

Address by Alan Shatter T.D, Minister for Justice, Equality and Defence at the Council of the Bar of Ireland and the Law Society of Ireland co-hosted Conference on Sexual and Domestic Violence – Questions for 21st Century Justice

Check against delivery

Chairperson, Members of the Judiciary, other distinguished guests, members of the Bar, members of the Law Society, ladies and gentlemen,

I am very pleased to open this unique conference on sexual and domestic violence, held jointly by the Council of the Bar of Ireland and the Law Society of Ireland. I would like to thank both bodies for affording me this opportunity to address you on these areas of law and on the wider issues relating to these forms of violence. These are issues which have long been of particular interest to me, not only as a parliamentarian but also as a legal practitioner and author.

Themes to be explored today include: relevant processes of the justice system; policy and legislative developments; impacts on individuals affected by domestic/sexual violence, and on their families; training and awareness-raising among legal practitioners; difficulties in relation to successful prosecution of cases; and meeting the expectation of victims of domestic and sexual violence.

At first glance, the issues of sexual and domestic violence would appear to be very different. There is a general misconception that sexual violence is mainly carried out by sexual predators attacking vulnerable strangers. However, as you will be aware, all too often sexual assaults are inflicted by a person who is well known to the victim. In many cases it is a partner or former partner or a relative or close acquaintance who is the assailant. These too are the relationships within which domestic violence occurs. Common factors which bind these horrific experiences are the intimate nature of the offences and the psychological effect on the victim and her family. I will tend to refer to the victim as a woman in my comments here as the majority of victims of sexual violence and serious domestic violence are women. However, I also acknowledge that men are also affected by these offences and that the effects of the violence for these men may be just as distressing as for women.

The issues which make these forms of violence particularly difficult to resolve successfully in the eyes of the victim are also often very similar. These may include:

Ø the wish of the principal witness to protect her privacy and that of her family

Ø the lack of other witnesses to the actual acts complained of

Ø the perception of society in general and even the victim themselves that they contributed to their assault by their own behaviour

Ø the emotional attachment of the victim to her assailant in many cases and

Ø family or community pressure to withdraw the complaint.

There are other factors which can make women even more vulnerable and are common to both forms of abuse, such as:

Ø being reliant on the abuser in the case of children or elderly people

Ø a disability – mental or physical

Ø isolation from the general community – a Traveller, an immigrant, or living in rural location, and

Ø economic dependence on the perpetrator.

Many of these issues cannot be addressed through law alone. These are matters which society in general must help address in order to protect those who need our help. However, the legal professions can and do have a major role in assisting individuals and our communities in combating and preventing these despicable crimes. One of the roles which both the Law Society and the Bar Council have undertaken is in relation to advice on legal issues, administrative practice and legislation, through a sub-committee of the National Steering Committee on Violence against Women. I know that the contribution of your representatives - Kathleen Noctor, Pauline Walley and Joan O'Mahony - is greatly valued in that forum as was the input of the President of the District Court, Judge Rosemary Horgan, a former member of the committee. I commend your important input. Our professions also have a long and proud tradition of providing services pro bono to many voluntary organisations around the country. I am aware of a number of national and regional support organisations who have greatly benefited from advice in relation to the law and in the operation of the courts in the production of guides to the legal process. These guides can assist victims and their friends and families who support them. Such service also provides benefits to the practitioner in that it provides a good grounding in real life cases on the difficulties which face a person seeking to deal with all the issues which arise - legal, physical, psychological and practical. Such experience can also assist in developing training or information modules for the legal professions where practical experience can be married to legal studies.

I would like to mention some developments which should assist victims, other witnesses and their families in their interactions with the justice system.

I was delighted to have secured approval for Ireland to opt-in to the negotiation of a European Union Directive establishing minimum standards on the rights, support and protection of victims of crime. The draft Directive provides a wide range of measures to support victims of crime and I welcome its comprehensive nature. Its imminent adoption at EU level and its subsequent transposition will mark a step change in the level of service to victims which will be required of the criminal justice agencies in this country.

Ireland will also participate in the proposal for a Regulation on Mutual Recognition of Protection Measures in Civil Matters. The key aim of this particular measure is to ensure that a victim who obtains a protection measure - such as a safety order or a barring order, for example - can have that protection extended to other EU member states. So, if the victim moves to another member state, he or she can be confident that the protection conferred by that order can easily be recognised in that member state. This sends an important signal that domestic violence, harassment and intimidation are unacceptable throughout the EU.

The introduction of the pilot "reasons" scheme by the Office of the DPP in October 2008 was a welcome development. The scheme provides that the Office of the DPP will, on request by the victim's family, legal representative or social workers acting on their behalf, give reasons for a decision not to prosecute in an alleged offence where a death has occurred. I would hope that the scheme would be extended in due course to victims of rape and other serious sexual assault.

My Department, with the Garda Síochána and the Probation Service, is working on developing the use of evidence based risk assessment tools to identify the higher risk sex offenders and to focus efforts on them in line with best practice identified internationally. This will entail a through care approach to the management of sex

offenders from conviction, through imprisonment and out into the community with a view to protecting the public and reducing the risk of reoffending by appropriate rehabilitative interventions combined with a more active supervision and monitoring of higher risk sex offenders after their release from prison by local risk management committees involving the Gardaí and the Probation Service.

My Department has also been conducting a wide-ranging review of the law on sexual offences and I expect to bring a General Scheme to Government for approval shortly. The General Scheme will address the recommendations of two Oireachtas committees and further protect vulnerable persons against sexual exploitation and abuse. The latter measures will facilitate full compliance with a number of international instruments, including the EU Directive on sexual exploitation and abuse adopted in December, 2011. The legislation will also reform the law on incest and amend the Sex Offenders Act 2001 to enhance risk assessment and notification requirements.

As part of the commitment in the Programme for Government to reforming the law on domestic violence, some changes have already been made to the Domestic Violence Acts, 1996 and 2002. Provisions which allowed opposite sex couples to avail of the protections available under the code were extended to same sex cohabiting couples by means of amendments made in the Civil Law (Miscellaneous Provisions) Act 2011. Restrictions requiring a minimum recent period of cohabitation in order to apply for a safety order were also removed under the 2011 Act. Probably the single most important amendment made in that Act was to allow an applicant who has a child in common with a respondent apply for a safety order even if the couple have never cohabited. This new category extended protection to a category of applicant who had never before been able to use the civil protections of the Domestic Violence code even though issues around custody of and access to children can, sadly, be triggers for violent and aggressive behaviour. I have been pleased to note that these recent changes have been broadly welcomed in permitting greater access to the protections afforded by the Act. I am very pleased to have had the opportunity to bring these amendments forward and to see that they have been utilised. I am also pleased to say that, in line with the Programme for Government, I have instructed Cosc and other officials in my department to develop proposals to amend the law further in respect of domestic violence. It is my intention during the period in office of the Government to publish a Bill containing further necessary reforms and consolidating our domestic violence law in a single Act of the Oireachtas.

The Courts Service has been endeavouring to make our courts a less intimidating place for victims and witnesses and I fully support their work in this regard. Accommodation provided for victims by the criminal justice system has been improved with victims' waiting rooms now available in over 50 refurbished courthouses and a dedicated victims' suite available within the Criminal Courts of Justice.

In this respect I should also mention the website of the Office of the Director of Public Prosecutions which also provides extensive information for potential witnesses in an easily understood format. The information is available in English, Irish and in 10 other languages as well as in audio format and Braille.

The Court Service website has also been greatly improved in providing information for all persons who need to attend court. The information on domestic violence is particularly useful but there is also general information provided about attending a court.

The in camera rule in family law and child care cases is, of course, long standing and is intended to ensure the privacy of parties in such proceedings and their anonymity is protected and that fear of publicity does not act as a barrier to those whose circumstances require that they apply to our courts for appropriate orders in family law proceedings. The in camera rule, as you know, applies to domestic violence

proceedings as well as to the broad arrange of family law matters and child care proceedings. The side effect of the in camera rule has meant that, not only are family cases not generally reported but also that the general public, including legislators, are not aware of how the law is being applied in practice in our courts at different levels. This is particularly so in respect of the District Court in which a written judgement is rarely delivered and in the Circuit Court where such judgements are only occasionally delivered. There is also little public understanding or awareness of the nature of the court hearings that take place and the approach taken in such hearings by members of the judiciary. Whilst there is a general public understanding of the need for privacy there is also a perception, by some, that undue secrecy is attached to the administration of justice in this area of our law and that there is a lack of uniformity and consistency in the manner in which it is administered. It is part of the Programme for Government that there be reform in the area of family law and I am progressing the preparation of legislation, which amongst other matters, will make court proceedings in family law and child care cases more transparent. The intended legislation will allow media access to the courts in family and child care proceedings subject to a strict prohibition on the publication of any material which would lead to the identification of parties or any children involved and care will be taken to ensure that the best interests of children are protected. We already have similar provisions in place with regard to the reporting of trials in which individuals are charged with rape and other serious sexual offences.

Of particular note in the Courts Service is the development of a very successful drop-in Support and Referral Service in the Dublin District Family Law Court at Dolphin House for those experiencing domestic violence. This free and confidential service is managed by Women's Aid and staffed by domestic violence support workers from Women's Aid, the Dublin 12 Domestic Violence Service and the Inchicore Outreach Centre. AMEN, the group that assists men experiencing domestic violence, also has a presence at Dolphin House on one morning per week and offers support through their telephone service at other times. I welcome and encourage this initiative and I am hopeful that the service can be expanded to other court houses in time as resources allow.

In conjunction with the Chief Justice, in her capacity as Chair of the Courts Service Board, I have established a Working Group on efficiency measures in the Circuit and District Court. Efficiencies across the criminal justice system are being designed to speed up the system and eliminate waste. This should ensure that many of the delays which often contribute to further trauma and uncertainty to both victims and accused persons will be kept to a minimum while ensuring that the constitutional rights of defendants to a fair trial are fully protected. The contribution of the representatives of the Bar Council and the Law Society, as well as the Criminal Law Practitioners' Organisation, is appreciated.

An important initiative of the Working Group has been the establishment of a pilot pre-trial procedure commencing in both the Dublin and Midlands Circuit Criminal Courts. This measure has the potential to contribute to the speedier and more efficient processing of cases through the criminal justice system as it requires both the prosecution and the defence sides to update the court on the state of play in the particular case and on any potential difficulties with its progress. The pre-trial procedure will reduce the number of mention dates and will facilitate an assessment of the readiness of cases on an earlier date than at present. By improving how the criminal justice system functions, we increase its capacity to meet the needs of victims, something for which I have long advocated.

As many of you here will also know I have, for many years, advocated the need for a separate, unified and integrated structure of family courts. In July of this year I announced that, in implementation of the Programme for Government, the Government approved, in principle, a future referendum on Article 34 of the Constitution which envisages amongst other reforms, the establishment of a unified

structure of family courts to hear and determine family law disputes, including proceedings relating to domestic violence and also child care cases. It is also envisaged that the required referendum will facilitate the establishment of a Civil Court of Appeal and work is underway with the aspiration of holding the required referendum in the Autumn of 2013. It is my intention that my Department holds a seminar on these and related initiatives in the first quarter of 2013 and I hope that many of you who are here this morning will attend and participate in that event.

This day next week voting will take place on the Childrens Rights Amendment. In recognising and affirming the natural and imprescriptible rights of all children the State is also required under the terms of that amendment "as far as is practicable, by its laws (to) protect and vindicate those rights". Where a child is a victim of sexual or physical violence within the family home the amendment provides the constitutional bedrock for the State to intervene by "proportionate means" to protect a child's safety or welfare. In the context of any such State intervention, the amendment importantly prescribes that in the resolution of "all proceedings" brought by the State for the purpose of preventing the safety and welfare of any child from being prejudicially affected, the best interests of the child shall be the paramount consideration. This important constitutional affirmation of the "best interests principle" also applies to the resolution of proceedings relating to the guardianship, or custody of, or access to any child. It is worth noting in the context of today's conference that such proceedings frequently go hand in hand with domestic violence proceedings and that the constitutional provisions give important recognition to the need to ensure that the best interests of the child is the paramount consideration in the resolution of guardianship, custody and access proceedings where there are background allegations of domestic violence directed against a parent. Moreover, in the context of such proceedings, the constitutional proposal seeks to ensure that "in respect of any child who is capable of forming his or her own views, the views of the child shall be ascertained and given due weight having regard to the age and maturity of the child". I know all of you here understand the importance of this proposed constitutional amendment and of voting this day next week. I hope that the historical nature of this referendum and its fundamental importance in providing a new constitutional architecture with regard to children will result in a substantial majority Yes vote in favour of constitutional change.

In conclusion, I know you will benefit today from the insights of many knowledgeable contributors regarding the multiple facets of the important issues being addressed at this conference. I am sure that their presentations will engender much informed discussion. I am hopeful that your debates will result in suggestions for change - whether they be legislative, administrative or practice based. Some of what you learn today may help to better protect our friends, our neighbours or even our own family members from these forms of violence. Our ultimate aim, however, must be to end such violence.

Finally, may I once again commend both the Council of the Bar of Ireland and the Law Society of Ireland for organising today's joint conference. I wish all of you well in your discussions today.

3 November 2012

ENDS.