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Title	Introduction to the Special Section: Can Criminal Justice Responses Empower Women? A Case Study of Domestic Abuse Disclosure Schemes
Type	Article
URL	https://clock.uclan.ac.uk/id/eprint/51384/
DOI	
Date	2024
Citation	Duggan, Marian and Barlow, Charlotte (2024) Introduction to the Special Section: Can Criminal Justice Responses Empower Women? A Case Study of Domestic Abuse Disclosure Schemes. <i>Feminists@Law</i> , 13 (1). ISSN 2046-9551
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Introduction to the Special Section: Can Criminal Justice Responses Empower Women? A Case Study of Domestic Abuse Disclosure Schemes

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Abstract

This paper introduces the Special Section *Can Criminal Justice Responses Empower Women? A Case Study of Domestic Abuse Disclosure Schemes*. It locates the case study of Domestic Abuse Disclosure Schemes in a wider trend of expanded criminal justice responses to domestic abuse. It then outlines the introduction and format of the Domestic Abuse Disclosure Scheme in England and Wales in 2014, followed by schemes introduced in other jurisdictions. It goes on to discuss the development, uptake and wider contextualisation of the schemes, as well as the emerging body of academic research. Finally, the contributions of the four substantive papers in this Special Section are detailed.

Introduction

Over the past 30 years, criminal justice responses to domestic abuse have significantly expanded in many jurisdictions across the globe. Such responses include the creation of more law to criminalise a wider range of abusive behaviours, rule tightening for police and other agencies, and changes in criminal justice policy. However, despite such efforts, criminal justice responses to domestic abuse continue to face continued scrutiny (HMIC, 2015), with questions remaining as to the extent to which approaches advocating a greater focus on criminalisation offer protection and justice for women (Goodmark, 2018).

The Domestic Violence Disclosure Scheme (DVDS), which originated in England and Wales, forms part of criminal justice efforts to reduce domestic abuse through early intervention policies. In the decade since its national implementation on International Women's Day 2014, national variations of the scheme have been adopted by police forces in Scotland and Northern Ireland. Similarly, international disclosure schemes have been implemented in several states across Australia and Canada, and most recently in Malta.

In England and Wales, the DVDS enables the police to use their common law powers to disclose information about a person's previous abusive or violent offending if deemed proportionate and necessary to prevent crime. It has two routes to disclosure: the publicly initiated 'Right to Ask' and the statutory initiated 'Right to Know'. Scotland's Disclosure

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Scheme Domestic Abuse Scotland (DSDAS) operates along a 'Right to Ask' and 'Power to Tell' approach, while Malta only provides the 'Right to Ask' element.

The DVDS was implemented following a high-profile public campaign after the murder of Clare Wood in 2009 by her partner who was found to have a history of violence unknown to her. Better known as 'Clare's Law', the DVDS has been heavily publicised by the police and wider media. It has featured in prime-time television and radio dramas, is regularly referred to in regional news media reports, and has spawned dedicated social media groups with thousands of members seeking and providing insight into and support around the application and disclosure process. Importantly, Clare's Law also featured prominently in an episode of the popular documentary series *24 Hours in Police Custody*, showing Bedfordshire Police informing a serial perpetrator's current partner of his history of violent conduct.

Efforts to increase awareness and demystify Clare's Law appear to be paying off. Home Office and police data indicate a steadily increasing number of applications to the Scheme under both the Right to Ask (public-initiated) and the Right to Know (statutory-initiated) routes. During the 2019-20 period there was a sharp increase in Right to Ask applications, almost doubling to 11,556, compared to 6,496 in the previous year. Of these, 37% (4,236) resulted in a disclosure. As the country went into the first of three national lockdowns prompted by the COVID-19 pandemic, an average of 1,100 Right to Ask applications were made between March and June 2020. Overall, there were more than 10,000 *more* applications under Clare's Law in the year to March 2021 than in the year to March 2020 for England and Wales. At 30,323 applications, this represented a 50% increase in interactions with the Scheme compared to 20,147 in the year to March 2020. Similarly, the number of disclosures also jumped from 8,715 in the year ending March 2020, to 13,439 in the year ending March 2021 (see generally, HMICFRS, 2021: 46-50).

This growth in uptake looks set to continue, bolstered by the Government having added violence against women and girls to the strategic policing requirement coupled with police forces implementing a range of initiatives to boost public engagement with the policy. Usually, these initiatives are aimed at the person who may be at risk of harm, but some forces are widening their target audiences. For example, Cheshire Constabulary instigated a campaign aimed at highlighting Clare's Law to those who are concerned about the possible dangers faced by their loved ones in an intimate relationship. They displayed posters targeting these potential applicants in a range of community venues, such as doctors and dental surgeries, hair and nail salons, and licenced venues such as pubs and clubs.

As more jurisdictions adopt this approach to violence prevention, greater variations of the scheme – and the language used within it – emerge, which may increase public and statutory confusion around how it operates.

Updated Guidance

A core body of academics have offered critical insight into these schemes, leading to the Home Office soliciting their input on the most recent version of the DVDS Guidance (Home Office, 2023). This research has examined the principles underpinning these schemes (Fitz-Gibbon and Walklate, 2017; Grace, 2021) alongside practitioners' views and engagement with them (Duggan, 2018; Hadjimatheou and Grace, 2021). Recently, research exploring victim-survivors' perceptions and/or experiences of accessing the DVDS has emerged in England and Wales (Barlow et al., 2023) and is currently underway in Australia (Fitz-Gibbon et al., 2023).

In England and Wales, the Domestic Abuse Act 2021 placed the DVDS on a statutory footing, requiring the police to pay due regard to the updated Home Office DVDS Guidance document (Home Office, 2023). Traditionally, the disclosure of DVDS information was at the discretion of individual police forces, leading to considerable variability in disclosure rates across England and Wales. The new statutory duty seeks to ensure that police forces apply the DVDS in a more equitable and consistent manner through paying closer attention to the Guidance document. The new Guidance also reduces the timeframes for police to disclose information about an individual's violence or abusive behaviour from 35 to 28 days. This became a key area of concern following media inquiries into disclosures taking longer than 35 days (Lowe, 2021) coupled with the tragic cases of women – such as Rosie Darbyshire – being murdered by their abusive partners while their Clare's Law applications were being considered (Oppenheim, 2019).

Given this context, and the growing level of international adoption of such schemes, the editors of this Special Section considered it timely to offer critical scrutiny on the efficacy of such schemes.

Contents

This Special Section provides a contemporary and international reflection on the varied strengths and limitations of using disclosure schemes to tackle domestic violence and abuse, considering the broader issue of the extent to which the criminal justice system is able to empower victim-survivors. The contributions critically reflect on whose interests DVDSs serve, under what circumstances, and the extent to which such schemes and the criminal justice system more broadly are able to empower women and keep them safe. The articles in this Special Section offer the first comprehensive and nuanced analysis of how domestic abuse disclosure schemes are operating and experienced by those involved with them, from victims and specialists through to policy makers and the statutory sector. The contributors are all engaged in research exploring domestic abuse disclosure schemes, adopting a feminist socio-legal approach to examining the nature and impact of this type of policy.

The first article in this collection is 'Criminal Justice Policy and Victim-Survivor Empowerment: A Case Study of Domestic Violence Disclosure Schemes in England and Wales' by Charlotte Barlow, Sandra Walklate and Nicole Renehan. The authors draw from the findings of their British Academy-funded project, the first empirical research to involve speaking with women about their experiences and perceptions of Clare's Law. In presenting their findings, the authors explore the degree to which the victim-survivors in their study experienced this particular domestic abuse disclosure scheme as empowering. The focus on this concept arises from the statutory discourse surrounding Clare's Law as being one of 'empowerment' for domestic abuse victims. The analysis also demonstrates important differences between the police's implementation of this policy, characterised as either 'incident'- or 'process'-centred in nature, which impacted considerably on how supported victims felt. In conclusion, the authors highlight the empowering nature of listening to victims and the importance of this in criminal justice policy development.

In 'How Can a Growing Use of Clare's Law Help Us Meet Human Rights Obligations to Victims of Domestic Abuse?' Jamie Grace adopts a legal approach to exploring the relationship between Clare's Law/the DVDS and the standards set out in human rights law. The article begins by mapping out data trends to evidence the annual increase in applications to Clare's Law against a backdrop of decreasing prosecutions for domestic abuse. Drawing from a body of European and domestic case law, the analysis explores how compliant policies such as Clare's Law can be in light of the consistent lack of prosecution for domestic and/or sexual violence in England and Wales. The article also draws from judicial directions to explore whether a failure by the police to disclose information in a manner which could prevent domestic abuse may constitute an 'egregious error' under the new operational standard. In conclusion, the author explores the impact of the Domestic Abuse Act 2021 placing Clare's Law on a statutory footing on future decision-making processes by the police.

Lesley McMillan and Andrew Tickell's paper, 'Lawful, Proportionate and Necessary? A Critical Examination of the Domestic Abuse Disclosure Scheme for Scotland', explores the Disclosure Scheme for Domestic Abuse in Scotland (DSDAS). This is similar to the DVDS in that it allows people a 'right to ask' the police whether someone has a history of domestic abuse. It also incorporates the 'power to tell' where the police can inform a person if someone is known to be a risk. Following a pilot, the legislation came into force in Scotland in October 2015, a year after the DVDS. The authors demonstrate that while both schemes appear similar, key differences exist regarding terminology and definitions, the statutory powers that underpin them, and the processes through which they are implemented. In their article, the authors critically examine the DSDAS, reflecting upon its relative merits and demerits, paying particular attention to the legislative framework upon which Police Scotland are basing DSDAS decisions.

An international focus is presented in 'Exploring the Outcomes of Divergent Approaches to the Policy Making Process: Domestic Violence Disclosure Schemes and Perpetrator Registers in Australia'. Here, Kate Fitz-Gibbon, Sandra Walklate and Ellen Reeves provide a detailed examination of the debates and discussions informing proposals around the implementation of a public register of convicted domestic, family and sexual violence perpetrators. Alongside this, the authors also examine the variability in approaches to adopting the DVDS across Australian states. Drawing from a range of case studies and two major government commissioned inquiries, the analysis demonstrates how the processes informing these key policy decisions are indicative of a gradual shift away from evidence-based reform. The article demonstrates the growing importance placed upon victim 'champions' and populist public sentiment in driving policy development. In conclusion, the authors advocate for a greater focus on remaining accountable to victims of domestic, family and sexual violence through evidence-based policy making which embeds the voices of victims throughout.

The editors and contributors would like to express their gratitude to the anonymous reviewers and the *feminists@law* editorial board.

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