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NICEM

SUBMISSION

**Domestic Abuse Offence and Domestic Violence
Disclosure Scheme**

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Introduction

1.1 The Northern Ireland Council for Ethnic Minorities (NICEM) is an independent non-governmental organisation. As an umbrella organisation¹ we represent the views and interests of black and minority ethnic (BME) communities.² Our mission is to work to bring about social change through partnership and alliance building, and to achieve equality of outcome and full participation in society. Our vision is of a society in which equality and diversity are respected, valued and embraced, that is free from all forms of racism, sectarianism, discrimination and social exclusion, and where human rights are guaranteed.

1.2 Domestic abuse is a serious issue that affects people from all backgrounds and groups. However, Police Service of Northern Ireland (PSNI) statistics show that BME people are disproportionately likely to be victims of domestic abuse, with BME people comprising 6.4% of domestic abuse victims in 2014/15, despite these same groups amounting to around 3.6% of the population.³

1.3 There are also factors, such as language barriers and having No Recourse to Public Funds (NRPF), that make it more difficult for some BME victims to escape their situation. Therefore, NICEM welcomes the opportunity to comment on proposals for an offence of domestic abuse and for a domestic violence disclosure scheme, and to ensure that these proposals work for all members of Northern Ireland's (NI's) society.

1. Does the current law adequately provide sufficient protection to victims of domestic abuse?

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. How would any changes be practically implemented?

2.1 Under the current legal framework in NI, domestic abuse offences are dealt with incidentally through various laws on assault, harassment, stalking et cetera. This approach leaves a gap, as the current framework does not capture "coercive control"; that is, the range of psychologically and physically abusive acts taken by perpetrators to coerce and control the victim's actions.

¹ Currently we have 27 affiliated BME groups as full members. This composition is representative of the majority of BME communities in Northern Ireland. Many of these organisations operate on an entirely voluntary basis.

² In this document "Black and Minority Ethnic Communities" or "Minority Ethnic Groups" or "Ethnic Minority" has an inclusive meaning to unite all minority communities. It is a political term that refers to settled ethnic minorities (including Travellers, Roma and Gypsy), settled religious minorities, migrants (EU and non-EU), asylum seekers and refugees and people of other immigration status united together against racism.

³ Police Service of Northern Ireland, 'Trends in Domestic Abuse Incidents and Crimes Recorded by the Police in Northern Ireland 2004/05 to 2014/15' (2015), p.28

- 2.2 The inability of existing provisions to effectively cover coercive control was a key reason behind the amendment of the legal framework in England and Wales to expressly recognise this offence under Section 76 of the Serious Crime Act 2015.⁴
- 2.3 This inability stems from the law on assault does not addressing the non-violent aspects of coercive behaviour and the law on stalking and harassment not explicitly applying to coercive or controlling behaviour within intimate relationships.⁵
- 2.4 Current provisions are also limited in their ability to protect victims due to their focus on prosecuting single incidents, with the cumulative impact of controlling behaviour that characterises Great Britain's law on domestic abuse being overlooked.⁶
- 2.5 Coercive control is not only damaging for the victim, but is also the most common context in which women are abused.^{7 8} That such behaviour is both prevalent and injurious makes it important that the criminal justice system react to tackle it.
- 2.6 Consequently, there is a serious need for the legislative framework in NI to be adapted to recognise a domestic abuse offence, based on coercive and controlling behaviour.
- 2.7 Further reason to legally capture coercive control relates to preventing behaviour from escalating to violence.⁹ A key flaw in the current regime is that it reacts only when extremes, such as assault, have already been reached.
- 2.8 Additionally, legal recognition of coercive control will align with the NI Government's definition of domestic violence, which includes this type of behaviour.¹⁰
- 2.9 Finally, legal recognition of the cumulative impact of coercive and controlling behaviours under a specific offence would align with the NI Domestic and Sexual Abuse Strategy's assertion that domestic violence and abuse is 'generally determined by a pattern of behaviour'.¹¹

⁴ Home Office, 'Strengthening the Law on Domestic Abuse Consultation – Summary of Responses' (2014), p.11

⁵ *ibid*

⁶ *op cit* n 4 p.11

⁷ Stark, E., 'Representing Battered Women, Coercive Control and the Defense of Liberty' (2012), p.4

⁸ Home Office, 'Controlling or Coercive Behaviour in an Intimate or Family Relationship: Statutory Guidance Framework' (2015) p.3

⁹ Home Office, 'Strengthening the Law on Domestic Abuse: Impact Assessment' (2014), p.1

¹⁰ Department of Health, Social Services and Public Safety, 'Stopping Domestic and Sexual Violence and Abuse in Northern Ireland 2013-2020' (2013), p.23

¹¹ *ibid*

2.10 NICEM recommends that an offence covering coercive and controlling behaviour in intimate relationships be introduced, in line with that under Section 76 of the Serious Crime Act 2015.

4. To what extent do you believe that the current disclosure arrangements are effective in preventing domestic violence?

3.1 It is unclear whether any information has been provided under the current mechanism that has prevented domestic violence from occurring, as data on common law disclosures is not centrally gathered. This is itself a drawback of the current system, which makes its efficacy difficult to monitor.

3.2 Additional to this, common law disclosures appear to take place on an ad hoc basis, with individual officers making decisions on disclosure with no official procedure to adhere to in doing so.

3.3 Such deregulated and isolated decision-making lacks the rigour necessary for making informed disclosure for the prevention of further domestic abuse.

3.4 Indeed, a key aim of introducing the DVDS in England and Wales was to add a 'consistent process' to existing powers of information disclosure.¹²

3.5 The isolated nature of common law disclosure decisions in NI also contrasts with the process under the Domestic Violence Disclosure Scheme (DVDS) in England and Wales, which utilises a decision-making forum to determine whether or not a disclosure will be made.¹³ This structure is important for establishing a multi-agency view of the applicant's risk.¹⁴

3.6 Furthermore, the common law system is generalist and not well known. By contrast, organisations in England and Wales have highlighted the benefit of having a 'high-profile' and 'widely-advertised' disclosure scheme that focuses specifically on domestic abuse.¹⁵

3.7 Having such clarity of process would make information disclosure more accessible for victims, through improving their understanding of how to approach the system and what they are entitled to.

¹² op cit n 14 p.2

¹³ Home Office, 'Domestic Violence Disclosure Scheme Guidance' (2013), p.22

¹⁴ Home Office, 'Domestic Violence Disclosure Scheme (DVDS) Pilot Assessment' (2013), p.17

¹⁵ op cit n 4 p.8

3.8 Additionally, it would help ensure that relevant information is effectively identified and disclosed by providing a consistent framework for officers within which to assess risk and determine when disclosure is appropriate.

3.9 Introducing a more formalised DVDS would also create an opportunity for support services to be integrated with disclosure, so that support can be provided to concerned individuals whether or not disclosure is made.¹⁶ It is unclear whether such measures are taken under the current disclosure system.

3.10 NICEM recommends that a formal Domestic Violence Disclosure Scheme be introduced in NI, in line with practice in the rest of the UK.

5. How could the current arrangements be improved?

4.1 While the introduction of a formal DVDS will be key to improving disclosure, it is also important to consider how this scheme can be delivered to engage BME groups in NI.

4.2 This is an important consideration, as the pilot scheme in England and Wales exhibited a low uptake from BME groups, with only 5% of applicants being of non-White ethnicity.¹⁷

4.3 A key recommendation to arise from the pilot in England and Wales was that publicity be available in a range of languages and formats, in order to reach as wide a range of individuals as possible.

4.4 This would be particularly important in NI, as a disproportionately high number of victims of domestic violence have an ethnic minority background and thus could have language needs.¹⁸

4.5 Illiteracy is also a prevailing issue amongst some BME groups in NI, such as the Roma and Traveller communities, so non-literary materials will need to be developed in order to effectively publicise the scheme.^{19 20}

¹⁶ For example, police services in England and Wales will leave an information pack with the applicant to help safeguard them in the future, even where disclosure has not occurred. See: op cit n 12 p.26

¹⁷ op cit n 14 p.24

¹⁸ op cit n 3

¹⁹ Northern Ireland Strategic Migration Partnership, 'The Integration of Newcomer Children with Interrupted Education into Northern Ireland Schools' (2014), p.14

²⁰ All-Ireland Traveller Health Study Team, 'All Ireland Traveller Health Study: Summary of Findings' (2010), p.18

- 4.6 Measures to compensate for language or literacy issues should not be limited to awareness-raising, but should extend to putting mechanisms in place to ensure that relevant applicants have understood the significance of disclosed information.
- 4.7 Such measures are central to ensuring that the DVDS meets the equality duty placed upon the Department, as this point was raised in the EQIA conducted by the Home Office while developing the scheme in England and Wales.²¹
- 4.8 Finally, it should be noted that individuals with NRPF as a condition of their visa will be ineligible for government-funded support systems, such as refuges.²² Consequently, it will be important for police to receive training on identifying individuals with NRPF and directing them to any resources that are available.
- 4.9 NICEM recommends that information on any future DVDS be made available in a range of languages and formats, including key minority languages and non-literary materials.**
- 4.10 NICEM also recommends that training for officers cover methods for identifying individuals with language needs and ensuring they understand the significance of disclosed information.**
- 4.11 It is further recommended that training cover the identification of women with NRPF and the support options that are available to them.**

²¹ Home Office, 'Domestic Violence Disclosure Scheme: Impact Assessment' (2013), p.20

²² McWilliams, M. and Yarnell, P., 'The Protection and Rights of Black and Minority Ethnic Women Experiencing Domestic Violence in Northern Ireland' (2013), p.20

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'?

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

8. What do you see as the potential risks and benefits? How might any risks be minimised?

5.1 The 'right to ask' is an important part of any future DVDS, with the majority of applications under the pilot in England and Wales taking this form.²³

5.2 In terms of ensuring that the right to ask system is accessible for BME communities, the model will need to compensate for a number of additional barriers faced by these communities.

5.3 Firstly, the language barrier can prevent potential applicants from finding out about their right to ask. Therefore, as noted above, publications and awareness-raising material should be produced in key minority languages.

5.4 Additionally, workshops and other outreach methods will need to work with the community and voluntary sector to access hard to reach populations.

5.5 Secondly, the language barrier can prevent applicants from fully understanding the implications of information that has been disclosed to them.²⁴

5.6 Therefore, for the right to ask to function properly for all ethnic groups, relevant officers will need to take additional steps to ensure that the applicant has understood the information and what it means.

5.7 Thirdly, it is well established that there is low engagement between some BME communities and police authorities in NI, with BME individuals being less likely to report offences.²⁵ This can be due to fear of contacting the police, mistrust of policing authorities, or lack of confidence that they will be listened to.²⁶

5.8 Consequently, additional measures will need to be taken to build relations between BME communities and the PSNI, to ensure that potential victims have the confidence to utilise their right to ask.

²³ op cit n 14 p.3

²⁴ op cit n 21

²⁵ Northern Ireland Council for Ethnic Minorities, 'Race and Criminal Justice in Northern Ireland: Towards a Blueprint for the Eradication of Racism from the CJSNI' (2013), p.37

²⁶ Radford, K., Betts, J. and Ostermeyer, M., 'Policing, Accountability and the Black and Minority Ethnic Communities in Northern Ireland' (2006), pp.6-7

- 5.9 Fourthly, BME women face additional barriers in situations where they marry a British or Irish national and are dependant upon them for leave to remain through a spousal visa – an increasingly common situation in NI.²⁷
- 5.10 These women face an impossible predicament, whereby they cannot end their relationship or approach police authorities without jeopardising their immigration status.²⁸
- 5.11 In practice, this condemns them to living in conditions of sexual slavery, with sexual exploitation analogous to forced prostitution, domestic servitude and other serious organised crimes being experienced.^{29 30}
- 5.12 Despite this, leave to remain afforded to victims of domestic servitude under Section 53 of the Modern Slavery Act 2015 does not extend to persons on a spousal visa.
- 5.13 While there exists potential for individuals to reapply for status under the domestic violence rule, this is a path that has consistently proven to be unlikely to succeed and prohibitively expensive for BME people experiencing domestic violence.^{31 32}
- 5.14 Such individuals also often have NRPF as a condition of their visa, which leaves them unable to access refuge centres and thus at risk of destitution if they approach the police and their relationship dissolves.³³
- 5.15 Therefore, it is clear if any future ‘right to ask’ scheme is to be accessible to all sections of the community, the Department will need to work with the Home Office to find a solution to the immigration barriers preventing these persons from approaching authorities. This should include allowing access to public services by exempting this small and vulnerable group of BME women from having NRPF.

²⁷ op cit n 22 pp.9-10

²⁸ Local Government Association, ‘Adult Safeguarding and Domestic Abuse: A Guide to Support Practitioners and Managers’ (2015), p.20

²⁹ The commonalities between domestic abuse and trafficking/slavery are well-established, see: <http://www.nrcdv.org/dvam/sites/default/files2/HumanTrafficking%26DV-TalkingPointsForm.pdf>

³⁰ Dudley, R., ‘Domestic Abuse and Women with No Recourse to Public Funds: Where Human Rights Do Not Reach’ (2014), p.ii

³¹ 61.3% of persons applying under this rule were rejected between 2012-14. See: House of Commons, ‘Written, Answers and Statements – Daily Report Thursday, 5 March 2015’ (2015), p.56

³² The fee for applying is £1500 for the applicant and a further £1500 per dependent. See: UK Visas & Immigration, ‘Application for Indefinite Leave to Remain in the UK as a Victim of Domestic Violence and a Biometric Immigration Document’ (2015), p.2

³³ Guidelines on the DVDS in England and Wales state that if the applicant’s initial contact with the police alleges a crime at any point, then they must pursue a criminal investigation as normal. See: op cit n 13 p.14

5.16 NICEM recommends that a 'right to ask' be incorporated into any future DVDS in NI.

5.17 NICEM re-emphasises its above recommendations on awareness-raising materials and training for officers on language needs.

5.18 NICEM further recommends that the Department work with local community groups to deliver outreach events that inform hard to reach communities, particularly BME women, of the scheme.

5.19 NICEM also recommends that the Department liaise with the Home Office to negotiate a more effective exemption to allow victims of domestic violence on spousal visas leave to remain and access to support services.

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'?

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

11. What other mechanisms for disclosing information about a subject's violent behaviour do you consider appropriate?

6.1 Having a 'right to know' has proven a vital aspect of the DVDS utilised in England and Wales. Domestic violence offences frequently go unreported by victims, often due to fear or the feeling that their experiences are trivial.³⁴ These same factors could prevent people from directly approaching the DVDS.

6.2 This projection is reinforced by the findings of the pilot scheme in England and Wales; applications under the right to know were 30.7% more likely to succeed than those under the right to ask, suggesting that these applications captured a high-risk section of the population who were unwilling to contact authorities themselves.³⁵

6.3 Consequently, a key benefit of utilising this system would be its ability to reach persons who are unwilling or unable to exercise their 'right to ask'. This includes BME people facing additional barriers to exercising their right to ask, as outlined above.

6.4 It is anticipated that there may be some risk associated with how information is disclosed to individual, as disclosure is unrequested and therefore unexpected, thus leaving potential for their partner to discover this disclosure.³⁶

6.5 One manner of navigating this difficulty is for officers to time disclosure for when the at-risk individual's partner will not present; however, it can be difficult to identify a time when this is the case.³⁷ This is an issue on which officers could benefit from training.

6.6 Furthermore, in ensuring that this system operates to the benefit of BME communities in NI, it will be important to address the language barrier. If an individual at risk has poor English language skills, then police authorities will need to be capable of identifying this need and issuing information in an appropriate manner.

³⁴ Dar, A., 'Domestic Violence Statistics' (2013), p.2

³⁵ op cit n 14 p.3

³⁶ ibid pp.19-20

³⁷ ibid p.20

6.7 NICE recommends that a 'right to know' be incorporated into any future DVDS in NI.

6.8 It is also recommended that training to police officers involved in a 'right to know' system cover how to deliver disclosure in a safe manner and how to ensure that the recipient has understood the implications of disclosure, particularly where they have language needs.

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'?

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

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

7.1 For the reasons discussed above, NICE would support both a 'right to ask' and 'right to know' system being utilised within NI, in line with practice in the rest of the UK.

7.2 These benefits are amplified by the synergetic effect of a system that can capture at-risk individuals through multiple routes; if an individual does not exercise their 'right to ask', there is the potential to receive information through the 'right to know' and vice-versa.

7.3 It is acknowledged that the pilot in England and Wales identified some challenges, such as low awareness of the scheme, inconsistency in support offered to applicants and technical difficulties and inconsistencies arising from police officers' delivery of the scheme.

7.4 These issues may largely be resolved by adhering to the recommendations of the pilot assessment, which include embedding routine training for police officers on delivering the scheme, working with the community and voluntary sector to develop a standard package of support for applicants and raising awareness of the scheme locally.³⁸

³⁸ op cit n 14 p.5

7.5 It was emphasised in the pilot assessment that awareness-raising should be conducted in a manner that balances public safety with local agency resources.³⁹ A good way of achieving this balance would be working with the local community and voluntary sector, to take advantage of existing networks and inform hard to reach groups

7.6 NICEM recommends that both a right to ask and a right to know system be introduced in NI.

7.7 NICEM also recommends that the Department adhere to the recommendations of the England and Wales pilot assessment in addressing the challenges identified therein.

7.8 NICEM re-emphasises its recommendation that the Department work with local community groups to deliver outreach events that raise awareness of the scheme amongst hard to reach communities.

15. Should disclosure cover all violent behaviour by 'B' or only those relating to domestic violence instances?

8.1 There are two main considerations in determining whether or not all violent behaviour should be subject to disclosure. Firstly, as there is currently no offence of domestic abuse in NI, the prior convictions of 'B' will not necessarily be recorded as related to domestic violence.

8.2 While the PSNI does log relevant offences as 'domestic abuse' on its database, the breadth of offences used to cover domestic abuse (common assault, harassment et cetera) leaves room for previous violent convictions that may have been related to domestic violence not to be recorded as such.

8.3 Secondly, there is a pattern of those who commit domestic abuse also being convicted of other offences. For example, research based in Wales demonstrated that half of identified domestic abuse perpetrators had convictions for non-domestic abuse offences.⁴⁰

8.4 Therefore, it would seem appropriate to allow all violent behaviour by 'B' to be open for potential disclosure where this is deemed appropriate. This would be in line with guidance in England and Wales, which allows for the disclosure of convictions and allegations related to a broad range of violent offences.⁴¹

³⁹ ibid

⁴⁰ HM Inspectorate of Probation, 'Domestic Violence: A Literature Review' (2004), p.17

⁴¹ op cit n 13 pp.28-29

8.5 Contrariwise, it is accepted that there are due limitations upon the degree of information disclosure that may take place, as under Schedules 2 and 3 of the Data Protection Act 1998 and Article 8 of the European Convention on Human Rights.

8.6 Thus, it is important for disclosure to take place as part of an informed, tailored assessment of the risk that B presents and the relevance of previous violent behaviour in each individual case.

8.7 NICEM recommends that disclosure be allowed to include previous violent offences not related to domestic abuse, where deemed relevant to the risk B presents to A.

16. Should disclosure of 'B's' violent behaviour be extended beyond convictions to encompass intelligence?

9.1 While convictions are important information, it may be the case that 'A' is demonstrably at risk even where 'B' has not been convicted of a domestic abuse related offence. This is the case for two main reasons.

9.2 Firstly, the conviction rates for domestic abuse related offences are likely unreflective of the number of instances of domestic abuse. While the Public Prosecution service does not maintain data on the number of successful prosecutions of domestic abuse related offences, PSNI statistics illustrate that only 27.1% of recorded domestic abuse offences in 2014/15 resulted in a charge.⁴²

9.3 Consequently, using conviction data alone may not adequately reflect the risk that 'A' faces in some circumstances. Rather, disclosing additional intelligence, such as recorded offences committed by 'B', may be appropriate.

9.4 Secondly, the inadequacy of relying solely upon conviction data in disclosure is outlined by the fact that no offence currently exists in NI to capture coercive and controlling behaviour.

9.5 Therefore, police authorities may need to disclose additional intelligence that is suggestive of this behaviour, as there will be no conviction history, other than indirectly related offences, to illustrate the risk presented to 'A'.

⁴² op cit n 3 p.23

9.6 It is notable in the context of both these factors that the DVDS utilised in England and Wales allows disclosure to be made regarding the 'intelligence history' of B, as well as 'allegations' made regarding relevant offences.⁴³

9.7 NICEM recommends that information disclosure under the DVDS be allowed to encompass non-conviction intelligence, in line with practice in England and Wales.

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

10.1 It is currently the case in the rest of the UK that disclosure may be made to third parties.⁴⁴ The main potential benefit of such a system is that it allows disclosure to occur even where 'A' does not themselves approach police authorities, which can be for a variety of reasons.

10.2 Such a measure has particular potential benefit for BME individuals at risk of domestic violence as, as is discussed above concerning the right to ask, BME persons face a number of additional barriers in approaching the police.

10.3 Ensuring that third parties can receive information may help in situations where there is a language barrier or the 'A' is fearful or mistrustful of police contact.

10.4 A further benefit to allowing third-party disclosure is that it informs a person who may then be able to safeguard 'A' from potential harm.⁴⁵

10.5 While it is acknowledged that some risk may present of information being unnecessarily disclosed to third parties, this has been offset in England and Wales through allowing disclosure under the right to know, in appropriate cases, to be made to the victim rather than the third party.⁴⁶

10.6 Indeed, the pilot in England and Wales demonstrated that actual disclosure to third-parties was a rare occurrence; only 10% of disclosures were made to third parties, all of which were delivered jointly to 'A' and the third-party.⁴⁷

⁴³ op cit n 13 pp.12 and 28

⁴⁴ The Scottish Government, 'Domestic Abuse Protection Goes National' (2015) Available at: <<http://news.scotland.gov.uk/News/Domestic-abuse-protection-goes-national-1ad2.aspx>> [Accessed 25/04/15]; op cit n 13 p.9

⁴⁵ op cit n 14 p.14

⁴⁶ ibid

10.7 NICEM recommends that information disclosure be made to third parties in appropriate circumstances.

18. What should be the extent of the relationship between the ‘A’ and ‘B’ before a disclosure is considered?

11.1 Under the terms of the DVDS utilised in England and Wales, ‘A’ and ‘B’ must be in what is known as an ‘intimate relationship’. This is a relationship that may be ‘reasonably characterised’ as being ‘physically and emotionally intimate’.

11.2 However, there is a broader definition of domestic violence provided by the Home Office, which encompasses all family relationships, including parents, children, grandparents, in-laws, step-family and others.⁴⁸

11.3 This wider definition is not used by police authorities in England and Wales in determining who could apply for information under the DVDS.⁴⁹ While it is not specified why this is the case, it is likely due to the breadth of applications it would invite and the dilution of the scheme’s specific character.

11.4 Due to these factors, it would seem reasonable to limit the DVDS to this type of intimate relationship.

11.5 However, a key limitation to the DVDS as established in England and Wales is its restriction of the scheme to applicants who are currently in such an intimate relationship.

11.6 It is possible for a person to be at risk from an individual with whom they have previously been in such a relationship, given that they maintain contact with that individual. This would arise, for example, where ‘A’ and ‘B’ have joint custody of children.⁵⁰

⁴⁷ op cit n 14 p.14

⁴⁸ Home Office, ‘Information for Local Areas on the Change to the Definition of Domestic Violence and Abuse’ (2013), p.2

⁴⁹ See, for example: <http://www.safenewcastle.org.uk/news/domestic-violence-disclosure-scheme-clare%E2%80%99s-law-and-domestic-violence-protection-orders-dvpos>

⁵⁰ New South Wales Government, ‘NSW Domestic Violence Disclosure Scheme: Discussion Paper May 2015’ (2015), p.8

- 11.7 While it is difficult to assess how often this situation would occur, it is notable that 75.7% of couples who divorced in NI in 2014 had at least one child under the age of 15 at the time.⁵¹ Therefore, there is a high potential for these couples to continue interacting long after their 'intimate relationship' has ended.
- 11.8 Furthermore, it is commonplace for abusers to stalk or pursue their ex-partners after an intimate relationship has been ended.⁵² This places the ex-partner at significant risk, with many commentators speculating that victims of domestic abuse are actually at most risk when they end their relationship.⁵³
- 11.9 Consequently, it is important in situations where 'A' and 'B' are no longer in an intimate relationship, but 'B' still presents a risk to 'A', that 'A' is able to receive any information on 'B's past violent behaviour, so that they may recognise this risk and take appropriate steps to safeguard themselves.
- 11.10 NICEM recommends that any future DVDS allow disclosure where 'A' is in an intimate relationship with 'B', or has previously been in an intimate relationship with 'B' and their contact is such that 'B' still presents a risk to 'A'.**

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

- 12.1 Under the DVDS in England and Wales, there are two main factors to consider when making disclosure. Firstly, whether there is a 'pressing need' to disclose and secondly whether the interference with 'B's rights under Article 8 ECHR and Schedules 2 and 3 of the Data Protection Act 1998 are 'necessary and proportionate'.⁵⁴
- 12.2 If these tests are not met, then it is deemed inappropriate to make disclosure. Considering these factors ensures that disclosure is not made where it is unnecessary, or where data protection rights would be violated.

⁵¹ Northern Ireland Statistics and Research Agency, 'Table 8.8: Divorces by Age of Wife at Marriage and Number of Children' (2014)

⁵² Douglas, K.S. and Dutton, D.G., 'Assessing the Link Between Stalking and Domestic Violence' (2001) 6 Aggression and Violent Behaviour 519, p.519

⁵³ See, for example: <http://www.theguardian.com/society-professionals/2014/dec/10/domestic-abuse-risk-trying-leave-housing-community>

⁵⁴ op cit n 13, pp.23-24

12.3 NICEM recommends that disclosure only be made where there is a 'pressing need' and where interference with 'B's rights under Article 8 ECHR and the Data Protection Act 1998 is necessary and proportionate.

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

13.1 It is notable that under the current pilot scheme in New South Wales, people are able to apply for disclosure where they maintain contact with a previous partner with whom they no longer maintain an intimate relationship.

13.2 As discussed above, applying the DVDS in NI in this way could provide vital information to people who are still at risk due to their contact with a former spouse.

13.3 NICEM re-emphasises its recommendation that disclosure be allowed where 'B' is a former partner, but maintains contact with 'A' such that they could still present a risk.