



Department of  
**Justice**

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**DOMESTIC ABUSE OFFENCE AND DOMESTIC VIOLENCE  
DISCLOSURE SCHEME –  
A CONSULTATION**

**SUMMARY OF RESPONSES**

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## 1. EXECUTIVE SUMMARY

1.1. This document provides a summary of responses to the public consultation carried out between 5 February and 13 May 2016 on proposals for introduction of a domestic abuse offence and domestic violence disclosure scheme in Northern Ireland. This Executive Summary sets out a high level indication of some of the key issues identified in the consultation responses. Fuller detail on responses to each of the 26 consultation questions can be accessed in Section 2 of the report.

1.2. In total, over 500 consultation letters were issued to organisations working in this area. The consultation was accompanied by a young person's version and a questionnaire which asked consultees to respond to specific questions; there was also an opportunity to provide additional comments. Provision was made for the consultation to be made available in alternative formats and on request a Polish translation was provided to an organisation.

1.3. The proposals were subject to an initial Equality Screening which concluded that the proposals will apply equally to all individuals and will not adversely affect any particular group. Respondents were invited to provide evidence which may run counter to this and the submissions received will now form part of the rescreening process.

1.4. The Department received 44 written responses (please see Annex A to the Report) and officials also delivered five presentations to:

1. Women's Resource and Development Agency, Belfast;
2. Fermanagh and Omagh Policing and Community Safety Partnership (PCSP), Irvinestown;
3. Foyle Women's Information Network, Derry Londonderry;
4. Armagh, Banbridge and Craigavon PCSP, Craigavon; and
5. Women's Aid Federation Northern Ireland, Derry Londonderry.

1.5. The report comprises four sections:

1. Executive Summary
2. Introduction
3. Summary of consultation responses
4. Conclusion and Way Forward

1.6. Copies of this report will be placed on the DOJ Website. This document can also be made available **in alternative formats, on request**. Contact details are as follows:

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### *Domestic Abuse Offence Proposal*

1.7. The consultation sought views on whether a specific offence should be created that captures patterns of coercive and controlling behaviour in intimate relationships, in line with the proposed new definition of domestic abuse contained within the draft *Stopping Domestic and Sexual Violence and Abuse Strategy*.

1.8. For the purposes of the public consultation, the following definitions for the behaviours were provided:

*'Controlling behaviour is described as a range of acts designed to make a person subordinate and/or dependent by isolating them from sources of support, exploiting their resources and capacities for personal gain, depriving them of the means needed for independence, resistance and escape and regulating their everyday behaviour. Coercive behaviour is described as an act or a pattern of acts of assault, threats, humiliation and intimidation or other abuse that is used to harm, punish, or frighten a victim.'*

### *Summary of Views*

1.9. Overwhelmingly, respondents considered that as there is no distinct offence, the current law needs to change to recognise domestic abuse in all forms. Creating an offence would be a positive step towards ensuring that certain types of abuse are not overlooked or treated less seriously. It was suggested that any offence should include mental, emotional and financial control.

1.10. It was highlighted that currently the criminal justice system treats and, where appropriate, prosecutes each occurrence of domestic violence as an individual incident with the cumulative impact of controlling behaviour being overlooked. Consequently, not taking the repetition of these acts into account means the law currently does not provide sufficient protection for victims.

1.11. It was highlighted that perpetrators who use controlling and coercive behaviour may justify and minimise the harm caused by the fact their behaviour is non-violent. Thus it was noted that as well as providing better protection for victims, a domestic abuse offence would also send a strong message to perpetrators, that abuse whether physical or emotional is unacceptable and will result in serious consequences.

1.12. Relatedly, a range of respondents stressed the need for a strong sentencing regime that reflects the seriousness of domestic abuse/coercive and controlling behaviour. However, it was also suggested that the Department should also consider exploring a restorative justice programme to address such behaviour.

1.13. Some respondents expressed concerns that prosecuting cases could be inherently problematic, for example meeting evidence thresholds. It was therefore suggested that a holistic approach to capturing evidence and innovative approaches to assist in building a portfolio of evidence for domestic abuse cases should be considered.

1.14. Respondents considered further work would be required in framing/establishing the standard for the offence e.g. should the offence specify particular conduct/relate to a perpetrator acting in an intentional or reckless way or should it focus on the impact to the victim. It was suggested that the offence in Northern Ireland should also encapsulate situations where ex-partners are continuing to exert coercive control over their victim, even after separation.

#### *Domestic Violence Disclosure Scheme*

1.15. The consultation sought views on disclosing information about an individual's history of domestic violence to a partner who is in an intimate relationship with them and whether such disclosure should be facilitated through a 'Right to Know' scheme, a 'Right to Ask' scheme or both.

1.16. The proposed 'Right to Ask' scheme would be based on an individual 'A' having the right to ask the PSNI for a disclosure of information about his/her partner 'B's' past where s/he has concerns about 'B's' behaviour or background. The decision to disclose would be made by a Panel.

1.17. The proposed 'Right to Know' scheme would entail information about 'B's' history being proactively disclosed by the PSNI in prescribed circumstances to 'A'. As with a 'Right to Ask' scheme, the disclosure decision would be made by a Panel. The consultation also sought views on whether disclosures could be made to a third party e.g. sibling, friend.

1.18. For the purposes of the consultation an intimate relationship was defined as *‘a relationship between two people which may be reasonably characterised as being physically and emotionally intimate.’*

### *Summary of Views*

1.19. Conceptually, there was broad support for the introduction of both ‘Right to Ask’ and ‘Right to Know’ schemes which fundamentally would formalise the rights of individuals to make timely and informed choices about their relationships. Responses provided in relation to the detail of the schemes usefully highlighted a range of issues which will require further consideration to ensure the legality and operational effectiveness of the proposed schemes which are summarised in paragraphs 20-28 below.

### *Risk Management, Safety and Support*

1.20. The necessity for requisite support provision and safety measures to be made part of the disclosure process was highlighted across a range of responses. Respondents emphasized throughout that victims should have access to adequate help and support from the initial point of enquiry to the end of the process and irrespective of whether disclosure is the end result and/or ‘A’ chooses to stay in or exit the relationship. Ensuring the safety of ‘A’ was particularly highlighted in the scenario where no information is available and no disclosure is made in so far as this is no guarantee that ‘B’ is not an abuser or may pose a threat to ‘A’.

1.21. Respondents also stressed the importance of the environment and the manner in which a disclosure is made, particularly if the disclosure hasn’t been requested by ‘A’. Relatedly, the timeliness of making a disclosure where risk levels for ‘A’ are identified as high was also underlined.

1.22. There was broad support for the proposal to facilitate a third party being able to request information under the ‘Right to Ask’ scheme as being critical to the wider protection mechanisms which lie at the heart of the scheme. It was recognised that often friends and family see signs and patterns of abuse long before ‘A’ seeks help and that ‘A’ may be fearful or mistrustful of police contact and not seek disclosure. The need to ensure that third party disclosures are regulated and controlled was also underlined.

## *Disclosure Process*

1.23. Respondents broadly welcomed the concept of a multi-agency panel being established to decide whether a disclosure should be made and the importance of adherence to and compliance with the Data Protection Act (DPA) 1998 and the Human Rights Act 1998 was emphasized.

1.24. A multi-panel agency with the necessary knowledge and expertise was also viewed as crucial to ensuring a consistent approach to disclosure is achieved and that safety and risk assessment procedures are followed.

1.25. Views on the type and scope of information which should be disclosed under the schemes were diverse. Some respondents noted that other disclosure schemes allow for the disclosure of convictions and allegations related to a broad range of violent offences and therefore considered that any information pertaining to a history of violence or previous police involvement in relationship issues should be disclosable. Conversely, others took a different view and asserted that only domestic violence incidents should be disclosed. the DPA was referenced in so far as it requires that any disclosures made must be 'relevant'.

1.26. On the issue of disclosure of going beyond convictions to include intelligence, some respondents viewed this type of information as relevant to disclosure, particularly as the vast majority of domestic violence and abuse incidents do not lead to a conviction. It was posed that the disclosure of intelligence is therefore essential to ensuring the scheme has the most positive impact possible and furthermore, that the England and Wales disclosure model incorporates intelligence history.

1.27. Other respondents however highlighted potential problems associated with disclosing intelligence which included issues such as what would be considered as intelligence, the veracity of the intelligence sources and the potential for legal challenges against criminal justice agencies. It was suggested therefore that any decision to make a disclosure of 'concerns' held based on intelligence, would need to be subject to robust analysis by the multi-agency panel.

1.28. To address any risks and fully explore the issues associated with data protection compliance, it was usefully suggested that the Department undertake a 'Privacy Impact Assessment'.

## *General Comments*

1.29. The critical importance of comprehensive training and detailed guidance being provided to all relevant stakeholders for effective implementation of both initiatives (domestic abuse offence and disclosure scheme) was repeatedly expressed

throughout the responses. Relatedly, the issue of adequate funding and resources being provided was also mooted as critical success factors for the overall efficacy of both initiatives.

1.30. The need for awareness-raising was alluded to by respondents particularly in relation to a disclosure scheme wherein it was viewed essential that members of the public be aware of the scheme and how it operates. The issue of raising awareness however raised some polarity of views; some respondents viewed that publicity around the initiatives should acknowledge the majority of victims as being female; others advocated a gender-neutral stance whilst some also suggested that campaigns should target specific groups e.g. males to challenge public perceptions.

1.31. Respondents also stressed the importance of ensuring an offence and disclosure scheme should complement and dovetail with existing and planned service provision and protections e.g. Multi-Agency Risk Assessment Conferences, Child Protection Disclosure Scheme, Violent Offences Prevention Orders etc.

1.32. A number of oversight bodies/Commissions (e.g. Information Commissioner's Office NI, NIHRC) provided technical and detailed commentary in relation to certain aspects of the proposals. These have not been expressly included in the main body of the report however they will be fully worked through with due diligence during the next phase of developing the proposals. The Department also intends to accept their offers of assistance to assist in this process.



## 2. INTRODUCTION

2.1. This document provides a summary of responses received as a result of the Department of Justice's consultation on a potential Domestic Abuse Offence and Domestic Violence Disclosure Scheme.

2.2. It is widely recognised that domestic abuse is not just about violence. Coercive and controlling behaviour can be more difficult to identify but can have an equally devastating impact on victims. In recognition of this in March 2016, the Department of Justice (DOJ) in partnership with the Department of Health published a revised Government definition of domestic violence and abuse to capture coercive and controlling behaviour. The Department of Justice, through this consultation, sought views on whether the law needs to be strengthened to keep pace with these developments and create a specific offence to capture patterns of coercive and controlling behaviour in intimate and familial relationships.

2.3. As well as protecting victims, we must also prevent these incidents from happening in the first place. Therefore the consultation also sought views on whether current arrangements could be enhanced with the establishment of a Domestic Violence Disclosure Scheme in Northern Ireland. This scheme could enable new partners of previously violent individuals to find out about their partner's history of violence and abuse. They could then make informed choices about how or whether they take that relationship forward.

2.4. The public consultation was launched on 5 February 2016 and officially closed on 29 April 2016. A number of organisations requested further time to respond and were given until 13 May 2016 to do so.

### Consultation

2.5. The consultation sought views on:

- creating a specific offence to capture patterns of coercive and controlling behaviour in intimate relationships; and
- whether current arrangements can be enhanced by the establishment of a Domestic Violence Disclosure Scheme in Northern Ireland.

2.6. There were a total of 44 written responses received from a range of organisations across the sectors, and an individual member of the public (listed at Annex A). To assist organisations in providing responses, DOJ Officials offered and, following requests, delivered five presentations to the following stakeholders across Northern Ireland, namely:

- Women's Resource and Development Agency, Belfast;
- Fermanagh and Omagh Policing and Community Safety Partnership (PCSP), Irvinestown;
- Foyle Women's Information Network, Derry/Londonderry;
- Armagh, Banbridge and Craigavon PCSP, Craigavon; and
- Women's Aid Federation Northern Ireland, Derry/Londonderry.

2.7. Respondents were asked to consider the current law and arrangements regarding offences associated with domestic abuse and the protection of potential victims through sharing information and risk management. Views were sought on how the law and practice could be improved, for example the creation of an offence of domestic abuse and a number of options were provided in relation to a domestic violence disclosure scheme. Respondents were asked to consider what the potential risks and benefits might be in progressing potential changes and what impact these changes might have on different groups within society.

2.8. The consultation was accompanied by a young person's version and a consultation questionnaire which asked consultees to respond to specific questions. There was also an opportunity to provide additional comments. Many respondents completed the questionnaire however a number of responses were made in alternative formats.

2.9. The following report provides an overview of the key issues raised during the consultation process and highlights the key points with regard to creating a specific domestic abuse offence and establishing a domestic violence disclosure scheme, as well as a summary of the additional comments.

### **3. SUMMARY OF CONSULTATION RESPONSES**

#### **GENERAL COMMENTS**

3.1. Due to the range of responses received, this summary does not reflect each and every view on all of the topics but highlights the key issues with regard to each question and area considered. It does however, where relevant, reflect a level of detail indicative of the complexities of the topics being consulted on. There were some issues that were repeated throughout the responses and which did not relate to a specific question or issue, these have been included under this section, “general comments.”

3.2. The majority of responses were supportive of the creation of a specific domestic abuse offence to capture coercive and controlling behaviour. Respondents also welcomed a disclosure scheme being established in Northern Ireland.

3.3. Within the responses extensive references were made to research, policy, academic work and case law. We intend to capture this information separately and this will be used to inform the shape of a specific offence and a disclosure scheme.

3.4. Evidence from respondents will also be used for the purposes of rescreening the proposals made. The Equality Screening form associated with the consultation document will be updated to reflect this, and the preferred proposals will be rescreened.

3.5. A number of oversight bodies and Commissions provided fairly technical and detailed comments to the consultation. The detail of their responses has not been included in full in this report however they will be considered fully when progressing work on the proposals. A number of these organisations have also offered assistance to the Department and we intend to meet them in due course.

3.6. The Department would like to thank all respondents for taking the time to provide such comprehensive responses to the proposals suggested within the consultation document. We look forward to working with key stakeholder to introduce a specific offence and a disclosure scheme in Northern Ireland.

#### **RESPONSES TO INDIVIDUAL CONSULTATION QUESTIONS**

3.7. The following information outlines the key points raised regarding the specific consultation questions asked within the document. It should be noted that some of the issues raised may relate to more than one question/area, therefore in order to ensure that we accurately reflect the issues raised, there may be some duplication in the content.

## Should there be an offence of Domestic Abuse?

### Question 1: Does the current law adequately provide sufficient protection to victims of domestic abuse?

3.8. The majority of respondents considered that the law could be enhanced to further protect victims of domestic violence and abuse and deter perpetrators from repeating abusive and harmful behaviour.

#### Concerns and fears

3.9. A number of respondents stressed the importance of addressing the concerns victims already have with regard to accessing justice, this included the connections that perpetrators might have, e.g. to paramilitary groups. They highlighted that it is very difficult for victims to come forward and report to the police, particularly those with children, as they fear the consequences it will have on their family. It was posed that accessing the criminal justice system can be intimidating. A focus group of victims and survivors advised that if a coercive control law had been in place at the beginning of their relationship with their abuser they would probably have gone to the police or sought support much earlier. It was highlighted that as the law stands perpetrators can continue to disguise coercive and controlling behaviour as caring or protective behaviour.

#### Need for change

3.10. Overwhelmingly respondents considered that, as there is no distinct offence, the current law needs to change to recognise abuse in all forms. It was noted that much remains to be done to protect and support victims of domestic abuse and creating a specific offence would be a positive step towards ensuring that certain types of abuse are not overlooked or treated less seriously. When forming an offence it was suggested that the crime should include mental, emotional and financial control.

#### Nature of Domestic Violence and Abuse

3.11. A number of respondents reflected that as domestic violence and abuse is a unique crime it necessitates a unique response. It was suggested that a key flaw is that the law currently reacts only to extremes, when violence has already occurred. It was stated that the criminal justice system treats and prosecutes each occurrence of domestic violence as an individual incident with the cumulative impact of controlling behaviour being overlooked. It was argued that not taking the repetition of these acts into account means the law is not adapted to the reality of many cases of domestic abuse and thus does not provide sufficient protection for victims. It was also highlighted that this results in PSNI not having a framework within which they can intervene early and perhaps stop the escalation of the abuse. It was suggested that the current law, based on each incident, leads to a lack of deterrent for perpetrators as well as a lack of awareness of the nature of domestic abuse.

#### Victims

3.12. Several respondents noted that domestic violence and abuse is a gendered issue and that domestic abuse is a cause and consequence of women's inequality. Conversely it was noted that there is still some way to go before men are truly recognised as victims. It was also highlighted that it is not widely recognised that domestic abuse is also perpetrated on vulnerable family members, for example,

elderly parents. Respondents also stressed that young people must not be forgotten.

**Question 2: Should the law be strengthened, for example, to include a specific domestic abuse offence that captures patterns of coercive and controlling behaviour in intimate relationships?**

3.13. The majority of respondents welcomed the creation of a specific offence to capture coercive and controlling behaviour as they highlighted that these behavioural patterns can be a very early indicator of an unhealthy relationship and can very often lead to violence and other forms of abuse.

3.14. It was argued that currently victims can suffer years of coercive and controlling behaviour but only see their partner's physical violence receive the indictment of the criminal law. It was posed that offenders who use controlling and coercive behaviour have been able to justify and minimise the harm caused by the fact that their behaviour is non-violent.

3.15. The point was again raised that the law does not contain sufficient measures to protect victims who experience coercive and controlling behaviour as it fails to address the cumulative harm experienced. However caution was advised as there may be unintended consequences from changing the law by introducing the offence.

3.16. It was also noted that an offence will bring the law in line with the new Government definition of domestic violence and abuse.

3.17. Numerous respondents considered that the creation of a domestic abuse offence would send a clear message that all forms of domestic abuse, whether physical or emotional are unacceptable and will result in serious consequences; encourage victims to come forward at an earlier stage to report; and, ultimately provide protection for potential and actual victims of domestic abuse. It was also noted that it would send a strong message to perpetrators that they cannot act with impunity

3.18. A number of respondents expressed concern that prosecuting cases could be inherently problematic, particularly meeting evidence thresholds.

3.19. However it was highlighted that the proposed criminalisation of coercive and controlling behaviour would be in line with international human rights instruments; augment existing criminal and civil remedies; enable a shared and consistent understanding and bring the UK closer to the ratification of the Istanbul Convention.

**Question 3: How would any changes be practically implemented?**

3.20. Respondents acknowledged that the legal recognition of coercive and controlling behaviour and the cumulative impact of it will align with the Northern Ireland Government's definition.

### Proving a criminal case

3.21. Respondents noted that careful practical consideration must be given, should an offence be created, to the substantive contours of the definition of controlling and coercive behaviour and the sub-categories of behaviour types that flow from this. It was posed that the types of associated behaviour should be specified and defined in order to enable a defendant to respond to any criminal charge. It was recognised that there is a risk that these could be regarded in a subjective fashion. For example the Home Office guidance regarding the offence details a range of behaviours however as this is not an exhaustive list, other factors could be taken into account by the Prosecution Service to indicate if an offence has taken place.

3.22. Given the offence will relate to criminal law it was noted that any behaviour will have to have had a demonstrable adverse impact on a victim. In the absence of physical violence/injury this will relate to psychological harm which may be difficult to prove in the absence/if it falls short of a medical diagnosis. Respondents noted that in such circumstances objective and independent proof would be rare and cases would be reliant on victim evidence, a concern, given complainants often withdraw from the criminal justice process. Respondents' referenced guidance associated with the offence in England and Wales which reflects examples of how a victim's behaviour may change as a result of an adverse effect. Respondents noted that these factors may be difficult to identify as evidence for use in a courtroom. It was however noted that more may be known in Northern Ireland about the psychological impact of abuse (including Post-Traumatic Stress Disorder) on victims given our history of conflict.

3.23. Respondents queried if abuse will need to be documented over the course of the relationship and noted the difficulties that may arise in directly linking any adverse effect to abusive behaviour rather than another alternative cause.

3.24. Respondents stressed that key elements of any new offence should be clear and proportionate and should not impact on healthy familial and intimate relationship dynamics. They suggested that safeguards should include a defence that the perpetrator had not formed any malicious intent or could not form this intent and that they believed that they were acting reasonably and in the best interests of the victim. They provided an example of this behaviour as being where an alleged perpetrator was a carer for a person who was mentally ill and who was required to take medication to control their illness for their own protection and the safety of others and was required to remain confined to their home e.g. if they had dementia. They noted that although it might be considered controlling behaviour it would be considered objectively reasonable unless the victim had cause to fear violence.

3.25. Respondents considered that thought should be given to framing the offence in a proactive way. Respondents suggested that the Department consider the Scottish draft offence. This offence defines abuse by reference to the effects which it has or is likely to have on the victim, rather than the particular kind of conduct which the perpetrator engages in.

3.26. It was suggested that the Department should explore, through discussions, how a recklessness standard might be incorporated into the offence. Respondents noted that this standard would be preferable to an intention standard, because if the

latter is used it may enable the possibility for perpetrators to argue that while their conduct may be controlling that was not the intent.

3.27. Respondents noted that clear guidance on the evidence needed to secure convictions would be essential particularly, as stated previously; there is little/no physical/tangible evidence other than victim and witness testimony. Respondents acknowledged that consideration would need to be given to how this would be managed within the new offence and what forms of evidence would be acceptable and will be required to support a prosecution.

3.28. Unlike England and Wales it was highlighted that any offence in Northern Ireland should encapsulate situations where ex-partners are continuing to exert coercive control over their victim even if they no longer live together. They posed that the law should also adequately protect victims with disabilities where their abuser is a carer.

### Evidence

3.29. Respondents advocated a holistic approach to capturing evidence and proposed that innovative evidence collection approaches should be considered to assist in building a portfolio of evidence, the following proposals were suggested:

- use of a Domestic Violence Register to show the number of times police have been called to the house, to build a picture of the frequency and nature of abuse;
- use of PSNI intelligence and evidence gathered from incidents to build a picture of coercive control as a course of conduct;
- use of CCTV footage to show instances of abuse in public;
- phone records, text and social media messages to build up a body of evidence that reflects the pattern of abuse occurring;
- use of personal recording devices; and,
- use of PSNI body worn camera evidence from the scene on each occasion to effectively demonstrate the impact and seriousness of abuse.

3.30. In relation to the use of PSNI body worn cameras a victim, through a focus group, commented that *“there’d be nothing more powerful than a video showing a victim asking permission to speak in front of a police officer.”*

3.31. Respondents proposed that advice and information could be provided on websites to victims about cataloguing the behaviour they are being subjected to.

### Misuse of the offence

3.32. Respondents also raised concerns that the law could be misused by perpetrators to make false allegations against the victim. They noted that this could be mitigated with the provision of clear guidance and training.

3.33. It was recommended that any offence must be written and implemented so as to avoid manipulation by offenders who claim abuse by victims. Respondents acknowledged that abusive situations can be very complex and advised that systems will need to recognise the extent to which partner abuse can involve mutual abuse. They also noted concern on the assumption that an individual cannot be a victim if they retaliate or defend themselves from domestic violence and abuse.

3.34. It was suggested that men may be more vulnerable to false allegations and that whilst the legislation will be made on a gender neutral platform anecdotally, service providers who cater specifically for men, noted that this has not been the experience of service users in other areas of the judicial system. They also highlighted that there is currently a complaint of false allegations being processed in England and Wales. It was proposed that any outcomes from this case should inform the offence in Northern Ireland.

3.35. Respondents also noted, as referenced below, that perpetrators often use and manipulate the family court system as part of a campaign of abusive behaviour.

#### Links to other initiatives and systems

3.36. Respondents also suggested that a specific offence/coercive control should have a persuasive factor when considering whether to grant, for example, Occupation Orders. They also suggested that Non-Molestation Orders should be granted as a standard response in cases of both psychological and physical abuse.

3.37. Respondents raised concerns with regard to the family court system and its response varying greatly from that of the criminal courts in cases involving domestic abuse. Respondents posed that perpetrators used coercive and controlling behaviour through the use of the family justice system to intimidate victims. It was suggested that if coercive and controlling behaviour is created as a specific offence it should be taken into account in the family court system as regards child contact. However other respondents noted that access to children and the threat of removal of access is also used as a form of control. Respondents perceived that there is a contradictory nature with regard to the court systems, whereby the civil and criminal cases focus on getting a victim to safety and away from the perpetrator, whereas the family court insist on victims being involved in ensuring child contact happens, even when a non-molestation order is in place. Respondents suggested that a specialist domestic violence and abuse court might overcome this contradiction.

3.38. Linked to this issue respondents voiced their support for specialist domestic violence courts where such cases are heard by specialists with a comprehensive understanding of the nature of domestic violence and coercive and controlling behaviour.

#### Awareness

3.39. Respondents highlighted that there would be a need for a large scale public awareness campaign to assist with informing victims, friends and families. It was suggested that this campaign would also raise awareness amongst potential perpetrators.

3.40. It was noted that local partnerships could play an important role in raising awareness amongst the wider community in partnership with delivery partners, relating information about the change in the law, and what it means for victims and perpetrators.



### Training

3.41. Respondents advised that in order for a specific offence to work, all parts of the criminal justice system (e.g. PSNI, the Judiciary etc.) and stakeholder organisations in the area of domestic abuse, would need to be adequately trained to understand and respond appropriately to coercive control, thereby ensuring a victim receives a consistent response should they report an offence. It was highlighted that training should be provided by experienced and skilled professionals and funded to ensure front line staff/practitioners are fully aware of the changes to the law and their implications.

### Support provision

3.42. Respondents stressed that it will be more important than ever to ensure that victims are provided with support from organisations with expertise in tackling domestic violence and abuse when they do decide to report incidents of coercive and controlling behaviour.

3.43. Respondents also noted that this support could include a comfortable and safe environment where victims can report abuse to the police, preferably outside of a police station. Respondents highlighted that reporting abuse can be extremely intimidating and a more neutral welcoming space may assist in facilitating disclosure.

3.44. With regards to support in court, respondents noted that special measures should be standard/mandatory unless the victim opts out /expressly desires not to avail of them.

### Justice and sentencing

3.45. It was also suggested that to complement a specific offence consideration needs to be given to introducing a restorative justice programme. They proposed that this would involve holding offenders to account for what they have done and helping them to take responsibility and to make amends. They proposed that the programme would lead to rehabilitating offenders, implementing a learning process.

3.46. Respondents also stressed the need for a sentencing regime that matches the seriousness of domestic abuse/coercive and controlling behaviour and the impact that it has on victims.

3.47. A number of respondents also suggested that, similar to article 2 of the Criminal Justice (NI) Order 2004, the Department may wish to consider making the presence of control and coercion within an intimate relationship/domestic setting a statutory aggravating factor in sentencing, sending a clear signal that this type of behaviour will not be tolerated.

3.48. Respondents also considered that there should be a mandatory prison term for perpetrators on conviction, irrespective of whether they plead guilty or not guilty.

3.49. Respondents also considered, with regards to perpetrators being released on bail that any guidance developed should include bail conditions and reflect the increased likelihood of further abuse and intimidation of victims following release.

### Funding

3.50. Respondents stressed that in a period of notable and well-publicised pressures on public finance, it is imperative that there is long term, sustained financial support for all those organisations that support victims of domestic abuse and for the criminal justice sector to bring perpetrators to justice.

3.51. Respondents considered that adequate resources being provided would ensure that an offence is implemented in a way that promotes accessibility, understanding and realistic confidence.

### Further considerations

3.52. Respondents also stressed the importance of considering the ongoing concerns of victims of domestic abuse in reporting to PSNI, and in accessing the criminal justice system generally. Respondents acknowledged that a new offence of domestic abuse is not going to eradicate this concern. It was noted that it will take time for victims to gain trust in the system and to feel able to ask for help.

3.53. Respondents also proposed that the Department should give greater consideration to the outcomes of the implementation of the offence in England and Wales. For example respondents noted that at the time of the consultation there were no statistics on the number of prosecutions nor was there any case law in place. It was suggested that taking time to consider these would ensure a more effective offence is implemented here.

### Engagement with Stakeholders

3.54. Respondents suggested that victims and perpetrators of domestic abuse together with support organisations must be engaged at the earliest stage in shaping the practical application of policies and procedures that PSNI and other criminal justice organisations will be required to put in place. Respondents also urged the Department to work with expert organisations and delivery partners (Women's Aid, PSNI, PPS, NICTS, the Law Centre etc.) in framing a specific coercive and controlling offence.

3.55. It was also highlighted that discussion must also take place with monitoring and oversight bodies, such as the Northern Ireland Policing Board, to ensure that methods of data collection and disaggregation of results are appropriate. Respondents noted the importance of collecting and assessing statistical data on domestic abuse and any changes in reporting, charging, prosecution etc. that may emerge from the implementation of a new offence.

3.56. Respondents considered that an offence which incorporates the coercive and control element of domestic abuse would give police more scope to pursue perpetrators and bring them to justice. They proposed that police will be able to secure more convictions, disrupt domestic abuse at an earlier stage, and take people who are dangerous off the streets.

## Options for disclosing information on domestic violence

### Option 1: Continue current arrangements under existing law

#### Question 4: To what extent do you believe that the current arrangements are effective in preventing domestic violence?

##### PSNI common law powers

3.57. A number of respondents considered that current arrangements with regard to PSNI common law powers may not be effective as the decision to disclose information is solely at the PSNI's discretion. They stated that there may be inconsistency and disclosures may vary across the service. It was highlighted that some officers may be reluctant to disclose as they may not fully understand their powers or the circumstances in which they should/could be used. Respondents also recognised that there would be limited awareness of the extent of these powers.

3.58. A suggestion was made that it would be useful to consider the extent to which the PSNI currently make disclosures under their common law powers in the context of domestic abuse situations. Respondents recommended that an assessment of whether these powers are under-utilised and what prevents more disclosures from taking place would be helpful. This would then inform any protocols and guidance should a disclosure scheme be adopted.

3.59. It was posed that victims are less likely to come forward and seek help under current arrangements. Respondents considered that current arrangements could be enhanced to strengthen the safety, support and early interventions offered to both adult and child victims, particularly those affected by serial perpetrators.

3.60. Some respondents considered current arrangements were effective in providing a safety plan for high risk victims of domestic violence but they suggested that they did not go far enough. Although they managed the risk presented by offenders already convicted of domestic violence offences they did not prevent the commission of these offences.

3.61. It was noted that there is no data published with regards to the use and effectiveness of current disclosure arrangements in relation to public protection and PSNI common law powers. It was also proposed that potential and actual victims are unaware that the police had these common law powers.

3.62. Some respondents suggested that the increase in domestic violence incidents and crime was indicative of current arrangements not being effective in preventing domestic abuse from happening in the first place and preventing re-victimisation.

##### Public Protection Arrangements for Northern Ireland (PPANI)

3.63. A range of respondents commented on the current PPANI arrangements in place.

3.64. Respondents noted that although persons convicted of violent offences in domestic or family situations are referred into PPANI a minimum conviction of Assault Occasioning Actual Bodily Harm is currently required or a verifiable pattern

of ongoing domestic violence or abuse. Respondents also acknowledged that the threshold to be deemed a Category 2 and 3 offender (PPANI risk classification) is high and many perpetrators of domestic violence will not meet this.

3.65. It was noted that under existing law /PPANI practice consideration is only given to disclosing information where there is a risk of serious harm. It was also highlighted that to date there is no concrete decision on how disclosures will be handled under PPANI.

3.66. It was also referenced that PPANI arrangements do not allow for a member of the public to directly contact the PSNI about a potentially violent partner.

#### Licence conditions

3.67. It was noted that at present offenders subject to supervision on licence post release from custody may be required to 'verifiably disclose' information to new partners in respect of their offending histories. Failure to verifiably disclose may result in the initiation of recall proceedings. However, where offenders are not subject to licence conditions agencies have limited powers regarding disclosure.

#### Other initiatives

3.68. Respondents stressed that the contribution of initiatives including early intervention, Multi Agency Risk Assessment Conferences and Dash forms (Domestic Abuse, Stalking and Harassment and Honour Based Violence Risk Identification and Assessment and Management Model) should not be underestimated. They also suggested that what is in place should be developed further to ensure robust best practice.

3.69. Respondents noted that a formal domestic violence disclosure scheme would be beneficial in providing a consistent framework for officers to assess risk and disclose information. It would also provide an opportunity for support services to be integrated into the disclosure process. It was however also noted that any potential scheme should take account of offender rehabilitation.

### **Question 5: How could the current arrangements be improved**

3.70. There were a range of suggestions from respondents on how current arrangements could be improved. With regards to preventative measures it was noted that education and greater public awareness is key to delivering improvement and bringing change.

3.71. It was proposed that current provision of services could be greatly improved to ensure sustainable and specialist services to support the diverse needs of victims. It was stressed that current arrangements must be improved to provide the best possible protection for victims. It was also suggested that funding and resources should be prioritised to tackle domestic violence and abuse.

3.72. Respondents noted that there should be a more effective method of information sharing between the PSNI and other agencies. As previously noted respondents recognised that this could potentially be achieved through a "right to

ask” and a “right to know” National Disclosure Scheme, their preferred Option 4. Respondents underlined the need for a formal, uniform and consistent process with regards to information sharing and making disclosures to potential victims. It was suggested that a robust central collection of data would allow effective monitoring of the enquiries, disclosure and outcomes. It was also noted that an established scheme will formalise existing common law processes particularly given the current common law system was considered open to individual interpretation and decisions as to the balance of individual rights. It was also suggested that while the question of disclosure is approached from within a rights-based framework, data protection considerations should not be allowed to compromise victim protection. It was also stressed that the detail of how an improved disclosure scheme operates could be the difference between a scheme that enables people to take steps to make themselves safe and one that may put people at further risk.

3.73. It was noted that the PSNI, in particular, would need to be supported to facilitate suggested improvements and the potential implementation of a formal process. It was recommended that this could be done by:

- improving the police’s ability to offer safety planning;
- increasing and improving the quality of domestic violence training for officers; and,
- developing the skills needed to respond to children at the scene of domestic incidents.

3.74. Respondents also recommended that all services and provisions should seamlessly dovetail and interface with each other. Not only was the need for greater signposting to support services for victims mentioned but specific reference was made to how improvements should link with other current and planned initiatives including child protection arrangements, domestic violence protection orders and Violent Offences Prevention Orders (VOPOs).

3.75. In relation to access to justice and addressing offending behaviour, a number of respondents emphasised the need for more thorough collection of evidence to support successful prosecutions. They stated that conviction rates for domestic abuse related offences needed to improve. It was suggested that this should also include a rigorously enforced arrest and charge policy and be complemented by an increased number of treatment programmes for adjudicated and non-adjudicated offenders of domestic violence and abuse.

## **Option 2: A ‘Right to Ask’ National Disclosure Scheme**

### **Question 6: Should a formal system be put in place to enable ‘A’ to ask the police for information about the previous violent behaviour of ‘B’?**

3.76. The majority of respondents agreed that there should be a right to ask scheme in place as well as a right to know scheme. The comments outlined below are indicative of the responses received.

3.77. A system of formal disclosure would enable ‘A’ to be more informed of the potential risks that may be posed by ‘B’, and enable them to make an informed decision about their relationship. The opportunity to access information at an early point in a relationship when a potential victim first has concerns may act as a form of early intervention enabling informed decisions about the future of the relationship to be made. Having a scheme in place may also lead to a decrease in the likelihood of perpetrators moving from victim to victim.

3.78. A right to ask scheme would send a message to potential victims of domestic violence and abuse that the police and justice system are on their side. A right to ask scheme may empower victims by validating their experience of abuse and would send a message to potential victims of domestic violence and abuse.

3.79. However disclosure/non-disclosure of information should not be the end of the process, the potential victim must be confident that they are able to access the help and support they need whether they intend to stay in the relationship or leave.

### **Question 7: Do you agree that the proposed model, with appropriate modifications following consultation, is a suitable model to apply under this option?**

3.80. Respondents generally considered that the proposed model was suitable once it has been modified to reflect the learning gathered from disclosure schemes in operation in other parts of the United Kingdom.

3.81. The importance of the scheme being fit for purpose was stressed. It was posed that the key to the disclosure scheme being successful will be the operational detail. It was noted that this detail could be the crucial difference between a scheme that enables people to take the action required to make themselves safe, and one that may put them at further risk. Respondents provided a range of comments with regard to the model that are captured under steps 1 to 4 below.

3.82. It was stressed that the scheme must provide potential victims with the tools to enhance their safety, facilitate exit from a relationship with a perpetrator, and link effectively with support provision for victims of domestic violence.

3.83. It was noted that a disclosure scheme can only work effectively against the backdrop of adequate support provision for those affected by domestic violence, and appropriately trained front-line professionals who can identify and respond to domestic violence and abuse in all its forms. It was also suggested that it should

operate in conjunction with proactive policing to pursue perpetrators and partnership work across all sectors.

3.84. It was also noted that any scheme developed should dovetail and have common processes and interfaces with other disclosure schemes currently operating.

3.85. The importance in putting realistic timeframes around the completion of the process was highlighted. However it was noted that disclosure should be made quickly to enable early intervention.

#### Step 1 – Initial enquiry and initial checks

3.86. It was noted that further clarification is required with regard to what constitutes an initial check. It was proposed that this initial check should not be limited to convictions particularly in light of the nature of domestic violence and the issues with underreporting and progressing cases through the criminal justice system. It was suggested that a convictions only check may result in no information being found and may lead to a false sense of security for individuals who may well have justified concerns with regards to their safety.

3.87. A number of concerns were raised from a data protection perspective with regard to conducting initial checks. It was noted that even though no disclosure has been made, 'B's personal information is still being processed by the PSNI. Respondents queried the value of a formal application being made by 'A' when initial Police checks indicate that no information is held. This could be considered excessive processing of 'A' and 'B's data if accessing of the information isn't entirely necessary at this stage. It was also highlighted that it is not clear from the model whether this initial enquiry occurs face to face, over the telephone or in writing. It was suggested that it may be more appropriate to only perform checks at Step 2, when the formal application for disclosure is made. It was however acknowledged that the consequence of this may be a delay in the victim receiving crucial information.

3.88. It was proposed that at this early stage a referral should be made to a support provider. This would mean that as 'A' awaits a response they can discuss their concerns with someone with expertise in the area. It was suggested this would lead to better outcomes for those making disclosures and assist in managing the false sense of security that may result from no information being disclosed.

3.89. It was also suggested that the initial enquiry by 'A' could be made by a mobile phone application (app). This may appeal to a younger demographic and those who are reticent in entering a police station to make initial enquiries.

#### Step 2 – face to face meeting and formal application

3.90. Respondents highlighted that it may prove difficult in practice to confirm the status of the relationship between 'A' and 'B'. It was noted that careful consideration would need to be given to what constitutes a relationship and what type of proof

would be required to substantiate it. It was proposed that robust procedures and guidance will be required to ensure that only genuine requests are considered.

3.91. As previously highlighted, it was suggested that the checking of 'B's' information could begin at this stage. In doing so this would ensure that the PSNI are only completing checks on behalf of individuals whose identity has been confirmed, it will lead to greater clarity at the end of the process, and, will avoid unnecessary confusion/anxiety.

3.92. A range of respondents agreed that the model should have safety mechanisms embedded. It was proposed that safety planning and risk assessment should be integral to the process and this should be complemented with the provision of support to 'A' and third party requestors 'C'.

### Step 3 – full checks and formal risk assessment

3.93. It was proposed that information should be considered from a wide range of sources including other jurisdictions. It was noted that appropriate safeguards should be put in place to ensure its accuracy and the necessity, proportionality and legality of disclosure. An example of the Scottish Police service was provided. They consult a wide range of partner organisations to assess if there is a risk of harm.

3.94. It was also suggested that a number of issues within the model require further elaboration. For example further detail would be of benefit with regards to what the risk assessment would entail. It was also suggested that the model is vague with regard to the disclosure decision taking the risk assessment into consideration *and* specifically the issue of having appropriate safety measures in place for the applicant. It was noted that the wording within the model suggests that a disclosure will not be made if appropriate support and measures cannot be put in place. Respondents highlighted that the model is not clear on what other steps may be taken to secure the individual's safety and the level of support that would be deemed adequate. It was suggested that support should be provided regardless of whether a disclosure is made.

### Step 4 – referral to multiagency panel and disclosure/non-disclosure

3.95. A number of respondents welcomed the safeguard where the PSNI refer the request to an appropriate multi-agency panel, which would then make a decision on whether to disclose the information to 'A'.

3.96. It was acknowledged that the Data Protection Act (DPA) should never be a barrier to disclosing information where there is a pressing need; however the panel should ensure compliance with the data protection principles.

3.97. It was noted that amongst other things, this requires the processing/disclosure of personal data to be fair and lawful, and require certain 'conditions for processing' to be satisfied to legitimise such processing. Furthermore, the DPA requires that information is adequate, relevant and not excessive, and that is kept accurate and up to date. This means that only the relevant information should be disclosed to fulfil the purpose (warn 'A' about dangers). Particular care should be given to ensuring that



the information held about 'B' is correct, as disclosing information which is inaccurate could cause significant detriment to the individuals concerned.

3.98. It was suggested that it will be of the utmost importance that the multi-agency panel is fully informed and aware of the requirements under both the DPA and the Human Rights Act 1998. Reference is made to the fact that for the policies to be successfully implemented assistance may be required from key stakeholders in all sectors. Respondents recommended that a code of practice/specific guidance is developed including reference to key DPA issues. It was noted that once the multi-agency panel has considered a request for disclosure, it may be advisable to return all relevant documentation to the PSNI to ensure the security of the information; therefore no agency is holding the information for their own purposes.

3.99. A number of respondents, including a victims/survivors focus group were concerned about the manner in which a disclosure is made. This was of particular note when the disclosure has not been requested by 'A'. Caution was urged in contacting 'A' at home. It was suggested that alternative venues for meeting with 'A' to discuss a disclosure should be considered, as a police station setting may be daunting. Meeting rooms within support organisations and rescue centres were proposed.

3.100. The importance of effective communication and safety planning was highlighted in instances where no information is held/no disclosure is made. This is to ensure that 'A' remains safe as it may be very possible that 'B' is an abuser but is not yet known to the police. It was noted that, if appropriate support mechanisms are in place, the disclosure scheme has the potential to be a preventative and early intervention tool even in non-disclosure cases.

3.101. It was also recommended that if 'A' decides to leave their relationship on the basis of a disclosure, support must be there to help them do this safely.

3.102. Respondents advised that not all people who are told of their partner's abusive history will leave the relationship, or they may return after some time apart. It was suggested that part of the disclosure scheme should include enabling 'A' to take steps to protect themselves while in the relationship. It was underlined that there should be no judgment if a disclosure takes place and 'A' decides to stay with their partner.

3.103. There are many reasons why 'A' might stay with 'B' after a disclosure and it is important that the statutory response to domestic violence does not punish victims who choose not to leave the relationship. It must be made clear in the messaging that support and protection is available to them at any point. It was proposed there should be a similar message for those who do not receive a disclosure, particularly if the person they are concerned about is abusive in the future.

3.104. Respondents recommended that the police ensure that those receiving information understand the confidentiality of the information being disclosed, especially given the civil and potential criminal law implications breaching that confidentiality might have. Issues specific to communities within Northern Ireland

need to be considered, for example the risk of vigilante behaviour, if information is disclosed without due care.

3.105. It was suggested that the scheme should be rolled out in such a way as to be most beneficial to as many potential victims as possible. To ensure effectiveness it was posed that robust monitoring must be inherent within the system with effective measurement of outcomes.

3.106. It was also stressed that the scheme should be fully accessible and inclusive. Further detail in that regard is provided later in the report and separately within the equality screening documentation.

### **Question 8: What do you see as the potential risks and benefits? How might any risks be minimised?**

#### Benefits

3.107. It was highlighted that the disclosure scheme would provide vital information to those at risk, enable access to support, provide an additional tool for combatting domestic violence and abuse, increase confidence in the PSNI, and potentially provide better protection for victims.

3.108. Respondents noted a range of benefits that could be realised with the introduction of a right to ask scheme. There would be a clear pathway for potential victims to raise their concerns at an early stage and have the information required to make a more informed choice about their relationship. A formal scheme would allow the development of standardised procedures in relation to disclosure and the support given to potential victims. There would be the opportunity to raise public and service provider awareness of the issues involved, including information disclosure and Human Rights; disseminate good practice; and develop appropriate training.

3.109. It was posed that victims will be able to ask for and receive information about a partner's previous offending, and this will enable them to make an informed decision about the future of the relationship. This information will hopefully protect them, and any children in the household, from any domestic abuse. It was suggested that a formal scheme may encourage earlier intervention and reporting of domestic abuse. Respondents noted that victims may leave the relationship sooner and avoid a commencement or escalation of abuse.

3.110. Respondents highlighted that a Right to Ask scheme will enable PSNI to operate a clear and consistent process for making disclosures. It will also provide an option for interested 3<sup>rd</sup> parties (e.g. parent, child of potential victim etc.) to request that relevant information be disclosed. The scheme may also bring potential victims and perpetrators of domestic abuse to the attention of PSNI and other agencies for the first time.

3.111. It was also suggested that a scheme may decrease the likelihood of perpetrators moving from victim to victim. It was suggested that police may identify previously unknown serial perpetrators if repeated requests are made by different partners/victims.

3.112. It was stressed that anything that will reduce the likelihood of harm is positive and cost effective.

3.113. Respondents acknowledged that there would be significant benefits in a multi-agency panel with the necessary knowledge/expertise as it should provide a consistent approach where safety and risk assessment procedures are followed. It was noted that this may require additional resources from the agencies involved however it would enhance multiagency working in a defined process.

3.114. It was also noted that benefits will likely extend to child protection where applicable, for example, family members may be able to provide a layer of protection to children where abuse is potentially present in the home.

### Risks

3.115. Respondents also highlighted a number of potential risks that needed to be considered and addressed. These included:

- only convictions being disclosed;
- no domestic violence advisor/advocacy service in NI;
- a malicious request;
- increased confusion amongst both service users and providers about the different disclosure schemes in operation;
- a potential lack of consistency of the information given in disclosure across police area;
- incorrect information being supplied;
- a training/awareness deficit with regards to officers and multi-agency panels;
- the system may not be expeditious enough for cases where there is pressing need for disclosure;
- falsely raising the expectations of service users if a properly holistic funded service is not in place; and
- the increased administrative burden reducing police resources available for other areas of domestic violence/abuse prevention, investigation and support.

3.116. Respondents recognised that there would be risks relating to barriers to access and engagement with the system, either as the result of the perpetrator's controlling behaviour or as the result of system barriers(for example an absence of foreign language versions advertising literature). It was also suggested that unless the scheme is based on legislative provision rather than common law there is an increased risk of legal challenge.

3.117. A number of respondents noted the risk of an 'official' disclosure indicating no history of previous domestic abuse/violence. This could lead to a false sense of security by an individual and the continuation of a potentially abusive relationship.

3.118. It was also suggested that the victim may be put at further risk if their partner finds out that they have asked for the information. Therefore, confidentiality on the part of all parties is of utmost importance.

3.119. Respondents also identified risks specific to communities within Northern Ireland which need to be considered, for example the risk of vigilante behaviour if information is disclosed without due care.

3.120. Victims noted significant concerns with regards to coming to the attention of social services as a result of seeking information and the impact that any application for disclosure might have on them and their children. This was of particular concern should the individual decide to remain with an abusive partner. This concern was also raised with regards to social services sitting on the multi-agency panel associated with this proposed disclosure scheme.

3.121. It was noted that with regards to disclosing information, a person's (B's) right to a private life can be interfered with to protect the rights of others (e.g. A), for example, to prevent crime, and that careful consideration in balancing both individuals' rights is vital. However respondents also noted the importance of the rehabilitation process and that a perpetrator who has changed their behaviour should not endure endless stigma.

### Mitigation

3.122. Respondents advised that a range of measures could be put in place to mitigate and minimise potential risks. These included:

- need to link with and build on the multi-agency systems already in place, e.g. MARAC, PPANI, the Safeguarding Board etc.;
- the process should be streamlined to ensure consistency of approach and uniformity of information that is shared;
- careful consideration would be required regarding the approach taken to obtaining information from other jurisdictions;
- ensure the PSNI and relevant agencies are appropriately funded and resourced to deliver;
- training of police officers, other key respondents and support workers with regards to domestic violence and abuse, information disclosure and the human rights balance involved in disclosure decisions, is of paramount importance;
- the provision of clear guidance / procedures for PSNI officers including explicit guidance around involving/informing 'B' - or not - as the model applies;
- the development of a communication strategy;
- a programme of awareness raising and a clear definition of the scheme;

- appropriate safeguards developed to ensure the accuracy of information and the necessity, proportionality and the legality of disclosure;
- information is disclosed with due care;
- appropriate funding with due regard to safeguarding funding for other areas of domestic violence / abuse prevention, investigation and support;
- the delivery of an accessible and inclusive system
- support should be offered irrespective of whether a disclosure is made/a history of abuse is found; and,
- it was considered that no punitive action should be taken by the police or social services if a victim decides to remain with a partner that they have concerns about and that they have asked for information on and who has been abusive in the past.

3.123. With regards specifically to BME it was noted that the language barriers could be mitigated and access improved by: ensuring publications and awareness raising materials are in key minority languages; ensuring the disclosure scheme and the information disclosed is understood by taking additional steps to ensure clarity; working to build relationships between communities and the PSNI; conducting outreach work and workshops and taking cognisance of specific barriers for members of these communities, e.g. issues around immigration, the spousal visa and leave to remain.

3.124. It was highlighted that the positive obligations on authorities to protect victims of domestic violence and abuse can be achieved through appropriate responses by the policing and prosecution authorities.

3.125. It was suggested that in order for a disclosure scheme to be fully effective, legislation needs to be enacted to enable the introduction of coercive/controlling behaviour as a crime. This will enable disclosure of important information at a much earlier stage thereby reducing the risk of people becoming long-term victims of domestic abuse.

3.126. To address any risks and fully explore the issues associated with data protection compliance, it was suggested that the Department conduct a 'Privacy Impact Assessment'. It was noted that this should identify the potential privacy risks associated with a disclosure scheme. In this regard the importance of robust safeguards and clear guidance and training for all involved in this process was emphasised. In relation to data, it was also noted that if the police begin to keep information on individuals as a result of applications to a scheme guidance will be required in terms of what this information is to be used for, how it is to be stored, and who has access.

3.127. It was suggested that to realise benefits and mitigate the risks associated with the implementation of a right to ask scheme engagement with stakeholders to set up the relevant systems, procedures and policies will be vital.

## **Option 3: A ‘Right to Know’ National Disclosure Scheme**

### **Question 9: Should a ‘right to know’ system be put in place to ensure that the PSNI proactively shares information to ‘A’ about the previous violent behaviour of ‘B’?**

3.128. The majority of respondents were welcoming of a right to know scheme facilitated by existing common law. A number characterised the system as a formalisation of existing police practice and the importance of the police retaining the duty and procedures to take proactive action, if required, was emphasised. It was recognised that a right to know scheme should ensure a greater consistency in the use of this police power.

3.129. It was highlighted by a number of respondents that this system would be beneficial given victims may not recognise signs of abusive behaviour. It was suggested that the right to know system would raise the awareness of individuals who are most at risk of suffering from abuse, making it easier for them to identify abusive behaviour, for example, should they choose to stay in the relationship.

3.130. Respondents acknowledged that a formal process would facilitate proactive sharing of information by the PSNI to protect ‘A’ where they are considered to be at risk of harm by ‘B’. It was also noted that the sharing of the information should be done in a controlled way.

3.131. Respondents also suggested that the provision of clear guidance, procedures and training for PSNI officers in relation to the ‘right to know’ would ensure that officers are aware of the extent of their powers in respect of disclosure and the process involved. This will consequently give them confidence in exercising their powers.

3.132. It was however noted that the practical implementation of the scheme may be challenging as PSNI may not be aware that a previously violent person has moved on to be with a new partner. It was also argued that under a right to know information should only be pro-actively shared by PSNI in limited circumstances and the presence of children in the relationship should be a relevant factor in the decision-making process.

3.133. It was suggested that a key benefit of utilising the right to know system would be its ability to reach persons who are unwilling or unable to exercise their right to ask. This could be as a result of fear, considering their experiences are trivial or additional barriers for example those faced by the BME community.

3.134. It was also suggested by victims/survivors that perpetrators may not feel as confident or act with such impunity if there is the option that their abusive history could be shared with current and future partners.

3.135. It was highlighted that there may be some risk associated with how information is disclosed to individual A, as the disclosure is unrequested and

therefore unexpected, thus creating the potential for their partner to discover the disclosure.

3.136. In this regard it was proposed that any right to know system must include the ability for people (B) to know if their information has been requested and by whom.

3.137. It was also noted that disclosure should be made as soon as possible to avoid undue delay that may put a potential victim at further risk.

3.138. It was also suggested by a number of respondents that whilst a right to know scheme may be considered administratively onerous it could in fact be argued to be a key preventative tool and far less onerous and demanding of police time than investigating and pursuing convictions for assault, murder or rape for example.

3.139. It was also stressed that anything that will reduce the likelihood of harm is positive and cost effective.

#### **Question 10: What do you see as the potential risks and benefits of such a scheme? How might any risks be minimised?**

3.140. Respondents noted that a right to know scheme has the opportunity to inform and protect those at risk, provide them with support that may be needed, and gives the PSNI further scope to proactively combat domestic violence and abuse. They proposed that the process, if implemented, should be streamlined to ensure consistency of approach and uniformity of information shared and disclosed.

#### Further consideration required

3.141. They also noted that further consideration would be required to clarify the detail around, for example, what would trigger a disclosure, how PSNI would ensure appropriate disclosure etc. They suggested that the threshold which must be met to trigger a 'right to know' disclosure may be easier to measure in the case of those individuals with relevant convictions; it may be more difficult where the information is based on intelligence. Respondents noted there would have to be a high level of certainty regarding the reliability and accuracy of the information prior to any disclosures being made.

3.142. Also it was suggested that further consideration should be given to how the 'right to know' model will differ from PSNI's existing power to disclose. It was noted that clarification on all aspects of a proposed scheme will ensure and instil confidence in making appropriate disclosures.

#### Capturing individuals unlikely to come forward

3.143. Respondents referenced that under the pilot in England and Wales applications under the right to know scheme were more likely to succeed than those under a right to ask. They noted that this might suggest that these applications capture a section of the community who were at high risk of harm but were unwilling/unable, for a range of reasons, to contact the authorities seeking assistance.

3.144. Respondents posed that a key benefit of the system would be its ability to reach persons who would not/could not exercise their 'right to ask'. With regards to this issue respondents specifically referenced individuals within the BME community, who as noted elsewhere, often encounter additional barriers.

#### Links with other initiatives and other jurisdictions

3.145. Respondents acknowledged the need to link with public protection arrangements and other multiagency groups working in this area, e.g. MARAC.

3.146. Respondents also noted that careful consideration would need to be given regarding the approach to obtaining information from other jurisdictions, particularly to ensure disclosure happens in a timely manner and that potential victims have a clear picture of the risks posed.

#### Managing disclosure

3.147. It was noted that difficulties may arise as the 'right to know' scheme might involve individuals who may *not want* to know. It may also be difficult for the PSNI to identify who 'A' is. It was also suggested that individuals not wanting to know coupled with the fact that in some cases, disclosure might place 'A' at a greater risk than if they had not been told. It was suggested that minimising the risk to these individuals might prove difficult.

#### Introduction of a new offence

3.148. It was suggested that in order for a disclosure scheme to be fully effective, legislation needs to be enacted to introduce an offence of coercive and controlling behaviour. It was noted that information of abusive behaviour will be captured and disclosed at a much earlier stage thereby reducing the risk of people becoming long-term victims of domestic abuse.

3.149. In terms of benefits specific to the disclosure scheme it was noted it will contribute to earlier informed risk assessment by victim and social partners which strengthens the interagency response to safety and support planning for adult and child victims.

#### Timing

3.150. Respondents stressed the requirement for the timely disclosure in circumstances where risk levels have been identified as high. Respondents therefore suggested the need for the multi-agency panel to meet on a regular basis and/or use other means of joint decision making outside of formal meetings, to ensure that delay in the process does not add to risk for a victim.

#### Multiagency panel

3.151. Respondents noted that a great deal of responsibility is placed on the multi-agency panel when making a decision of whether to disclose this information.

3.152. They also recommended that a full audit trail should support every decision to pro-actively disclose information. It was also stressed that the panel should have the necessary knowledge and expertise to ensure safe and informed disclosure decisions.



### Confidentiality

3.153. Respondents also suggested that a confidentiality clause for disclosing information would allow police to navigate conflicts between data protection, privacy and the need to keep people safe.

3.154. Some respondents also proposed that information should be shared under the scheme only as far as it is necessary to protect potential victims and that there should be a balance between safety and privacy concerns.

3.155. Respondents suggested there should be appropriate measures in place to ensure the 'right to know' scheme is not abused by individuals or groups. It was highlighted that there may be a risk of groups of people putting in large numbers of requests and attempting to create their own database, therefore there must be a failsafe to identify anomalies/multiple requests. The risk of 'A' sharing the information was also referenced. It was also noted that unlike England and Wales Northern Ireland has the particular concern of community divides and paramilitary threats, primarily in the form of 'punishment' attacks/shootings.

### Resources and training

3.156. It was proposed by respondents that much of the risks could be addressed with appropriate resources, training and guidance for all those involved in the 'right to know' scheme/process. They considered that the involvement of stakeholders from all sectors will be key in ensuring the process is fit for purpose and meets the needs of all sections of our community. Respondents also considered that the Department should engage experts in Information Management and Human Rights issues to address the more technical complexities.

3.157. Respondents also referenced the need for an effective pathway for victims who choose to leave their relationship. They also noted that there should be clear messaging to all potential victims of the options that are available, and particularly given some may wish to remain in the relationship that, 'the door to support remains open'.

### Trial

3.158. Respondents recommended that if this model is adopted, the Department should embark on a trial period to identify risks and adopt solutions accordingly.

3.159. The right to know scheme can therefore enable potential victims and groups to gain vital information and respond appropriately in an areas that is traditionally 'behind closed doors'

### **Question 11: What other mechanisms for disclosing information about a subject's violent behaviour do you consider appropriate**

3.160. Although both a right to ask and a right to know scheme were generally welcomed, further comment was provided with regard to other mechanisms.

3.161. Respondents queried if the model proposed where disclosure decisions are made by a multi-agency panel would be appropriate where urgent action is required. They suggested that a different approach may be required, such as authorisation by

a senior police officer, where there is pressing need for disclosure with appropriate safeguards to ensure that the disclosure is lawful, necessary and proportionate to protect the potential victim from harm. It was noted that this option should be discussed further with support groups including Human Rights and Civil Liberties lobby groups. It was also suggested that the right to ask scheme should be similar to the Child Protection Disclosure Scheme.

### Register

3.162. A number of respondents also proposed a different mechanism of a Domestic Abuse Offenders Register, similar to the existing Sexual Offenders register.

3.163. It was noted that registers exist in other jurisdictions and we might wish to explore having a register similar to those in certain states in the United States. It was proposed that a database could be publicly accessible and searchable which might be a solution to shortening the process and relieving the pressure on the police. Respondents acknowledged that there may be issues with regard to privacy of the individual concerned, however it was highlighted that a domestic violence register could be held and operated in much the same way as the existing register for sex offenders. It was noted that the latter gives concerned persons the right to ask if a person is on the register, but does not confer on them the right to search the register themselves (Scotland's Sex Offenders Register was given by way of example).

3.164. It was highlighted that with regards to the register there would be a legal requirement for perpetrators of domestic violence to register as part of their conviction and this may require a change in the law.

3.165. A focus group identified that *"Women (victims) carry a lot of shame, and the perpetrator just slopes off to the next relationship. A register would give the perpetrators their own shame"*. It was also said that *"It should impact on their lives as much as it's been impacting ours"*.

3.166. It was proposed that the register could be managed by a designated body for example the PSNI and or by a multiagency group.

### Programmes for perpetrators

3.167. Support systems would need to be put in place for those persons coming off the register after a certain length of time. It was suggested that a model consisting of counselling and education programmes could be considered.

3.168. It was also suggested that consideration needs to be given to introducing a restorative justice programme. This would involve holding offenders to account for what they have done and helping them to take responsibility and to make amends. This programme would lead to rehabilitating offenders and implementing a learning process.

3.169. It was also suggested that a disclosure scheme could be coupled with pre-existing probation programmes enabling offenders to address, identify and work towards changing their behaviours; this would provide greater safety and balance to the proposed scheme.

### Existing mechanisms

3.170. It was suggested that any initiative should complement existing preventative and early intervention measures.

3.171. It was noted that existing mechanisms such as MARAC, case conferencing etc. although helpful can be restricted in terms of what information can then be shared with the victim to assist their own risk assessment and safety and support planning.

3.172. It was also suggested with regards to current disclosure arrangements (e.g. under Multi Agency Public Protection Arrangements, MAPPA), that the less formal agencies should have a more significant role in informing a victim of possible dangers. However it was stressed with regard to MAPPA that the police should remain in the lead. It was also noted that victims are often engaged on a multi-agency level before contacting the police (social services, GPs, housing and health authorities, children's schools, etc.) and so it may provide a safer environment for a disclosure to be coordinated on a multi-agency level.

3.173. Respondents urged the Department to work with expert organisations in the formulation of the Disclosure scheme and the domestic violence offence measure.

## **Option 4: A 'Right to Ask' and a 'Right to Know' National Disclosure Scheme**

**Question 12: Should both a 'right to ask' and a 'right to know' system be put in place to:**

- **enable 'A' to ask the police for information about the previous violent behaviour of 'B', and**
- **ensure that the PSNI proactively shares information to 'A' about the previous violent behaviour of 'B'?**

3.174. Respondents generally agreed that the introduction of both a 'right to ask' and a 'right to know' disclosure system were essential to strengthen the position of the police and other statutory agencies in being able to disclose information and also to give victims and potential victims an opportunity to be fully informed about potential risks associated with their relationships. Respondents considered the implementation of both models would formalise the rights of potential victims to ask for the disclosure of relevant information and retain the proactive duties of police in situations where no request has been made.

3.175. It was proposed that the combination of both schemes will provide greater opportunities for supporting victims of domestic violence and abuse, provide increased access to support services and provide a means of increasing public confidence in the PSNI's ability to safeguard victims of domestic violence and abuse. Respondents considered it would be helpful for agencies to proactively work together and consider sharing information in cases where they are concerned about A.

3.176. If a proactive system is put into effect it should be fair, consistent and involve trained professionals.

3.177. It was noted that elements of domestic abuse, including physical and sexual violence, often occur long after patterns of coercive and controlling behaviour have been well established, thereby making it more difficult for victims to seek help and break the cycle of domestic abuse. It was therefore highlighted that an opportunity to break the cycle at the earliest opportunity should be welcomed and introduced as a matter of urgency.

3.178. Respondents emphasised the need to ensure the introduction of any such scheme was significantly publicised to ensure people are aware of the scheme and how it operates. It was noted by respondents that any advertising should acknowledge that the majority of victims are women, conversely it was suggested that awareness should be 'gender neutral', some went further and proposed that specific campaigns should be aimed at certain groups such as men to challenge public perceptions.

3.179. It was also emphasised that a scheme would need to be supported by clear guidance for PSNI on the powers which they can exercise under the scheme whilst at the same time being cognizant of the Data Protection Legislation. Respondents stressed DPA should not act as a barrier to sharing of information where there is a clear risk of harm if the sharing does not take place. In this regard it was noted that a multiagency panel is the appropriate approach for the models that should be adopted.

3.180. Respondents suggested that the introduction of such a scheme must furnish police with the powers to disclose more than convictions; further comments on this issue are provided under Question 16. It was noted that the implementation of a scheme requires the development of robust clear guidance and training for all, in particular the PSNI.

3.181. It was suggested that if individuals have the right to be informed by the PSNI about an intimate partner's history, this can potentially help protect them from future harm and abuse. Equally, confirmation of a partner's past may serve to validate for a victim the abuse which is occurring in the relationship and enable them to leave.

3.182. With regards to all violent behaviour being disclosed where there is violence against the person; respondents noted that it could be considered that there is no distinction between violence within the domestic environment or outside the home. However it was proposed that this may present a challenge considering the potential numbers of violent offenders in Northern Ireland including persons who might be considered to have a propensity to violence. Respondents considered that the option which works best for Northern Ireland should be selected.

3.183. It was noted that there is a careful balance to be struck that will both protect potential victims from domestic abuse and prevent unfair disclosures for people who have previously offended, whether in relation to domestic abuse specifically or other

offending behaviour. It was suggested that a well-managed and proportionate domestic violence disclosure scheme could be beneficial in reducing offending and supporting people to make informed choices.

3.184. Respondents also proposed that the scheme should be subject to monitoring, support and supervision to ensure it at least achieves the level of response set down by that policy and that it is proofed and compliant with regards to both equality and human rights.

3.185. Respondents noted that the scheme should be coupled with programmes enabling offenders to address, identify and work towards changing their behaviours, thus providing greater safety and balance to the proposed scheme.

3.186. A number of respondents also proposed that the implementation of a Domestic Abuse Offenders Register, similar to the existing Sexual Offenders Register, would be the most suitable process to adopt to complement a disclosure scheme. It was suggested that the register could be managed by a designated body for example the PSNI and/or a panel / committee, further information on the topic can be found under Question 11.

3.187. Respondents acknowledge that the timing of the introduction of a fully rolled-out domestic violence disclosure scheme in Northern Ireland may be vitally important, particularly as the guidance regulating the Domestic Violence Disclosure Scheme in England and Wales is under review. It was suggested that it may be useful to ensure the implementation of a domestic violence disclosure scheme in Northern Ireland takes cognisance of any revised guidance for England and Wales, to ensure full lessons can be learned from the Home Office study.

**Question 13: What do you see as the potential risks and benefits of having both schemes in place? How might any risks be minimised?**

Benefits

3.188. Respondents identified a range of benefits of having both a right to ask and right to know scheme in place and it was emphasised that the potential benefits of society developing practice to keep people safe must be harnessed.

3.189. A key benefit identified by numerous respondents was that both schemes would enable potential victims to make an informed choice about their relationship. It was suggested that the right to ask scheme would provide a clear pathway for potential victims to raise their concerns at a very early stage. It was noted that both have the opportunity to inform those at risk, provide them with access to support, provide an additional tool for combatting domestic violence and abuse and increase confidence in the PSNI. It was proposed that the schemes may prove to increase the empowerment of victims who for various reasons cannot break out of the cycle of violence and that it may also increase the victim's understanding of the situation they are in.

3.190. A formal scheme would allow the development of standardised procedures in relation to disclosure and the support given to potential victims. It was suggested that an intelligence log could be created of potential perpetrators. It was also claimed that the benefits may extend to child protection where appropriate e.g. if informed appropriately, extended family may be able to provide a layer of protection to children where abuse is potentially present in the home.

3.191. Emphasis was placed on the benefits of a multi-agency panel with the necessary knowledge and expertise as this should provide a consistent approach where safety and risk assessment procedures are followed.

3.192. It was noted that a benefit could be the increased update of available support and the implementation of the schemes could lead to the possibility of victims self-seeking support and protective services.

3.193. It was purported that potential perpetrators may also become more aware of the consequences of their offending behaviour and the long term effects it may have on them.

3.194. It was also mentioned that there could be a greater public awareness of domestic violence and abuse and ultimately a greater police and multi-agency focus on this issue. There could be further development of public and service provider awareness of the issues involved, including information disclosure and Human Rights implications. It was suggested that there is the potential to develop training including the appropriate balance of rights and an added benefit could be the dissemination of good practice.

### Risks

3.195. The issue of accessing a disclosure scheme service was raised as a concern, particularly given the controlling behaviour associated with domestic violence and abuse. It was also noted that barriers could also be because of the system or the particular needs of the potential victim, e.g. English not being their first language.

3.196. It was noted there would be significant risk if the system is not expeditious enough for cases where there is pressing need for disclosure. It was suggested that it may be a difficult scheme to enforce as PSNI may not always know who 'A' is.

3.197. It was proposed that there may be a lack of consistency of the information given in disclosure across police areas. It was also stated that there may be a risk of incorrect information being disclosed.

3.198. A number of respondents recognised that there would be risks associated with non-disclosure of information. It was stressed that this does not mean that the potential victim is not at risk from domestic abuse

3.199. Caution was advised with regard to the privacy and rights of 'B', the information subject, and the management of any information following disclosure to the applicant 'A'. Respondents acknowledged the risk of vigilante behaviour

particularly if information is disclosed without due care. It was noted that there may be a risk of bias and possible defamation of innocent parties.

3.200. Respondents acknowledged an increased risk of danger to a potential victim after disclosure. The fact that an advocacy service for victims of domestic violence is not in place was an additional concern.

3.201. With the two running in tandem there may be increased confusion amongst both service users and providers about the different disclosure schemes in operation.

3.202. Concern was noted with regard to falsely raising the expectations of service users, especially, if a properly holistic funded service is not in place. Numerous respondents identified risks associated with limited resources and costs. Concern was expressed with regards to PSNI resources and the time delays this may lead to when disclosing information. A training/awareness deficit of officers and multi-agency panels was also referenced.

3.203. It was noted there would be an increased administrative burden reducing police resources available for other areas of domestic violence and abuse prevention, investigation and support.

3.204. It was identified there would be risk if disclosure is limited to convictions, particularly given that the majority of domestic violence and abuse incidents do not result in conviction.

3.205. It was also argued that unless the scheme is based on legislative provision rather than common law there is an increased risk of legal challenge.

#### Mitigation

3.206. The process would need to be streamlined in order to ensure consistency of approach and uniformity of information that is being shared and disseminated amongst the agencies.

3.207. Information disclosed needs to be accurate, proportionate and appropriately disclosed. There needs to be mechanisms in place to ensure information disclosed is not passed on to others resulting in an increased risk to victims and/or the perpetrator. It was noted that learning should be taken from other practice, e.g. the Judicial review around DHSSPSNI 3/96 Sharing to Safeguard, particularly if non-adjudicated offenders /intelligence without convictions were included as part of disclosures.

3.208. It was stressed that the environment for disclosure must be non-threatening and easy for the victim to explain away. 75% of all domestic violence homicides happen during or after an attempt to leave. It was highlighted that a break in routine or police contact may arouse the suspicions of the offender and make the situation more dangerous. Respondents advised that this needs to be taken into account and effectively managed (please see question 12 for suggestions on multi-agency disclosures).

3.209. It was stressed that the timely delivery of a disclosure in circumstances when risk levels have been identified as high will be required. It was proposed that it is therefore important that the multi-agency panel meet on a regular basis and/or use other means of joint decision making outside of formal meetings to ensure that delay in the process does not add to risk for a victim of domestic violence.

3.210. It was noted that further consideration and explicit guidance would be required with regard to the proposed model and involving and informing 'B', if deemed appropriate.

3.211. Respondents acknowledged that after-care is essential and proposed that decisions need to be made in relation to how support to any potential victim is provided from the initial point of enquiry to and after the end of the process whether or not a disclosure is the end result.

3.212. It was suggested that relevant agencies and support organisations must be on hand or easily accessible to help the victim make safe and informed choices. It was proposed that generally risk could be minimised by implementing a Multi-agency approach to information gathering/sharing. It was highlighted that there should be clear links with Multi-Agency Risk Assessment Conferences (MARAC). Clear links with PPANI/LAPP were also proposed. It was noted that comprehensive DASH/Risk assessment, safety planning and sign posting to support services must take place. It was proposed that this should be in place regardless of whether 'A' decides to remain or leave the relationship. It was also highlighted that refuge places must also be secured so the victim has an option of somewhere to go.

3.213. It was noted that further consideration will also be needed with regard to how victims can be supported to come forward to report and engage with the Criminal Justice System.

3.214. It was stressed that there must be accessible systems that encourage people to contact the appropriate authorities for help. It was noted with regards to the disclosure scheme that people may need help in making application.

3.215. To ensure benefits are realised respondents proposed that appropriate support and training for officers who will be responsible for administering this process will be vital to the effectiveness of the scheme. The training should seek to provide an understanding of the risks within abusive relationships, an understanding of how this scheme can operate appropriately alongside data protection responsibilities and how the scheme can be an opportunity to support and empower potential victims.

3.216. Training should be rolled out for officers prior to introduction of the scheme and at the earliest opportunity for all professionals and agencies to ensure there is a clear understanding of the levels of information that can and should be disclosed and the procedures and support associated with the scheme.

3.217. It was stressed that time needs to be invested in producing clear, step by step guidance for civilian station enquiry staff who may be the first point of contact for applicants and frontline police officers who may be required to make disclosures. For



frontline officers there needs to be clear guidance provided as to how a domestic abuse disclosure scheme could overlap with child protection procedures, PPANI and the Child Protection Disclosure Arrangements.

3.218. Respondents stressed the importance of the process being applied equally and without prejudice, for example, if a person has been told of a partner's violent history but remains in that relationship it is important that they are not made to feel guilty about this as this could deter them from seeking help or leaving that relationship at a later stage.

3.219. It was suggested that awareness would have to be raised across all the sectors and the general public. It was recommended that should a dual scheme be adopted, the public should be clearly informed as to how each process works to avoid possible confusion. It was highlighted that Agencies need to ensure that public expectations regarding the scheme are effectively managed, i.e. providing clarity regarding what the scheme can & cannot do. It was proposed that information regarding the scheme should be effectively communicated with the general public in a number of ways, e.g. via media briefings, provision of information 'on-line' and disseminating information via community/public sector agencies working with those at high risk of abuse. It was also proposed that the DOJ work with local community groups to deliver outreach events that raise awareness of the scheme amongst 'hard to reach'/'seldom heard' groups.

3.220. To ensure public confidence in the scheme, it was also noted that the application process should not be overly complicated and the timescale for disclosure not overly lengthy.

3.221. Respondents also suggested that we could go further with regards to awareness and education campaigns. It was also proposed that this should reflect all victims of domestic violence, particularly irrespective of gender.

3.222. In implementing any new scheme the additional demands this will place on resources must also be considered.

**Question 14: What measures should be put in place to address some of the challenges identified during the pilot in England and Wales?**

3.223. It was suggested that the challenges identified during the pilot in England and Wales could be countered by appropriate planning, training for those who have responsibility for administering the process, proper public awareness raising and agreed partnership working responses in support of the scheme in advance of its introduction.

3.224. Some respondents monitored the implementation of the scheme in England and Wales and highlighted a number of ways in which they considered the scheme could be adapted and improved; these suggestions are also captured under this question.

## Resources

3.225. Respondents stressed that the scheme should be realistically and adequately funded. They noted that due regard should be given to safeguarding funding for other areas of domestic violence / abuse prevention, investigation and support. Respondents highlighted that the accessibility and inclusivity of the system is essential and should form part of the discussions with stakeholders in shaping and implementing the scheme.

## Awareness

3.226. Respondents noted that for the scheme to be effective we have to ensure the public are fully aware of its existence and how it can be accessed. They considered that it would be vital to raise awareness with the public and particularly amongst front line staff. It was suggested that awareness raising campaigns would also assist in managing victims' expectations of the scheme.

3.227. To improve awareness and understanding of the scheme respondents stressed the importance from a DPA perspective that all individuals involved in the scheme (including 'A' / 'B' / third party) have reasonable expectations as to how their information may be used. It was highlighted that this forms part of 'fair processing' and information will not be fairly processed unless a data controller explains this (subject to certain exemptions). Respondents noted that this could be addressed through an effective communications campaign, and engaging with key stakeholders to ensure an informative, consistent message is delivered on how the scheme operates. Respondents noted that a format such as the child friendly version of the consultation document is an example of how the scheme could be explained to vulnerable individuals.

3.228. It was highlighted that any awareness raising should be conducted in a manner that balances public safety and local agency resources. Respondents suggested that a good way of achieving this would be working with the community and voluntary sector to take advantage of existing networks and reach all parts of the community. It was noted that awareness of the scheme should be raised both locally and regionally.

3.229. A number of suggestions were made with regard to the format of awareness raising. It was suggested that a Communication Strategy should be developed to assist in that regard. Respondents noted that, with a mindful appreciation of the costs involved, a multi-pronged media campaign, supported by leaflets, in plain English, giving details of the scheme, should be used. It was noted that these leaflets should be available in police stations, health centres/GP surgeries and community centres. Respondents advised that it would be useful to inform key workers in the community, e.g. teachers, social workers etc. of the existence of the scheme and how it works to enable them to share this information with individuals who might find it of benefit.

3.230. Respondents suggested that this campaign needs to be sustained long-term, and to continue long past the initial implementation. It was noted that a sustained and ongoing campaign would help to create awareness around the prevalence of domestic violence and assist with destigmatising and addressing victim-blaming with regard to the issue of domestic violence and abuse.

3.231. Respondents recommended, given the diversity of Northern Ireland's population that all literature with regard to the issue of domestic violence should be produced in a range of languages as well as English.

#### Training and guidance

3.232. Respondents noted the need to work with the police to embed routine training on the Domestic Violence Disclosure Scheme for front-line and specialist domestic abuse police officers and staff (to include consistency of approach when disclosing information).

3.233. Staff training was stressed as being fundamental to the scheme's success, to making proper disclosures where there is a pressing need, and avoiding inappropriate disclosures.

3.234. Likewise respondents considered the training of police officers and other key respondents and support workers with regards to domestic violence and abuse, information disclosure and the human rights balance involved in disclosure decisions is of paramount importance. It was noted that adequate training will also go towards ensuring that there is consistency of application within each police station, as well as across the province.

3.235. With regard to training, it was recommended that it should be delivered by experts from a relevant agency/organisation and should encompass all pertinent issues, including the dynamics, forms and effects of domestic abuse and a clear explanation of the aims, functions and limitations of the scheme. It was also posed that this approach would enhance the co-operation between the police and those organisations that specialise in tackling domestic abuse.

3.236. It was noted that front line staff involved in the decision making process may benefit from tailored training involving case studies. It was suggested that these could be based on England and Wales' forces experiences of dealing with DVDS to date.

3.237. It was also highlighted that training should be complemented and bolstered by robust guidance. It was noted that general guidance could assist in ensuring a certain level of consistency. It was suggested that this guidance could assist with the decision-making process, while leaving sufficient flexibility in dealing with cases on an individual basis.

3.238. Respondents noted that while it is desirable that consistency be sought, the amount of detail disclosed must be considered on a case-by-case basis, with a careful evaluation of the balance of rights between the right of 'A' to be given information relevant to their safety and well-being, and the rights of 'B' to have their criminal record kept confidential and their privacy respected.

3.239. Respondents highlighted that guidance on the situations where disclosure is warranted would ensure that police are not erring on the side of caution and failing to disclose information that could keep people safe.

3.240. It was suggested that work should commence with community and voluntary organisations to develop a standard package of support that can be given to individuals who request/receive information. It was suggested that this standardisation of response would further address any concerns regarding consistency of information and support. It was noted that there are also obvious advantages to having agencies work together on this issue and that training could also be delivered in such a way as to strengthen inter-agency links. Respondents also noted that, in line with the England and Wales model, a set of minimum standards of support should be provided for use in non-disclosure cases.

3.241. A number of respondents suggested that a disclosure should contain as much detailed information as possible to enable the potential victim to be fully aware of the risks they face. Respondents noted that victims advised that they would prefer to get as much information as possible in a disclosure rather than being left wondering what other crimes are in their partner's past. To ensure consistency in the information contained in the disclosure it was suggested that it would be helpful to develop a template and guidance for officers.

3.242. It was noted that guidelines could incorporate provisions on the extent of the information disclosed to 'A', the wording of the disclosure and the method/format of disclosure. It was also recommended that the disclosure should reflect the gravity of the offences committed and the level of risk/need to disclose.

3.243. To ensure appropriate disclosure it was noted that suitable safeguards should be developed with regards to the accuracy of information and the necessity, proportionality and the legality of its disclosure. Also it was noted that guidance would be necessary with regard to how the scheme overlaps and complements other disclosure processes.

#### Penalty for inappropriate disclosure

3.244. With regards to inappropriate disclosure of information the Department was reminded that the Information Commissioner has the power to impose a Civil Monetary Penalty of up to £500,000 for very serious breaches of the DPA.

#### Lack of understanding of the term 'pressing need to disclose':

3.245. In England and Wales disclosure is based on a 'pressing need to disclose'. Respondents stressed the importance of the term for the success of the Scheme and its uniform implementation, a clear definition of the term should be arrived at. It was recommended that this definition should be referred to in training, as well as in literature available to the public, if necessary. It was highlighted that since a definition is crucial to the success of the Scheme, such a definition would be tailored and interpreted in the light of the aims of the Scheme. Respondents recommended that the definition should remain adequately vague, so as to leave some leeway for authorities. It was noted that too high a threshold would endanger the effectiveness of the Scheme.

3.246. In addition to a common definition and guidelines it was suggested that the inclusion of examples of situations of 'pressing need to disclose' should be provided so as to help establish a common threshold. It was highlighted that these examples could be taken from the pilot application of the Scheme in England and Wales.

Respondents also noted that with regards to need to disclose the phrase “identifiable and ongoing risk” might be a more useful term to use.

#### Delivery of Right to Know disclosures

3.247. With regards to the pilot and specifically the issue of police finding it difficult to practically manage the delivery of a Right to Know disclosure respondents acknowledged that this is a valid concern, and one not remedied easily. They noted that tact and discretion are key to the delivery of this service. Therefore respondents considered that disclosure be made in person and follow best practice guidelines. This type of disclosure respondents noted as being particularly difficult as the victim is not expecting the information. They noted that it will likely come as a shock to them and they may not wish to believe it. Respondents proposed that the use of professional judgement and appropriate risk assessment will assist in delivering the disclosure effectively and appropriately. It will be important to have a support worker who will have a key role in supporting the victim during the disclosure process.

#### Access

3.248. With regards to accessing the scheme respondents noted that there would need to be sufficient and appropriate access to interpreters. It was suggested that there should be support for dependants during disclosure. Respondents also noted the need for a safe environment in which to talk. In regards to ensuring access the Department intends to update the Equality Screening form to reflect any relevant evidence and comments provided by respondents.

#### Bureaucracy and Streamline existing processes

3.249. During the pilot, police in particular felt that there was a lot of duplication in paperwork, and that the process was overly bureaucratic. Therefore further consideration will be required to streamline and simplify paperwork to ensure it is not overly time consuming, but yet gives enough scope to record all relevant details in each case. Respondents reiterated that we would need to ensure that PSNI has enough resources in place to undertake what would be a fairly resource intensive task of researching a potential perpetrator’s violent history.

3.250. Respondents also suggested that processes should be streamlined to avoid duplication with existing schemes e.g. PPANI, MARAC etc.

#### NI Specific issues

3.251. Respondents highlighted that Northern Ireland may have some unique issues in relation to the effects of a divided and post conflict society. They also noted that while the Department’s equality screening report indicates that there is little data available on the effects of political opinion or religion on the access to or effect of the proposed policies, evidence from studies from other post conflict societies suggests a link between a higher incidence of domestic violence and the effect of civil conflict.

3.252. Respondents therefore noted that sections of the community involved in the conflict and subsequently convicted of historic non-domestic violence related offences or on whom intelligence has been gathered, may be the subject of greater positive disclosure depending on the disclosure rules of the final system. It was suggested that this may be a matter for further consideration by the Department in consultation with the relevant organisations/groups.

### Register

3.253. With regards to further improving the scheme it was suggested that a domestic violence register might be a useful addition, comments under Question 11 refers.

### Further consultation

3.254. Respondents welcomed the need for further consultation that was suggested within the document. It was noted that the involvement of key stakeholders will assist in addressing issues in advance of the proposed introduction of the scheme.

3.255. Respondents suggested that a working group be established and that it should include practitioners, survivors, local domestic violence partnership members, as well as strategic policy makers to both co-design, review and assess each aspect of the model before it is rolled out. It was highlighted that this should be a time bound piece of work as set out within domestic and sexual abuse strategy infrastructure arrangements.

## **Scope of Disclosure**

### **Question 15: Should disclosure cover all violent behaviour by 'B' or only those relating to domestic violence instances?**

3.256. A range of respondents considered that any information pertaining to a history of violence or previous police involvement in relationship issues should potentially be disclosable to a victim or potential victim, as past indicators of violent behaviour could increase the level of risk.

3.257. It was suggested that for a disclosure scheme to be effective, information beyond convictions for crimes with a domestic motivation should be disclosable. It was noted that often the offending behaviour of 'B' may not be directly linked to domestic violence or abuse. It was noted that the wide range of offences that occur during domestic violence/abuse incidents leave room for domestic motivation to be missed. It was also noted that the majority of perpetrators may not have convictions associated with their domestic violence. Respondents stated that other disclosure schemes allow for the disclosure of convictions and allegations related to a broad range of violent offences.

3.258. A number of respondents advised that it is widely recognised that there are links to other types of offences and incidents such as cruelty to animals, criminal damage, theft etc. It was suggested that there may also be a history with regards to child protection issues. Respondents noted that this type of offending behaviour can be "symbolic" of the coercive strategy used by abusers to intimidate victims while demonstrating the level of threat/violence that could be perpetrated against them. This in turn increases the victim's fear and reluctance in seeking help. A range of respondents proposed that disclosure should also include intelligence; comments relating to this issue are captured under Question 16.

3.259. It was recommended that any patterns of violence and harmful behaviour should be considered in the overall risk assessment and decisions should be made by experts on a case by case basis. One respondent suggested that the General Aggression Model (GAM) would be a useful reference with regard to indicators of violent behaviour.

3.260. Respondents highlighted that research indicates people who are violent in the public sphere demonstrate a greater propensity for violence in the private sphere. It was noted that if the multi-agency team deems it in the best interests of 'A's safety and well-being to disclose with a view to crime prevention, then disclosure should be considered. Particularly given the rationale behind a 'right to know' element of the Scheme is that if there is reason to believe 'A' is in danger from 'B', then 'A' has the right to that information for their own safety, protection and well-being.

3.261. Respondents however cautioned that there must be recognition that some perpetrators operate differently through the use of manipulation, grooming and seduction etc. It was posed that their behaviour in all public arenas may be generally viewed as exemplary which can hide the controlling and humiliating behaviour demonstrated within the intimate setting. Respondents noted that expert and skilled professionals will/should be acutely aware of the range of profiles of those who perpetrate domestic violence and abuse and this expertise will be needed to assess the risk and identify if there is a need for disclosure.

3.262. Respondents stressed that it is imperative that a holistic view of an individual is taken, not just one act, incident or conviction. It was suggested that a disclosure concerning all violent behaviour will give a much better understanding of the potential use of alcohol, drugs, whether behaviour is perpetrated when sober or under the influence. Also violence within a different context will inform the risk assessment with regards to the internal controls, protective factors that do and do not exist, and will also give a sense of any escalation of violence and behaviour.

3.263. A number of respondents, while acknowledging that it may be desirable for 'A' to know of general offending, considered that disclosure should relate exclusively to domestic violence incidents. Respondents noted that this is further complicated by the absence of a specific offence. It was also proposed that it would be difficult to defend the disclosure of all violent behaviour. Particularly given the Data Protection Act 1998 (DPA) requires that any disclosures made should be 'relevant'. The DPA also states that where disclosure has extended beyond that which might be reasonably expected, then a record should be kept to justify this.

3.264. Respondents noted that there would be limitations to the degree of information disclosure that may take place due to Schedules 2 and 3 of the DPA 1998 and Article 8 of the European Convention on Human Rights. It was therefore suggested that importantly disclosure should take place as part of an informed tailored assessment of the risk that B presents and the relevance of the previous violent behaviour in each individual case.

3.265. It was noted that as part of their responsibilities, the panel and agencies involved may need to consider the potential harm if information is withheld. It was noted that a balance should be struck, bearing in mind the purpose for processing

personal data, sharing where it is necessary, and, withholding it where it is unnecessary. It was posed that any decision to disclose should be based on a robust analysis of the risks in disclosure against the risks in not disclosing.

3.266. It was also highlighted that if the proposal to create a specific domestic abuse offence is adopted, this will have a direct bearing on the type and possible volume of information held by the PSNI, and therefore, more of the information held may become relevant.

### **Question 16: Should disclosure of 'B's' violent behaviour be extended beyond convictions to encompass intelligence?**

3.267. A range of respondents noted that disclosure should go beyond convictions to encompass intelligence however some respondents were equally concerned with regard to the use and sharing of this type of information as part of the disclosure scheme.

#### Comments supporting the use of intelligence

3.268. It was noted that intelligence-led information has an important role to play in terms of the type of information that should be disclosed, particularly as the vast majority of domestic violence and abuse incidents do not lead to a conviction. Also with regard to convictions this is complicated by the fact there is currently no specific domestic violence/abuse offence. Members of a victim focus group noted that the crimes their abusers were convicted of were not directly related to the abuse (e.g. criminal damage), this is in line with national trends on convictions for domestic violence related offences.

3.269. So whilst there may be no recorded criminal offence associated with the individual there may be an extensive history of abusive behaviour that future potential victims should be informed of so they can ensure their safety and, if applicable, that of their family. For example it was suggested that there is a well-established link between abuse of humans and abuse of animals, therefore a history of animal cruelty may raise concerns.

3.270. It was highlighted that the disclosure of intelligence will be essential to ensure that this scheme has the most positive impact possible.

3.271. It was suggested that it would place individuals at risk if the scheme were to dismiss clear evidence of risk on the basis a conviction has not been secured.

3.272. It was proposed that disclosure information should include convictions, spent convictions relating to domestic violence, non-molestation orders and other protective orders against them at present or in the past. Concern was raised with regards to how long convictions are kept on record and how this would affect the disclosure given.

3.273. It was also suggested that it should include intelligence held by police on the individual such as previous call-outs for domestic incidents with different partners



and any instances they have been identified as a perpetrator at MARAC (particularly if they have been flagged as perpetrators more than once).

3.274. It was posed that if police have information relating to a perpetrator of domestic violence, and they are asked by 'A' if they should have any concerns about that perpetrator, it is most likely in the interest of 'A's safety that disclosure is made.

3.275. It was noted that the model in England and Wales allows disclosure of the 'intelligence history' of B.

3.276. It was proposed that the use and potential disclosure of intelligence and other non-conviction information related to domestic violence and other related behaviours will require the development of robust protocols to ensure the legality, necessity and proportionality of the process of disclosure. Respondents considered it vital that support groups, including those supporting perpetrators, as well as Civil and Human Rights groups should inform the protocols required.

3.277. It was suggested that any decision to make a disclosure of 'concerns' held, which is based on intelligence, should be subject to a robust analysis by the multi-agency panel.

#### Concern regarding the use of intelligence

3.278. There were concerns and complex issues noted with regard to the disclosure of "intelligence" and what would be considered as intelligence. The veracity of sources was a concern and the importance of ensuring the intelligence is not malicious or inaccurate in nature.

3.279. It was posed that disclosure of intelligence that extends beyond convictions might be problematic and lead to legal challenges for criminal justice agencies in standing over the disclosure of information concerning violent behaviour based on intelligence. This will in turn have an impact on legal aid.

3.280. Some respondents went further by suggesting that the potential use of 'intelligence' is close to assumption based profiling, which could likely lead to prejudicial action being taken/encouraged based on nothing that was demonstrable with evidence. It was noted that should evidence be present to a satisfactory level, a conviction would exist meaning intelligence is not needed.

3.281. Another respondent noted that if a case has not been proven in court information should not be divulged, *'People are innocent until found guilty'*.

3.282. It was however highlighted that the relationship between perpetrator and victim makes it difficult for victims to partake in criminal proceedings, either because of fear and intimidation or love and loyalty felt towards their partner.

#### Other jurisdictions and sources of information

3.283. It was also suggested that Police should check for information held in other jurisdictions if the potential perpetrator has lived outside Northern Ireland in the recent past. It was noted that this is particularly important in a cross border context and therefore cooperation with An Garda Síochána will be vital.

3.284. It was also highlighted that there are other important sources of information, such as Social Services and relevant voluntary sector organisations.

3.285. Practitioners noted that the sharing of intelligence among and between social partners is often the crucial factor that can strengthen the robust risk identification and assessment arrangements and ensuring support planning is in place to assist and meet the needs of victims.

**Question 17: Do you agree that information should be disclosed to third parties other than 'A' (eg. a sibling or parent of 'A')?**

3.286. It was highlighted that the scheme must recognise that many victims who are subject to coercive and controlling acts or behaviour by an abuser will never seek to access the scheme directly for a variety of valid and compelling reasons.

3.287. A significant number of respondents noted that friends and family very often see signs and patterns of abuse long before a victim is in a position to disclose and seek help.

3.288. Respondents referenced that there will be situations where a third party will wish to 'ask' on behalf of 'A', for example as a parent, sibling or friend. It was recommended that the ability to request a disclosure should be limited to those who can establish a close relationship with the person who may be at risk. In the first instance, should a third party enquiry result in the decision to disclose, this disclosure should be made to the person identified as at risk. The third party enquirer should only be given the disclosed information if the risk assessment completed as part of the decision to disclose identifies that this person is best placed to safeguard the person at risk.

3.289. Respondents went on to note that there are 'best placed' trusted people who can act on behalf of the victim. This point was emphasised in the instance where 'A' is deemed vulnerable or not fully capable of making decisions for themselves. The involvement of third parties in the disclosure process would need to be part of the system for people with disabilities when the alleged perpetrator is the main carer and the disabled person is dependent on that person for their physical requirements. In those instances it may be other professionals or carers who are the first to recognise that 'A' is at risk from 'B'. It was noted that this may extend to schools recognising signs and being able to trigger a request for a disclosure.

3.290. It was also suggested that ensuring that third parties can receive information may help in situations where there is a language barrier or where 'A' is fearful or mistrustful of police contact. The involvement of a third party may be of particular benefit to BME persons given they may face additional barriers.

3.291. It was suggested that although it would be very important that disclosure information be made available to third parties it is imperative that it would be in a controlled and regulated manner, so that it wouldn't result in victims being at higher risk.

3.292. Any decisions to involve third parties within the scheme and to disclose information to third parties will require a clear and evidenced decision making process with robust checks in place. It was highlighted that this should involve a multiagency group. It was also noted that the confidentiality of the process is paramount in order to protect the victim and ensure the legality, necessity and proportionality of the process.

3.293. It was proposed that the system should allow third parties to apply for information, but similar to the Child Protection Disclosure Scheme, this information should be given to the person 'A' in the relationship or the person best able to protect them.

3.294. It was stressed that the availability of information to defined third parties is critical to the wider protection mechanisms which lies at the heart of the scheme.

3.295. It was suggested that with regard to the right to know, the answer is less obvious. Disclosure to third parties might be considered as going too far in someone's private life and exceeding the aim of the scheme in terms of giving 'A' the opportunity to make an informed choice on their relationship. It was purported that a third party might well have better opportunities to reveal the disclosure to 'A' and might be able to word the information in such a way that they would be receptive to it. A third party may be in a good position to offer support and help in the event that 'A' wanted to change their situation. It was acknowledged that such a solution would have the capacity to enhance the effectiveness of the scheme, provided appropriate safeguards were put in place.

3.296. It was suggested that in order to ensure clarity, guidance should be developed for those making decisions on third party applications to ensure that the safety and support of the potential victim remain at the heart of the process.

**Question 18: What should be the extent of the relationship between 'A' and 'B' before a disclosure is considered?**

3.297. The majority of respondents noted that A should be in an established/intimate relationship with B, where both parties believe and agree that they are in a relationship, before a disclosure is made. It was however highlighted that domestic violence can be perpetrated within a short timescale of A and B having met.

3.298. It was stressed by a number of respondents that any intimate relationship should be within the scope of the scheme. A number of respondents noted that disclosure should be made at the earliest opportunity to prevent abuse from escalating thus making it easier for victims to leave the relationship and reduce the risk of injury and death.

3.299. It was noted that further consideration and discussion was required regarding the definition of a relationship and, for example, length of relationship, given abusive relationships may not always be long-term in nature. It was posed that the duration and stability of the relationship should not be factors to prevent disclosure of information. It was also noted by many that the extent and nature of a relationship is

not clear cut and careful consideration would have to be given to the seriousness of the relationship, age, and other factors such as children/vulnerable adults affected, length of relationship etc. These might be indicators that would point to whether a disclosure should be made. It was affirmed that each potential victim should be afforded equality of opportunity in being made aware of the potential risks they may face.

3.300. Whilst it was stated that definitions of 'intimacy' and 'intention' must be developed and discussed, it was also highlighted that a rigid, standardized definition of when a relationship is considered a relationship would not be helpful, particularly as relationships obey no standards with regard to their evolution. It was also argued that an attempt to create a specific definition overlooks the dynamics of intimate partner violence as a long process of coercion and control, which is not limited to any kind of relationship status.

3.301. With regards to the process it was noted that there is an obligation on the part of 'A' to describe to police the nature of their relationship. As part of the process it was also suggested that B should be contacted to validate the status of the relationship.

3.302. The fact that the relationship could take many forms and could, at one point, be virtual/on-line was also highlighted. A number of respondents noted that with regards to what constitutes a relationship clear guidance will be required.

3.303. A number of respondents noted that the disclosure scheme should not exclude previous intimate relationships, for example where there is on-going contact with children/vulnerable adults. It was also noted that victims are most at risk when they leave a relationship and disclosure of information would be appropriate in these circumstances. Conversely it was argued that there should be an intention, on the part of 'A' to remain in the relationship.

**Question 19: What in your view are the circumstances where a disclosure should not be made?**

3.304. It was noted that disclosure should be looked at on a case by case basis.

3.305. It was proposed that, in line with the England and Wales model, disclosure should be made where there is a pressing need and where it is necessary and proportionate. It was highlighted that all decisions for disclosure should be proportionate to the level of risk. Some respondents noted that they were not aware of any circumstances where a disclosure should not be made where there is a risk identified.

3.306. Respondents noted a range of circumstances where a disclosure would not be appropriate such as:

- it is unclear if a relationship is in progress;
- the relationship is over and there has been no contact for specified time/there is no likelihood that the relationship will commence again;
- there is evidence to indicate that the information requestor 'A' has been harassing B;
- it has been established and verified that an allegation has been made against B maliciously;
- there is no relevant information available about previous violent behaviour;
- the items being disclosed have not been proven in a court of law;
- there is deemed to be no risk to the victim; and,
- sharing information will increase risk for the victim and individuals/children within the household.

3.307. With regards to the points above it was noted that there may be situations where it is impossible to be certain about the nature of the relationship between the requester ('A') and the data subject ('B').

3.308. It was also highlighted that the data controller, together with other appropriate agencies need to take reasonable steps to be satisfied as to the nature of the relationship and the validity of the requester's identity. It was expressed where this cannot be achieved, and importantly, where harm cannot be prevented through a disclosure, then it would probably not be justifiable to disclose information.

3.309. It was also noted by a number of respondents that where there is intelligence or a conviction there would be no circumstance where disclosure should not take place. It was also highlighted that disclosure has to be carefully managed and may in some cases need to be delayed in order to ensure safety of a potential victim.

3.310. It was highlighted that thought should be given to the age of the information when deciding whether there are 'concerns'. This might differ from case to case depending what information is held relating to 'B'. For example, it might be the case that information held on 'B' from 20 years ago could be very relevant and appropriate to disclose to 'A' even though it seems like a long time ago. It was noted that these decisions should be taken on a case by case basis as every situation will be different and present a set of unique challenges.

3.311. It was also stressed that with regard to malicious or frivolous applications for disclosure, policies need to be in place to establish the validity of the request. It was stated that in relation to third party disclosure, clear guidance would have to be developed to ensure the interest and intent of the third party is the protection of a

potential victim. In respect to the risk to victims, it was highlighted that leaving a relationship can be the most dangerous time for A.

3.312. As the safety of individuals is paramount it was noted that a comprehensive risk assessment is vital. Safeguarding of both 'B' and 'A' must be incorporated into any disclosure. It was highlighted that protection and support arrangements should be put in place by statutory and voluntary agencies to protect the victim from harm as appropriate.

**Question 20: Are you aware of any disclosure scheme models in other jurisdictions that we should explore?**

3.313. Many respondents highlighted that they were aware of the pilot arrangement and national roll out of the scheme in England and Wales that was referenced in the consultation document. It was also noted that as the Criminal Justice system in Northern Ireland is most closely aligned with the rest of the United Kingdom it may be preferable to learn from this scheme in the first instance.

3.314. A similar scheme in Scotland was also referenced. It was noted that it works alongside the Adult Care and Support Act and although still in its early stages, lessons from the scheme in Scotland could also be useful when developing a potential model for Northern Ireland.

3.315. A number of respondents noted that a disclosure scheme has been introduced in some Australian states, e.g. New South Wales, which may be based on the UK model. A disclosure scheme in New Zealand was also referenced.  
[https://www.women.nsw.gov.au/violence\\_prevention/domestic-violence-disclosure-scheme](https://www.women.nsw.gov.au/violence_prevention/domestic-violence-disclosure-scheme)  
<http://www.police.govt.nz/advice/family-violence/family-violence-information-disclosure-scheme-fvids>

3.316. The Child Protection Disclosure Scheme was also referenced by one respondent. It was noted that there is significant sharing of information with regards to safeguarding and promoting the well-being and safety of children.

3.317. It was also noted that Social Services have a lot of experience in disclosing information in the interests of safeguarding and promoting the well-being/safety of children which includes engaging with persons of concern whilst adhering to data protection requirements and recording decision making processes and outcomes

**Question 21: What are your views on the impact of the current arrangements for different groups?**

3.318. Respondents acknowledged that domestic violence and abuse happens in all societies, irrespective of ethnicity, class, nationality, religion, cultural background, disability, marital status or age. A range of responses noted that current arrangements are likely to apply equally to all groups. Generally respondents considered that there is no adverse impact on any group outlined in Section 75 of the N.I. Act 1998. However specific comments were made in relation to equal access by

some groups that are captured under this, and subsequent questions. Although not directly related to a specific S75 group it was noted that current arrangements do not cater for individuals who are experiencing low level domestic abuse.

3.319. A number of respondents noted that a well implemented and managed disclosure scheme and offence could have a positive impact and realise increased benefits for all section 75 groups.

3.320. It was highlighted as with any policy or legislation, that there can often be additional barriers for minority groupings, including certain Section 75 groups. These barriers could include, but are not limited to: accessing information, language, immigration status, finance, etc. With regard to current arrangements, respondents highlighted specific concerns about victims of abuse who have no recourse to public funds. It was stressed that they should receive the same help and support as others. It was highlighted that immediate help should be freely offered and available until it is no longer required.

3.321. Respondents also highlighted that there are particular issues for children, vulnerable adults, and, persons with a mental health disability both as perpetrators and victims. It was noted that a range of articles within the United Nations Convention on the Rights of Persons with Disabilities (UNCPRD) would be relevant. Again it was stressed that appropriate support, help and advice should underpin arrangements, particularly where there is a multi-agency co-ordinated approach.

3.322. Respondents suggested in the circumstances where certain individuals or groups may not be as empowered, for example due to a particular vulnerability, action will be required to mitigate this. Effective outreach and communication was suggested.

3.323. Throughout the responses the issue of gender was raised. A range of respondents noted the gendered nature of domestic violence and abuse and considered that any arrangements should reflect and acknowledge this. Respondents highlighted a number of European Court of Human Rights cases and noted that evidence is overwhelming, that gender asymmetry in domestic violence remains in full effect. It is suggested as being highly likely that any shortcomings of the current arrangements will have a disproportionately negative impact upon women. Respondents noted that further action is required to remedy the unfair cultural-structural gender equality across society at large. Conversely others raised the importance of increasing the profile of violence against men. They also noted a perceived low conviction rate for female perpetrators and high levels of false accusations against men.

3.324. However generally it was considered that arrangements should apply equally and respondents noted that any potential barriers should be clearly identified and solutions developed in order to ensure equality.

3.325. Respondents considered that everyone should feel able to seek help and support if there is violence or abuse within their intimate relationships. Respondents suggested that this remains problematic for the lesbian, gay, bisexual, and

transgender community and individuals from a range of diverse cultural backgrounds.

3.326. Respondents acknowledged that efforts had been made by the Department to gather and present evidence through the Equality Screening associated with the consultation, however they noted that for some Section 75 groups there was limited data included. They therefore considered it difficult to comment on relevant questions given the lack of information. It was suggested that the development of a monitoring framework capable of supplying robust disaggregated section 75 data, combined with targeted research, would supply further information on the current arrangements and the impact of any new arrangements and allow corrective action to be taken.

3.327. Respondents noted that there would be merit in engaging widely with support and advocacy groups who work with ethnic minorities and particularly ethnic minority women. They advised that anecdotal evidence would suggest that there is a high prevalence of domestic abuse within specific ethnic minority communities and it can be particularly difficult to reach victims within these communities.

3.328. It was recommended that with regards to current and future arrangements should be developed within a rights base framework, fully reflective of regional, national and international human rights obligations.

**Question 22: What are your views on the impact of a specific domestic abuse offence for different groups?**

3.329. Respondents were generally of the view that there is no adverse impact on any particular group. Respondents considered that any offence should be applicable to all groups and that the law of Northern Ireland should apply equally to everyone. It should be noted that comments provided in the other equality questions may well also apply to this question, e.g. respondents have made comments elsewhere regarding ensuring access for ethnic minority groups. Respondents did however provide comment on certain groups.

3.330. Respondents advised that the Department must take cognisance of multi identity issues to ensure equality of opportunity for all categories listed under Section 75.

Persons with a disability

3.331. Whilst agreeing that strengthening the law in regard to domestic abuse offence and a domestic violence disclosure scheme will benefit everyone, respondents highlighted that not everyone is at the same starting point. They noted that in particular there are significant barriers that people with disabilities face within a domestic violence situation. Respondents proposed that these barriers should be considered to ensure a robust implementation. Respondents provided the following as examples:

- The perpetrator may be the main carer;
- Isolation due to physical dependency;
- Fewer opportunities to attend medical appointments etc. to talk to someone about abuse;



- Professional home carers may be their only external contact;
- Worry about having adapted home; and,
- Concerns on impact of care package.

3.332. Respondents also noted, as research indicates, that persons with a disability are more likely to experience intimate partner violence.

3.333. It was also stressed by respondents that measures would need to be in place so professionals can assess whether domestic violence has occurred in cases where the abuse is being perpetrated by someone with a disability, for example autism or a brain injury.

#### Children and Young People

3.334. With regards to children and young people specifically, the need to recognise children's experiences of domestic violence and abuse including their experience of coercive and controlling behaviour within families was highlighted. It was posed that without taking this in to account any measures implemented would not be effective in helping children and young people who live with domestic violence and abuse. Respondents noted that the extent and impact of domestic violence and abuse on children is well documented and research suggests that its psychosocial impact can be severe. This can include children who grow up in families affected by domestic violence and abuse having a higher risk of mental health difficulties throughout their life.

3.335. Respondents noted their concern that despite clear evidence that children experience significant harm in families where domestic violence occurs, they remain largely conceptualised as 'witnesses' rather than 'victims'. It was noted that there is currently limited research that engages either with children's lived experience of violence, or psychological abuse and coercive control in familial relationships. In summary it was noted that children remain excluded from most domestic violence policy, and legal definitions often do not include them as victims. Respondents stressed that these issues need to be considered in the drafting of a specific offence and any associated guidance.

#### People with dependents

3.336. Respondents advised that consideration should be given to ensuring that any specific offence should take cognisance of coercive control being used through restricting and controlling access to a partner's children.

3.337. Respondents also noted that control and coercive behaviour should also reflect and include the use, withdrawal, or control of contraceptives by both men and women, where there is not mutual consent by both parties.

#### Lack of data

3.338. Respondents welcomed the efforts made by the Department to gather evidence for the Equality Screening which highlighted potential issues in relation to attitudes and access of the criminal justice system. They did however note that for several Section 75 groups little data is available, for example people with disabilities, therefore they considered it difficult to make definitive comments other than to

highlight that non-physical abuse is still largely not recognised in the criminal justice system and the continuing high levels of physical domestic abuse.

3.339. With regards to the lack of evidence respondents suggested the development of a monitoring framework capable of supplying robust disaggregated section 75 data. They noted that this combined with targeted research would supply further information and clarity with regards to the potential impact of any new arrangements and allow corrective actions to be taken.

#### Stakeholder assistance

3.340. Respondents again noted that the development of legislation to an introduce a offence should be informed by key stakeholders within statutory and community/voluntary agencies in Northern Ireland who can ensure that unplanned for, negative consequences for particular groups are avoided.

3.341. It was noted that this engagement will ensure all Section 75 categories are reflected in the development of structures and guidance emanating from any change in law.

#### **Question 23: What are your views on the impact of a “right to ask” scheme for different groups?**

3.342. Respondents generally agreed that there is no adverse impact on any particular group. It was however acknowledged by a number of responses that measures would need to be put in place to address barriers/potential barriers to accessing and using a disclosure scheme.

3.343. Respondents also noted that measures may need to be put in place with regards to ensuring the person requesting the information has capacity.

3.344. It had been highlighted that inherent to the success of a scheme are the areas of pre-implementation training, appropriate partnership working agreements, and a public awareness campaign in support of the scheme. Respondents considered that work to progress these areas must take account of the needs of all S75 groups and ensure that any additional supports needed have been met.

3.345. It was posed that in order to ensure that the disclosure scheme has the most benefit to minority ethnic groups or those in relationships with partners who have lived outside the jurisdiction of Northern Ireland, it will be important to ensure that checks completed by the PSNI should be extended in those cases. Respondents argued that without this information, the ability to proper risk assess will be hampered and therefore individuals may be at more risk than an initial assessment would indicate.

3.346. It was noted that the onus of the ‘Right to Ask’ scheme is on ‘A’ to request the information. While respondents acknowledged that both males and females can be victims of domestic abuse they stressed the importance that consideration is given to the issue that women from certain cultural backgrounds may be less likely to pro-actively seek out this type of information. It was also noted that in Northern Ireland

there can be reluctance on the part of some individuals in seeking information and assistance from the PSNI. This reluctance may relate to a number of S75 groups.

3.347. With regards to access, respondents advised that consideration should be given to ensuring that information/literature is provided in a variety of languages and that translation services are available in respect of disclosure. This also needs to be the case with support services following disclosure.

3.348. Proper provision of awareness raising materials and interpreters to assist the process will also be vital.

3.349. Respondents considered that in order to make a right to ask scheme successful, several elements would be required including an inclusive and accessible awareness raising programme; training for relevant officers and service providers; accessible procedure and effective risk assessment and support. It was noted that effective risk assessment can be best established through consultation with, and the participation of stakeholders.

3.350. Respondents recognised that there is merit in engaging widely with support and advocacy groups working with all section 75 groups. Groups supporting ethnic minority women were referenced specifically. As indicated previously, respondents noted that individuals within ethnic communities may be particularly difficult to reach given perceptions regarding abusive and 'normal' behaviour.

3.351. It was highlighted that when a right to ask or right to know process has begun consideration must be given to all equality and human rights aspects.

**Question 24: What are your views on the impact of a “right to know” scheme for different groups?**

3.352. It was highlighted that there should be equality and inclusivity for all groups.

3.353. The majority of respondents considered that the “right to know” scheme should apply equally to all groups and will not adversely affect any particular group. It was generally agreed that the scheme should be operated impartially. It was noted that with regard to disclosure there is a need to ensure that 'Individual A' has capacity.

3.354. It was however noted by a number of respondents that measures would need to be put in place to address barriers and potential barriers to accessing and using the disclosure scheme. The importance of training for members of the decision making panel was stressed, particularly with regards to the needs/representation of all section 75 groups to enable informed decisions and facilitate safe disclosure.

3.355. It was proposed that there may be merit in engaging widely with support or advocacy groups working with ethnic minorities and particularly ethnic minority women. With regards to access it was suggested that consideration should be given to ensuring that information literature is provided in a variety of languages and that there is translation services available in respect of disclosure.

**Question 25: Is there an opportunity to better promote equality of opportunity or good relations?**

3.356. Emphasis was given to equality of opportunity and the promotion of good relations as being two objectives that should be strived for in the implementation of any new legislation or disclosure scheme. It was noted that there are various stakeholders/groups that could assist in this regard and that good relations could be better promoted through the use of existing support groups for people from diverse cultural backgrounds.

3.357. Respondents highlighted that the introduction of a new domestic abuse offence and disclosure scheme had the potential to address the inequalities that result from the experience of domestic abuse.

3.358. As identified previously, respondents considered there were significant opportunities to raise awareness of the scheme within the community and heightened awareness among the agencies involved.

3.359. Respondents also identified opportunities for increasing confidence in policing by providing PSNI with greater powers to prosecute perpetrators of abuse and to implement right to ask and right to know disclosure schemes. The importance of partnership working to include all section 75 groups in the development and implementation of both initiatives was also recognised and the belief that the process will increase knowledge and understanding of domestic abuse and the additional and different needs of all those who experience it. It was noted that this could be an opportunity for increased understanding and improved services for all.

**Question 26: Are there any aspects of these proposals where you consider potential human rights violations may occur?**

3.360. Respondents noted that Human Rights was a key issue when considering domestic violence and abuse and how it should be tackled. They noted that any policy in this regard should take cognisance of both victim and perpetrator and the human rights of both parties. Respondents noted that Department had an obligation to ensure access to services and that any proposal balanced human rights obligations appropriately.

3.361. Respondents noted that focus groups had queried if the human rights of the victim was fully considered within the justice process. The groups described that the domestic violence and abuse they suffered amounted to months or years of mental and physical torture where they were in constant fear for their safety and that of their children.

Specific offence

3.362. With regards to a specific offence respondents considered that failing to criminalise coercive and controlling behaviours could lead to violations of a victim's

right to be free from inhuman and degrading treatment, which the state has a positive obligation to prevent.

3.363. Respondents also noted that with regard to the needs and human rights of the victim they should be supported through the criminal justice process.

#### Disclosure Scheme

3.364. With regards to Human Rights and their implications respondents provided the most comment on the disclosure scheme. They acknowledged that the decision to disclose should be proportionate to the risk involved. They argued that given police can disclose using their current powers that the issue of disclosing within the Human rights Act framework has already been addressed.

3.365. Respondents acknowledged that the application of a disclosure scheme will interfere with the Human Rights of an individual. This would include Article 8 of the ECHR, the right to private and family life. Respondents however noted that interferences are permissible, for example when balanced with the protection of the rights of others. Respondents referenced key outcomes that have emerged from cases that have progressed through the European Court of Human Rights.

3.366. Respondents noted that the consultation document does not provide sufficient detail for respondents to give a full assessment of the proportionality of the scheme, e.g. it was suggested that the Department will wish to consider the definition of an intimate relationship and the specific requirements and guidelines required for the scheme and in particular the decision making process. Also it was noted that further consideration of support provision to partners after disclosure would be required to ensure their safety.

3.367. On the whole respondents noted that disclosure is a scheme based on balance and that fundamentally the right to life takes precedence over the right to privacy. They did however express concern about the rights of 'B' within the disclosure scheme should the model include the sharing of intelligence (non-adjudicated information). Also concern was raised with regard to whether 'B' would ever be made aware that an application for disclosure by 'A' was made.

3.368. To ensure any proposals going forward are considered within a human rights framework, respondents considered that all relevant individuals (e.g. PSNI, Judiciary etc.) should be provided with appropriate training and guidance on human rights. The Northern Ireland Human Rights Commission offered to meet the Department to discuss the technical issues relating to the Human Rights of all parties.

## Additional Comments

#### Prevalence and diverse needs

3.369. With regards to general comments, respondents welcomed the opportunity to respond to the consultation. Many, within their response, highlighted the important work their organisations are doing in tackling domestic and sexual violence and abuse. They also highlighted the prevalence of domestic violence and abuse in Northern Ireland. Some focused in on specific evidence and the prevalence of

domestic abuse with regards to their service users. Respondents acknowledged that women remain overwhelmingly the majority of the victims of this type of domestic violence. They posed that this may be associated with the implications of gendered power, status and financial differentials within households and across society. Respondents however considered that the proposals should apply, and be accessible equally to all Section 75 groups, and that consideration needs to be given to all sections of the community when shaping the way forward.

3.370. Respondents noted the specific issues and sensitivities there are with regards to supporting their service users and the barriers they encounter coming forward to report and engaging fully with the criminal justice process. They noted that any proposals should meet a diverse range of needs.

3.371. Respondents considered that there is a need to offer better protection to victims of abuse and that early intervention could reduce the risk of serious injury as a result of domestic violence and abuse. They considered this important given domestic abuse and violence is a pattern of behaviour that escalates. Respondents acknowledged that the cumulative adverse impact that intimate partner violence and abuse can have at both the level of the individual and wider family will vary from case to case. They also noted, as widely established in literature, that the impact may be variously characterised as potentially multi-dimensional.

#### Serial Offenders

3.372. Respondents noted that many perpetrators are serial offenders. When Officials met with focus groups they were advised by support organisations that they have, on numerous occasions, supported a number of victims who have had the same abusive partner.

#### Legacy of conflict

3.373. Respondents also advised that research had affirmed a distinct relationship between the context and legacy of the conflict in Northern Ireland and the nature, prevalence and non-reporting of intimate partner violence. They noted that the conflict has been identified as having 'masked the perpetration of domestic and sexual violence'. Respondents therefore recommended that government should ensure its approach remains properly anchored within a rights-based framework, fully reflective of all pertinent domestic, regional and international human rights obligations.

#### Further assistance from respondents/stakeholders

3.374. A number of respondents offered to assist further in bringing both initiatives into Northern Ireland, particularly given the significance of the subject matter and the potentially complex legal and practical issues involved. They also stressed the importance of ensuring that any initiatives dovetail with the service provision and protections that are already in place.

3.375. A significant number of respondents considered that the proposed offence and disclosure scheme should be further informed by key stakeholders within statutory, community and voluntary sectors.

### Concerns about consultation document and screening process

3.376. Respondents raised concern with regards to the consultation document and the equality screening process. Specifically respondents noted their dismay that the consultation document was not offered in a range of alternative formats. They also expressed that they were very concerned that the screening process has made an assumption that the policy will have no effect on certain groups where there is limited evidence.

*3.377. The Department would like to provide the following comments and assurance: The document was offered in a range of formats, as outlined on page 16 of the consultation. However given the Department added the questionnaire to the body of the document this information was not obvious to the reader. The Department will seek to ensure that this information is more prominent in future consultations.*

*3.378. With regards to the Equality Screening document the Department acknowledges that there was limited evidence for a number of section 75 groups. Due to this fact the Department sought further evidence through the consultation process (Questions 21 to 25 refers) and are in the process of rescreening the policy, taking cognisance of the further evidence provided by respondents before a formal screening decision is made.*

#### 4. CONCLUSION AND WAY FORWARD

4.1. Consultation responses were received from a broad range of organisations and individuals and engagement with stakeholders took place through written responses, and workshops facilitated by key stakeholders. This process has attracted a broad range of views, raising many important issues and providing further insight into the potential challenges that may be faced in implementing these proposals in Northern Ireland. The Department wishes to thank all respondents to the consultation and workshop participants for their invaluable input.

4.2. Respondents have generally welcomed the proposed implementation of a specific offence to capture coercive and controlling behaviour. They have also been supportive of a domestic violence disclosure scheme which includes both a 'right to ask' and a 'right to know' approach. Given this broad support, on 12 September 2016, the Minister of Justice announced her intentions to bring forward an offence and implement a disclosure scheme into Northern Ireland.

4.3. The Department of Justice has logged the issues and complexities raised in the consultation and noted the widely advocated suggestion that further engagement is required with key stakeholders/delivery partners to ensure any offence or scheme meets the needs of all sections of the community. The Department has therefore recommended that a working group is constituted to progress both these initiatives and will contact stakeholders/partners across the sectors to seek their support and assistance in due course.

4.4. As Domestic Violence and Abuse is a cross-cutting issue which cannot be tackled in isolation, the Department will also engage with other Executive Departments as necessary to ensure that any initiatives taken forward complement and strengthen the framework in place across the Executive to tackle domestic violence and abuse.

4.5. The Minister for Justice will engage with the Justice Committee on the development of the proposals and seek Executive approval in due course.

4.6. If you require any further information in relation to the consultation or the summary of responses please contact:

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<b>Consultation Respondents</b>
Action on Elder Abuse Northern Ireland
Ards and North Down Borough Council
Armagh, Banbridge and Craigavon Policing and Community Safety Partnership
Attorney General for Northern Ireland
The Bar of Northern Ireland
Belfast Area Domestic Violence Partnership
Belfast Feminist Network
Causeway Coast and Glens Policing and Community safety Partnership
Children in Northern Ireland
De Montfort University Lecturer
Disability Action
Fermanagh and Omagh District Council
Fermanagh and Omagh Policing and Community Safety Partnership
Information Commissioner's Office
Legal Services Agency Northern Ireland
Lisburn & Castlereagh City Council
Men's Advisory Project
Mens Aid NI
National Society for the Prevention of Cruelty to Children
Newry Mourne and Down Policing and Community safety Partnership
Northern Ireland Association for the Care and Resettlement of Offenders
Northern Ireland Council for Ethnic Minorities
Northern Ireland Human Rights Commission
Northern Ireland Public Service Alliance
Northern Ireland Policing Board

Parenting NI
Parole Commissioner
Probation Board for Northern Ireland
Police Federation for Northern Ireland
Public Protection Arrangements NI
Public Prosecution Service
Queens University Belfast Students Human Rights Centre
Relate NI
South Eastern Domestic Violence Partnership
Sheffield Hallam University
Sinn Féin
Southern Health and Social Care Trust
Superintendents' Association of Northern Ireland
Victim Support Northern Ireland
Women's Aid Federation Northern Ireland
Western Domestic Violence Partnership
Women's Regional Consortium
Women's Resource and Development Agency
Individual respondent