



SNaP National Policy Paper

SAFE Ireland

September 2016



Specific Needs and
Protection Orders

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1 Introduction: Background, Research Findings, and Structure of Paper

1.1 SAFE Ireland

SAFE Ireland is a leading, innovative social change agency with expertise in responding to and preventing domestic violence. We are directly linked to women and children who experience Domestic Violence. We work to bring voice and understanding to the causes and impact of Domestic Violence. We respond to thousands of women and children affected by Domestic Violence in Ireland every year. SAFE Ireland works in collaboration with 40 domestic violence services throughout the country that respond to and advocate for, the safety, practical, emotional and child related needs of women and children who are victims of domestic violence.

We “centre stage” the needs and experiences of women and children who are impacted by domestic violence. SAFE Ireland gives a public voice to the unreported crimes experienced by thousands of women and children who access our members’ domestic violence services every year, and advocates nationally to ensure state responses serve to protect victims of domestic violence and ensure justice for the crimes committed against them. SAFE Ireland conducts innovative research which focuses on victims of domestic violence and provides practice-based evidence to inform social change, service development and further understanding about the causes and impacts of domestic violence in our society.

1.2 SNaP (Specific Needs and Protection Orders)

The aim of this study was to examine the effectiveness and appropriateness of orders under the Domestic Violence Act 1996 as amended, for women victims of domestic violence with additional vulnerabilities, or “specific needs”. This was part of a European project part-funded by the European Commission,

examining this issue in five countries (Austria, Germany, Poland, Portugal and Ireland) during 2015/6.¹

A key aim of the SNaP research was to avoid considering only stereotypical **categories** of domestic violence victims, each with its own set of presupposed and fixed additional vulnerabilities, and to think instead in terms of identifying specific needs of **individual women**, many of which might change over time. In this way it was hoped that less obvious but equally acute, specific needs might be identified. The research methodology reflects this more dynamic approach by examining specific needs not under fixed categories (disabled women, migrant women, and so on) but under broad headings which are not mutually exclusive: accessibility of DVA orders, dependency issues (including perpetrator's dependence on victim), cultural norms, and situational and/or circumstantial vulnerabilities.

Key Research Findings from SNaP Irish Research (2016):

- Many women are highly dissatisfied with the outcomes of DVA applications, and only a tiny minority find the process entirely effective (4%) and appropriate (10%).
- The DVA order process is long, formidable and costly, and the rate of attrition high.
- Participants described specific needs in groups of complex and inter-related needs. Women never had a single specific need;
- Barriers to accessibility are numerous, and many women with specific needs who could benefit from protection are seen to be not applying for DVA orders;
- Specific needs may be created by or taken advantage of by the perpetrator within a coercive control dynamic and this needs to be recognised by judges, Gardaí and all relevant agencies;
- Judges and Gardaí are seen as inconsistent in application of law and policy;
- Specific needs could arise out of the DVA order process in ways that could be prevented with more effective inter-agency cooperation;

1.3 Evidence Base, Legal & Policy Framework and Aim of Policy Paper

¹ SNaP = Specific Needs and Protection Orders (2014-2016). In Ireland the study focussed on the orders available under the Domestic Violence Act 1996 as amended. See generally www.snap-eu.org for more information.

Evidence & Policy Base: Most of these recommendations emerge directly from SNaP research findings and conclusions, and include additional recommendations made in the course of the SNaP National Expert Hearing². The evidence base for the recommendations also encompasses other recent research findings, reported in³ the INASC Report “In Search of Justice” (Improving Needs Assessment and Victim Support in Domestic Violence Related Criminal Proceedings) (2016), “The State We Are In” (2016) and “The Lawlessness of the Home” (2015), among others. The policy base for the recommendations is to be found in the most recent SNaP project research findings⁴, in these reports, and also in a submission to the Joint Oireachtas Committee on Justice, Defence and Equality on the General Scheme of the Revised and Consolidated Domestic Violence Bill (2015)⁵. Finally, the policy basis for these recommendations draws much from the SAFE Ireland recommendations for reform of our legislation and our administrative systems, which were made to the National Steering Committee on Violence against Women originally in March 2014⁶. The wide-ranging list of legal recommendations at the end of “Lawlessness of the Home” (published March 2015) is based largely upon this list, and many of them are repeated in this document.

The Submission, the Recommendations and the Reports cited are all grounded firmly in nationwide and ongoing consultation with domestic violence services. Their collaboration enabled the gathering of data from women affected by domestic violence from around the country, so that a truly national picture can be presented which reflects accurately their experiences as they struggle to navigate our justice systems.

Legal & Policy Framework: In this context, the most directly relevant legal instrument is EU Directive 2012/29 establishing minimum standards on the rights, support and protection of victims of crime, in force since 16 November 2015 but awaiting transposition into Irish law.⁷ Within the Directive, the most directly relevant Article is 22, which sets out the obligation to conduct an individual needs assessment for each victim, to identify any “specific protection needs”. Victims who are in a close relationship with the perpetrator are identified as a group to which particular attention should be paid (among others). Other especially relevant Articles are Article 3 (right to understand and be

²SAFE Ireland draft National Report on SNaP Research Project 2016 (published October 2016)

³ See Appendix 1 for a full list with online references

⁴ See SNaP National Report Ireland 2016, SAFE Ireland

⁵ See Appendix 1 for an online reference

⁶ And accepted by the NSC in their meeting later that year

⁷ See Footnote 10 below for full reference and weblink to full text:

understood), Article 7 (right to interpretation and translation), Article 18 (right to protection), Articles 20 and 23 (general rights to protection during investigation and special measures during investigation and court proceedings for victims with identified specific protection needs, respectively), and Article 25 (training obligations on Member States with regard to justice professionals).

The other key international instrument is the Istanbul Convention⁸ on violence against women, which the Government has now signed and committed to ratifying, particularly Articles 12 and 18 which refer to victims with specific needs, Article 51, which refers to the obligation to conduct risk assessment and management, and Article 56, which deals with special measures to protect victims at every stage of the legal process. An Action Plan to achieve this is included in the Action Plan to implement the 2nd National Strategy on Domestic, Sexual and Gender-Based Violence 2016-2021⁹. The key national statute is of course still the Domestic Violence Act 1996 as amended. This is due to be revised and consolidated by way of a new Bill. So far only the General Scheme of the Reformed and Consolidated Domestic Violence Bill has been published¹⁰. Finally, the General Scheme of the forthcoming Criminal Justice (Victims of Crime) Bill 2015, is also relevant¹¹.

The key official policy framework document is the 2nd National Strategy on Domestic, Sexual and Gender-Based Violence 2016-2021 itself¹², together with the related Action Plan, cited above.

Aim of Policy Paper:

The aim of this Policy Paper is to produce practicable recommendations, well grounded in evidence, to inform forthcoming legislation, policy and practice as they develop with regard to women with specific needs, and to influence also the direction and compass of the 2nd National Strategy Action Plan, which is designed to be a living document to which new actions may be added and existing ones modified. Through these mechanisms, it is hoped the actual

⁸ Council of Europe Convention on preventing and combating violence against women and domestic violence (2011), available online through this weblink: <http://www.coe.int/en/web/conventions/full-list/-/conventions/rms/090000168008482e>

⁹ Available online through this weblink: <http://www.cosc.ie/en/COSC/Pages/WP08000096>

¹⁰ Available online at:

<http://www.justice.ie/en/JELR/Corrected%20GENERAL%20SCHEME%20OF%20A%20REFORMED%20AND%20CONSOLIDATED%20DOMESTIC%20VIOLENCE%20BILL.pdf/Files/Corrected%20GENERAL%20SCHEME%20OF%20A%20REFORMED%20AND%20CONSOLIDATED%20DOMESTIC%20VIOLENCE%20BILL.pdf>

¹¹ Available online at:

[http://www.justice.ie/en/JELR/CRIMINAL%20JUSTICE%20\(Victims%20of%20Crime\)%20BILL%202015.pdf/Files/CRIMINAL%20JUSTICE%20\(Victims%20of%20Crime\)%20BILL%202015.pdf](http://www.justice.ie/en/JELR/CRIMINAL%20JUSTICE%20(Victims%20of%20Crime)%20BILL%202015.pdf/Files/CRIMINAL%20JUSTICE%20(Victims%20of%20Crime)%20BILL%202015.pdf)

¹² Available online through this weblink:

<http://www.cosc.ie/en/COSC/Second%20National%20Strategy.pdf/Files/Second%20National%20Strategy.pdf>

specific needs of women in domestic violence situations will soon meet appropriate and effective responses from all our agencies.

2 Structure of Policy Paper's Recommendations

This National Policy Paper's recommendations are grouped under a separate heading for each responsible agency. This means that any recommendations for statutory (legal) change are listed under the Government heading.

2.1 An Garda Síochána: Recommendations

1. Garda policy and training in domestic violence should stress the importance of ensuring that victims have understood information and advice given at every stage, particularly in relation to available supports, court decisions and possible actions;
2. Both general and specialist team Garda training and performance monitoring should stress the importance of consistency in putting the Garda Policy on Domestic Abuse into practice, especially with regard to proactive arrests, prompt preservation of evidence, establishing and maintaining contact with the victim, and effective and appropriate liaison with other relevant agencies;
3. Both general and specialist team Garda training should include "unconscious bias" training to make it easier for them to avoid unconscious stereotyping of women with specific needs (she is Roma so she comes from a culture which accepts DV e.g)
4. Garda foundation training and Garda CPD training should each include input from DV support services on the dynamics of domestic violence, and on a trauma sensitive, trauma informed approach to its victims, to include material on how women with specific needs may be affected by DV;
5. All first responder Gardai should be encouraged to attend any training on DV offered by DV support services at local and national level, as far as possible, and they should be allowed to do this in working hours and as part of their duties;
6. Breaches of DVA orders should always be investigated fully and prosecuted with vigour wherever possible;
7. The timely and thorough investigation of DV related crimes should be identified in Garda Strategy and Policing Plan documents as a constant high priority, even in areas where there is a high volume of non DV related

- crime, and Gardai at high levels within the Force should not hesitate to seek increased resources aimed at reducing DV crime;
8. Individual assessment processes to identify the specific protection needs (which will be introduced as it is a requirement under Article 22 of the EU Directive on Victims' Rights¹³), should take account of their fluid, complex and inter-related nature, and should be updated where necessary;
 9. As far as possible and appropriate at local level, the Garda response to women experiencing DV and the Garda response on related issues (such as child protection, criminal investigations) should be co-ordinated;
 10. Specialist approaches to investigation and prosecution of domestic violence should be supported, developed further, resourced adequately and publicised well;
 11. Creating and maintaining regular inter-agency contacts at local and national level with DV and non DV support agencies, and with the Courts Service in relation to DV issues, should be named in the Garda Domestic Abuse Policy (forthcoming version) as the responsibility of a designated member in each Garda Division, and as a priority for the Garda National Protective Services Bureau in every Garda Strategy and Policing Plan;
 12. Garda data collection systems: should identify DV incidents as such from earliest contact, should record them as such and should alert users to repeated contacts with same person or address.

2.2 Court Service: Recommendations

1. Courts Service training in Domestic Violence should include training in the recognition and where appropriate, the management of specific needs of women seeking DVA orders, and this training should include an element of "unconscious bias" training to help them avoid stereotypical thinking in relation to women with specific needs;
2. Courts Service management should consider introducing a standardized approach to recognizing and where appropriate, managing the specific needs of women seeking DVA orders;
3. In all contacts with women seeking DVA orders, Courts Service staff should do all they can to ensure that information about processes, outcomes and what to do if a breach occurs, has been well understood;

¹³ DIRECTIVE 2012/29/EU OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA, available online through this weblink: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2012:315:0057:0073:EN:PDF>

4. As far as possible, Courts Service staff should facilitate DV support service staff to provide accompaniment to women victims of domestic violence in court and in the court precincts, by providing space and other facilities for resident DV support services and by appropriate and timely referrals to non-resident DV services;
5. Where possible especially at local level, inter-agency contacts with other relevant statutory and NGO agencies (including the local Gardai) working with victims of domestic violence, should be maintained and developed as a priority.

2.3 Solicitors and Barristers: Recommendations

1. All legal representatives of women seeking DVA orders must take extra care to ensure that advice, information and instructions about court processes, outcomes and what to do if there is a breach of an order or the situation becomes more dangerous – has been understood fully by their client, at every stage of the process but especially after every court appearance;
2. Legal professional training bodies should ensure that regular training sessions are made available to their members on the dynamics of domestic violence and on the nature, recognition and where appropriate, management of the specific needs of women who are eligible for DVA orders, and should include an element of “unconscious bias” training;
3. Such professional training should include at least an overview of the range of specialist services available to address some specific needs which these women may have, and this overview should include material on the range of services provided by DV support services – so that they can advise and refer their clients appropriately and in a timely manner;
4. All legal representatives working in this area should take every opportunity to develop relationships with other agencies working with women in domestic violence, such as DV and non-DV victim support services, so that over time, they develop a fuller understanding of the nature and complexity of special needs which these women may have.

2.4 Judges: Recommendations

1. The Judiciary as a whole, through whatever structure is appropriate, should take steps to ensure that all judges who handle DVA applications (and breaches) regularly, are trained in the dynamics and impacts of domestic

violence. This training should include material on the fluid, complex and inter-related nature of the specific needs of women victims of domestic violence, so that they can recognise and address these in the applicants before them, to the extent that this is possible, and should also some input on “conscious bias”, to help them to avoid stereotypical thinking in relation to some groups of women with specific needs;

2. Individual judges should always be alert to recognize and where possible, address, the specific needs of women applicants for DVA orders in court, whether or not these are brought to their attention through a previous assessment;
3. Judges should be mindful that some specific needs will have the effect of making it hard for the applicant to absorb and retain important information, and that these needs may not always be obvious (e.g: a person may speak a second language very well, but have great difficulty in understanding a native speaker's meaning correctly when s/he replies), and therefore should take the utmost care to ensure that applicants understand what is going on, so that they grasp outcomes and above all, what they should do if there is a breach of an order or the risk to them escalates in the future;
4. As far as possible, judges should facilitate applicants to have the support of DV service accompaniment staff, in court;
5. As far as possible, judges should facilitate, including through the use of special measures where appropriate, DVA order applicants to give their evidence fully and coherently, whatever their specific needs might be;
6. The judiciary as a body should not hesitate to advocate for more court time and other resources, through whatever structure and to whatever extent, is appropriate to their role;
7. To the extent that it is appropriate to their role, judges should make and maintain links with other professionals working with women victims of domestic violence, with a view to working together to improve responses to their specific needs;
8. Judges should assume that applicants for DVA orders with specific needs related to a learning or intellectual disability, have the capacity both to give instructions and to give evidence, in the absence of impartial and expert evidence to the contrary, and should be alert to prevent the use of unfounded allegations of incapacity by respondents as a tactic to discredit applicants;
9. Judges should avoid accepting undertakings, especially cross-undertakings unsupported by evidence, to resolve applications for DVA orders, save in exceptional circumstances, because they do not offer an applicant at risk any form of protection from violence;

10. Mediation should not be supported by judges in DVA proceedings, whenever this is put forward as a possible means of resolving issues between the parties, save in exceptional circumstances, as the risk of exploitation of the application by the respondent is too great.

2.5 Other Specialist Support Services (Mostly NGO): Recommendations

1. As far as possible, non-DV specialist services DV support services should continue to develop relationships with each other and with the Gardai, at local level, with a view to exchanging knowledge, experience and expertise about different aspects of women's needs and the legal process, as this will encourage women with specific needs to seek support, including but not limited to, DVA orders;
2. All local DV support services and non-DV specialist support services should report any failure by local Gardai to deal adequately with any domestic violence incident in their area, to the responsible Inspector in that District as soon as possible (with consent of the woman concerned);
3. As far as possible, non-DV specialist services should provide at least summary information about DV support services and the DVA order process, to their clients in user-friendly formats;
4. As far as possible, non-DV specialist services with women clients experiencing DV should avail of the expertise available from local DV services to provide staff training and information sessions;
5. DV specialist services and other non-DV specialist support services, should collaborate to pool information about all services to women with specific needs on a common website, and should be resourced adequately by the State to do so;
6. All information from NGO's aimed at women with specific needs should set out as fully and simply as possible the range and nature of available services.

2.6 Government: General (Administrative) Recommendations

1. DV support services should be resourced adequately enough to provide extra supports where necessary to women with additional vulnerabilities ("specific needs");

2. Where necessary and appropriate, these resources should include provision for support through other languages/modes of communication, travel and childcare support;
3. Government should ensure that all official information about the legal process and about other State run supports, for victims of DV and all relevant documents including Court forms, are written in plain English and versions of information leaflets should be available which are capable of being understood by women without literacy skills (e.g. in cartoon form);
4. Initiatives to increase the supply of affordable housing and to make it available even when women victims of DV are on paper, property owners (of an unusable former joint home with the perpetrator), should be continuously developed as a matter of priority;
5. Government should ensure that quality specialised training on the dynamics and impacts of domestic violence, is made available to all professionals engaged in the DVA order process, to include material on the nature, recognition and management of specific needs of applicant women, on an ongoing basis;
6. This training must be resourced adequately by Government;
7. Government should devise a dedicated DVA National Plan to increase the number of judges, the amount of court time, and the physical facilities available for DVA applications and related family law matters;
8. Government, in collaboration with the relevant agencies (the Courts Service, the judiciary, the legal professions, AGS, CSO, specialist NGO's), should work to find ways to flag and record identified specific needs on all files (AGS, CS, occasionally DPP, solicitors' client files) which are common to all and understood by all;
9. Government, together with the relevant agencies, should devise a common guideline or series of guidelines to help with identifying and managing specific needs in court on DVA applications (they would be useful in other legal contexts as well)¹⁴;
10. Government should ensure that at all times, Garda and Court accompaniment services provided by DV NGO's and/or others are provided with enough resources to carry out this most important job;
11. Government should consider funding the establishment of a National Legal Advocacy unit to support improved outcomes for victims, consistent

¹⁴ As possible models to be adapted, see the various Guidelines for Vulnerable Witnesses produced by the Advocates' Gateway group and now being used in England and Wales, mostly in the criminal courts but also increasingly in other courts, including Family Courts: www.theadvocatesgateway.org

- standards across the country, and thereby support effective implementation of EU directive, to be managed by SAFE Ireland;
12. Government should fund adequately the provision of additional supports at court to women with specific needs making applications for DVA orders, such as intermediaries and interpreters;
 13. Government should take steps to ensure that precedents are available to Judges and advocates in the Circuit Court for DVA orders which conform to the legislation, to reduce the possibility of a DVA order being made which is unenforceable because it is not drafted correctly.

2.7 Recommendations for Legislative Change

Domestic Violence Legislation

1. It is clear from our latest research findings, as from previous reports, most obviously the findings in “Lawlessness in the Home”¹⁵, that our Domestic Violence legislation (now Domestic Violence Act 1996 as amended) or any succeeding equivalent legislation, should include a clear and comprehensive **definition of what constitutes “domestic violence”**. This definition should capture not only acts of physical (including sexual) violence, but also acts of psychological and economic abuse, including stalking and other forms of harassment, and acts which are undertaken in order to exercise “coercive control” over their victim;
2. The forthcoming **Reformed and Consolidated Domestic Violence Bill** should be refined, progressed, enacted and brought into force as soon as possible;

SAFE Ireland welcomes very much the proposal in the General Scheme of this Bill to hold proceedings for breach of a DVA Order in camera and also, the provisions in relation to anonymity (Heads 23 and 24 respectively of the General Scheme).

SAFE Ireland also welcomes the provisions in Heads 13 and 14 of the General Scheme in respect of accompaniment of domestic violence victims, and submits that neither need be subject to conditions, but each should allow for a particular accompanier to be replaced if there is

¹⁵ SAFE Ireland 2015, see Appendix 1 for weblink to the full document

opposition to the continuation of an individual in that role, “on a reasoned basis”.

3. Remaining steps necessary to ratify the Istanbul Convention should be taken with the minimum of delay;
4. **A set of criteria or list of factors** to be taken into account on deciding whether to grant a particular DVA order, should be included in the legislation, and this should be broadly phrased to take account of any novel circumstances. With regard to domestic violence which the court is satisfied **has already occurred**, it is suggested that wording similar to that below could be used:

In determining the nature, extent and duration of any actual violence used by respondent against the applicant, the following factors shall be considered¹⁶:

- Nature, extent and duration of any threats of violence by respondent against the applicant;
- Actual or threatened use of any weapon by respondent against the applicant;
- Nature, extent and duration of any harassment by respondent against the applicant;
- Housing status and living conditions of the applicant;
- Economic status of the applicant;
- Educational status of the applicant; and
- Any other matter which in the opinion of the court is relevant to the safety or physical or psychological health, and/or housing conditions, and/or economic status, of the applicant;

With regard to the assessment of the risk of any **future domestic violence** against the applicant, the following should also be considered as well as the list above :

- The impact or likely impact of any domestic violence by the respondent which has occurred or is likely to occur, on the physical safety of the applicant and other members of her/his household;
- The impact or likely impact of any domestic violence by the respondent which is occurred or is likely to occur, on the applicant’s personal well-

¹⁶ Taken from General Scheme of a Children and Family relationship Bill 2014, Head 32, p 58-59

being, including his/her psychological and emotional well-being, and that of other members of his/her household;¹⁷

In assessing the safety and welfare of the applicant and dependants, the court should be mindful of the applicant's age, any form of disability which s/he has, physical or intellectual, her/his state of health, her/his ability to live independently of the respondent, and any other personal circumstances or specific protection needs¹⁸, which would make her/him especially vulnerable. An example would be an inability to speak, read or write English and a resultant over-dependence on the perpetratorⁱ.

The SNaP research findings in particular tell us that the same individualised approach to victims' needs set out in Article 22 of EU Directive 2012/29, is also entirely appropriate and desirable in the context of civil proceedings for protection (in Ireland DVA) orders.

With regard to protection and safety orders under DVA legislation, SAFE Ireland welcomes the inclusion of Head 2 (2)(c) of the General Scheme of a Reformed and Consolidated Domestic Violence Bill, of [orders prohibiting] "following or communicating with the applicant, including by electronic means..". There is no doubt that much harassment in intimate contexts is now done by electronic means, and that protection against this kind of behaviour is much needed. We would however recommend that it also specify that communications with third parties about the applicant, particularly by electronic means, are also included to catch the nasty behaviour known popularly as "revenge porn".

5. The phrase in the current legislation in relation to the grant of a barring order, "**putting in fear**", is open to many interpretations. It should be clarified that it refers to the fear felt by the applicant and/or any dependants, of **any** future violence and/or abuse or threats of same, by the respondent;
6. The **property restriction** on the making of applications for **all types of** barring orders should be abolished, ideally unconditionally, and if such is deemed necessary, a Constitutional Amendment should be sought to overcome any perceived Constitutional obstacle; ⁱⁱ

¹⁷ The wording of these two subparagraphs is related closely to that in Section 31 (3) of the Guardianship of Infants Act 1964 as inserted by Section 63 of the Children and Family Relationships Act 2015

¹⁸ The wording is deliberately open and deliberately close to that in part of Article 22 of the EU Directive 2012/29 establishing minimum standards on the rights, support and protection of victims of crime [etc]

7. **Dating or formerly dating, intimate partners** (of either sex) should have the protection of the DVA, not least because abusive behaviour is by no means confined to current or former intimate partners who are, or were, living together, and further, there is no issue relating to legal or beneficial interests in property.

As the law stands now, parents of a child in common who may have never lived together at all, can already invoke the protection of the DVA, and it seems illogical to exclude from protection dating or ex-dating intimate partners who do not have a child in common;

8. **Breach of a barring order** should be made an indictable (hybrid or “either way”) offence, so that really serious breaches can incur the heavier sentences possible only in the Circuit Court;
9. **EBOs:** While the individual assessment approach outlined in Article 22 of the EU Directive 2012/29 on victims’ rights was drafted in reference to criminal proceedings, it is clear to us from the SNaP findings that it is appropriate also in the context of DVA proceedings to provide a framework through which individual needs can be identified and addressed, and nowhere is it more important to consider the conditions necessary for a DVA order than in the context of EBOs which have immediate and dramatic effect.

Accordingly, SAFE Ireland recommends that any procedure to implement **Emergency Barring Orders** as described at Article 52¹⁹ of the Istanbul Convention, should be considered very carefully to ensure that the right conditions are in place for these Orders to provide effective emergency protection to victims of domestic violence. This is likely to be more important for the success of these Orders than the mechanics of the procedure itself. These conditions include the availability of such supports as adequate personal care assistance, emergency social welfare payments, language supports to help women with everyday administrative tasks, and effective referral and access to specialist DV

¹⁹ Council of Europe Convention preventing and combating violence against women and domestic violence (2011). Article 52 reads: “**Article 52 – Emergency barring orders**

Parties shall take the necessary legislative or other measures to ensure that the competent authorities are granted the power to order, in situations of immediate danger, a perpetrator of domestic violence to vacate the residence of the victim or person at risk for a sufficient period of time and to prohibit the perpetrator from entering the residence of or contacting the victim or person at risk. Measures taken pursuant to this article shall give priority to the safety of victims or persons at risk”.

Support Services etc – the nature of the support needed will depend on the specific needs of each individual.

The SNaP International Comparative Report²⁰ makes extensive reference to the conclusion of the Austrian research team that EBO's (police based in Austria) can and do work for most victims, including some with identified additional specific needs. However, it does not work for other groups of victims, and this difference in outcome seems to be related to the absence of certain social supports, without which the EBO's are not likely to be effective (e.g. some form of publicly funded personal care for a woman who is dependent on her violent partner for help with essential daily tasks).

With regard to the mechanism chosen to implement Article 52, SAFE Ireland recommends that the utmost care is taken to choose a model which can provide emergency protection with the **minimum of delay** and administrative requirements, but also recognizes the rights of the person being barred to the extent necessary to ensure that it is acceptable to, and used by, those who must invoke them (Duty District Judges on call and Gardai, whether or not the Gardai are in the role of decision maker). This may mean further scrutiny of EBO systems in other jurisdictions; and finally, SAFE Ireland is concerned that whatever system is chosen is resourced adequately, both with regard to the EBO procedure itself and the conditions necessary to ensure that they do provide effective protection.

10. DVA legislation should be amended to include a **presumption of capacity** to give (a) instructions and (b) evidence, of applicants with any form of learning or intellectual disability;
11. DVA legislation should be amended to make it mandatory for orders made under DVA 1996 as amended to be **served personally** by a member of An Garda Síochána, on the respondent, unless the respondent is present in court at the time that the order is made, in which case it should take effect from that moment;
12. DVA legislation should be amended to provide a legal mechanism whereby the ability of a respondent to **delay, subvert or otherwise interfere**

²⁰ Will shortly be available on www.snap-eu.org

with the course of a DVA application without reasonable cause may be restricted.

For example: A common tactic by a respondent is to appear unrepresented in court and refuse to proceed unless and until legal representative is available. The matter is then adjourned, and the legal representation is not pursued before the next hearing, when the scenario repeats itself. Very often respondents get away with repeated appearances without representation and no real evidence that there were genuine reasons why a lawyer could not be present, so that the application is not finally decided for months on end, or at all. This has the effect of wearing out the applicant's resources (money, time, emotional resilience) often to the point where she abandons the application, and of course this is exactly what some respondents intend.

The contrary tactic of representing oneself and conducting cross-examination in person, is also often used by respondents to discourage the applicant from pursuing a DVA application. Self-representation is not the issue so much as the risk of oppressive, abusive, prolix, repetitive and often largely irrelevant cross-examination. It should be possible to prevent this kind of abuse of process.

Some form of wasted costs order procedure against vexatious litigants, often but not always litigants in person, could be considered as a possible deterrent.

13. DVA Legislation should be amended to make it impossible for a DVA application to be determined by undertakings, most especially not **cross-undertakings** which are not orders of the Court, in circumstances where the Court is satisfied that there is a real risk that domestic violence may occur in the future, whether or not it has already happened. If the Court does not yet have evidence on either point, it should make careful enquiry before deciding whether there is real risk of future violence. If no order is made in a situation fraught with risk, women and children will find it difficult to invoke the protection of the courts.

Without the protection of a court order, there is no power of arrest, and therefore in practical terms, no real protection for any victim of domestic violence. Cross-undertakings are proposed all the time by respondents' legal representatives as a means of avoiding legal responsibility. In addition, cross-undertakings should be avoided in principle in any situation

where the balance of the evidence suggests that only one party is at fault, not two.

Other Legislation:

14. The existing **Civil Legal Aid legislation** should be amended to make the waiver of the full fee of €150.00 automatic in all applications made solely under the Domestic Violence Act 1996 as amended, and to ensure that the grant of a Civil Legal Aid certificate relating to a DVA application does not ever preclude the grant of a second CLA certificate within the 18 months after the grant of the first to the same applicant, at a minimum where the application for the second certificate relates to proceedings connected closely with the first (for example custody/access, maintenance, guardianship proceedings);
15. The existing **Criminal Law legislation** (in particular the Non-Fatal Offences against the Person Act 1997 as amended) should be the subject of further study to establish whether it is feasible, as has been done in some other jurisdictions, to introduce specific **domestic violence offences** into our system. Possible common-law models include Section 13M of Chapter 265 of the General Laws of the Commonwealth of Massachusetts²¹ (“assault or assault and battery on a family or household member”, in which “family or household member” is quite widely defined to encompass many different relationships);
16. Also with regard to the Non-Fatal Offences against the Person Act 1997, consideration should be given to making **common assault** under Section 2 of the Act, an **arrestable** offence, although it is summary only. Such a measure in tandem with the Garda proactive arrest policy should send out a strong zero tolerance message to anyone who commits, or intends to commit, violence in the home. However, this measure cannot be a replacement for a well-resourced, speedy and uncomplicated system of application for EBO’s,
17. Whether or not this is held to be feasible, SAFE Ireland submits that it is entirely possible and appropriate to introduce legislation identifying breach of a position of trust as an aggravating factor in any sentence involving an

²¹ Available online through this weblink:
<https://malegislature.gov/Laws/GeneralLaws/PartIV/TitleI/Chapter265/Section13m>

offence of violence and/or abusive behaviour in a close relationship. This has been done in Sweden (See section 2 of Chapter 29 of the Swedish Penal Code²²). Breach of trust is well-established as an aggravating factor in sentencing for offences of dishonesty; as the breach of trust in a close relationship can have an absolutely devastating effect when it occurs through violence or abusive behaviour, we suggest that it is entirely appropriate that the gravity of this offending is reflected in our criminal law in this way. It should be noted also that a second or subsequent conviction of an offence of domestic violence is marked in Massachusetts by a doubling of the maximum sentence, and in our view, that is also entirely appropriate.

²² English version available online through this weblink:
<http://www.google.ie/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&ved=0ahUKEwiA-rmozrfPAhVnB8AKHYNgADYQFggbMAA&url=http%3A%2F%2Fwww.legislationline.org%2Fdocuments%2Fid%2F8919&usq=AFQjCNEFnQPtEoMM2DzYbDfPbETmvt4nuA&bvm=bv.134495766,d.ZGg>

3 Appendix

Appendix 1: Some Relevant SAFE Ireland Research Reports and Policy Documents with References

1. SAFE Ireland Oral Submission to the Joint Oireachtas Committee on Justice, Defence and Equality, On Domestic Violence (2013):
<http://www.safeireland.ie/wp-content/uploads/Sl-Submission-JOC-June2013.pdf>
2. SAFE Ireland Submission to the Joint Oireachtas Committee on Justice, Defence and Equality on the General Scheme of a Reformed and Consolidated Domestic Violence Bill (2015), available online via:
www.oireachtas.ie/committees
3. "The Lawlessness of the Home" (2015), <http://www.safeireland.ie/wp-content/uploads/SAFE-IRELAND-The-Lawlessness-of-the-Home.pdf>
4. INASC "In Search of Justice" National Report (2016),
http://www.safeireland.ie/safeireland-docs/INASC_SAFEIreland_report.pdf
5. INASC "Make it Happen!" Resource for Criminal Justice Professionals (2016),
<http://www.safeireland.ie/safeireland-docs/Make-it-Happen-Guidance-for-Justice-Professionals.pdf>
6. "The State We Are In" (2016), <http://www.safeireland.ie/safeireland-docs/STATE-WE-ARE-IN-SAFE-IRELAND.pdf>

Appendix 2: Relevant Irish Statutes and other Documents:

1. Domestic Violence Act 1996 (Administrative Consolidation), available online at:
http://www.lawreform.ie/_fileupload/RevisedActs/WithAnnotations/HTML/EN_ACT_1996_0001.htm
2. Children and Family Relationships Act 2015 (Administrative Consolidation) available online at:
http://www.lawreform.ie/_fileupload/RevisedActs/WithAnnotations/HTML/en_act_2015_0009.htm
3. General Scheme of a Reformed and Consolidated Domestic Violence Bill 2015, available online at:

<http://www.justice.ie/en/JELR/Corrected%20GENERAL%20SCHEME%20OF%20A%20REFORMED%20AND%20CONSOLIDATED%20DOMESTIC%20VIOLENCE%20BILL.pdf/Files/Corrected%20GENERAL%20SCHEME%20OF%20A%20REFORMED%20AND%20CONSOLIDATED%20DOMESTIC%20VIOLENCE%20BILL.pdf>

Appendix 3: Relevant International Instruments

1. EU Directive 2012/29 establishing minimum standards on the rights, support and protection of victims of crime and replacing Council Framework Decision **2001/220/JHA**, available online at:

<http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32012L0029&from=en>

2. Council of Europe Convention on preventing and combating violence against women and domestic violence (2011), available online at:

<https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=090000168008482e>

3. Massachusetts General Laws Chapter 265 Section 13M, available online through this weblink:

<https://malegislature.gov/Laws/GeneralLaws/PartIV/TitleI/Chapter265/Section13m>

4. Swedish Penal Code (English version) Chapter 29 (Sanctions), available online through this weblink:

<http://www.google.ie/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&ved=0ahUKewiA-rmozrfPAhVnB8AKHYNgADYQFggBMAA&url=http%3A%2F%2Fwww.legislationline.org%2Fdocuments%2Fid%2F8919&usg=AFQjCNEFnQPtEoMM2DzYbDfPbETmvt4nuA&bvm=bv.134495766,d.ZGg>

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