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Home Office consultation - domestic violence disclosure scheme

Purpose of report

For discussion and agreement.

Summary

On 25 October 2011, the Home Office launched its consultation seeking views on three options for a national domestic violence disclosure scheme to improve the protection of victims of domestic violence. Such a scheme would disclose information about an individual's history of domestic violence or violent acts to a new partner. This report provides details of this consultation and set out a suggested response for the Board to consider and agree.

Recommendations

Members are invited to:

1. Consider the three options presented; and
2. Agree the proposed response from the LGA set out in **paragraphs 14 and 15**.

Action

LGA officers to finalise the LGA's response to the consultation in light of members' comments.

Contact officer: Helen Murray

Position: Head of Programmes

Phone no: 0207 664 3266

E-mail: helen.murray@local.gov.uk

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Home Office consultation - domestic violence disclosure scheme

Background

1. Clare Wood was murdered by her former partner in Greater Manchester in 2009. This brought national attention to police disclosure of information on previous violent behaviour and criminal convictions against different partners. This proposed disclosure has often been described as 'Clare's Law'.
2. The Coroner's report into the murder recommended that "consideration should be given to the disclosure of such convictions and their circumstances to potential victims in order that they can make informed choices about matters affecting their safety and that of their children."
3. The murder followed a Home Office commissioned report by Chief Constable Brian Moore of Wiltshire Police on behalf of the Association of Chief Police Officers (ACPO). This report also set out recommendations including a "right to know", i.e. that the police should proactively disclose information to a new partner of an individual's previous domestic violence history.
4. Further to these developments, the Home Office launched its consultation on a national domestic violence disclosure scheme on 25 October 2011.
5. This report provides details of this consultation and sets out a draft response for the Board to consider and agree.

The consultation and its proposed three options

6. The consultation (<http://www.homeoffice.gov.uk/publications/about-us/consultations/domestic-violence-disclosure/>) outlines the current legal situation, which is that any member of the public can already ask the police for information about a third-party's violent history and the police already have common law powers and discretion to disclose information relating to previous convictions or charges where there is a need to prevent further crime. Indeed under the Multi-Agency Public Protection Arrangements the local panel is required to consider disclosing previous convictions to potential victims every time offenders at certain levels have their case reviewed. There are no figures available on how often information is disclosed or asked for.
7. The consultation seeks views on whether the current legal position is sufficient to disclose information to an individual (referred to as "A" in the consultation) about previous violent offences committed by another individual with whom they

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have an intimate relationship with (referred to as "B" in the consultation) and suggests three options:

- 7.1 Option 1: continue current arrangements under existing law – as per paragraph 6 in this report;
- 7.2 Option 2: a "right to ask" national disclosure scheme – enabling A to ask the police about B's history of domestic violence or violent acts where A has concerns about B's behaviour or background. The police would undertake full checks to inform a risk assessment and disclosure. This option, which could be based on the Child Sex Offender Disclosure Scheme (Sarah's Law), might involve four steps:
 - 7.2.1 After an initial enquiry by A to the police, the police undertake an initial check on the Police National Database to identify any information held on B;
 - 7.2.2 A is met face-to-face to confirm theirs and B's identity, the relationship between them, and complete a formal application for disclosure;
 - 7.2.3 The police conduct full checks on police database systems to inform a risk assessment for A; and
 - 7.2.4 The police refer information about B to an appropriate multi-agency setting (e.g. a Multi-Agency Risk Assessment Conference) to decide whether to disclose the information to A. Such a decision would be informed by the risk assessment and whether appropriate safety measures can be put in place for the applicant. If disclosure is approved, it would be made by the police with an Independent Domestic Violence Adviser present to provide support to A if required.
- 7.3 Option 3: a "right to know" national disclosure scheme – where the police would proactively disclose information in prescribed circumstances to A relating to B's history of domestic violence or violent acts (as recommended previously by ACPO).

Key issues about each option

8. There is a strong case for making information more widely available to people in a relationship or forming a relationship with an offender who commits domestic abuse. This is particularly important where children are involved. In principle it would seem right for information to be made more widely available about the history of domestic violence offenders as a means of reducing domestic violence and in some instances saving lives.

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9. Set against that, the options proposed must protect outcomes for victims and reduce domestic violence, and not increase the risk of it. In the event that A confronts B about information they have received about B's domestic violence history there is a real risk that this could result in a domestic violence incident however carefully A frames their questions. Therefore the disclosure of such information, however undertaken, must above all be considered from the perspective of the (potential) victim.
10. Option 1 maintains the status quo, and would not satisfy the principle outlined above of making information about the history of domestic violence offenders more widely available. Options 2 and 3 each have various benefits and challenges, and also raise a number of issues.
11. Option 2:
 - 11.1 This option offers A the maximum opportunity, empowerment and choice through a reinforced right to acquire such information to make informed choices about who they are with, with appropriate support as necessary.
 - 11.2 The balance of power in relationships where domestic violence occurs means that it is unlikely that the 'right to ask' would be widely taken up.
 - 11.3 There is also a risk that when A approaches B with any information they have been given through such a disclosure scheme, that this results in a violent incident.
 - 11.4 If the scheme is to prevent as much domestic violence as possible, A should be able to ask for a disclosure even if there are no specific concerns about B's behaviour or background, as some perpetrators may for example hide their past behaviour or background. Previous victims of domestic violence wary of a new relationship may also want to request such information.
 - 11.5 There is no body of evidence to support the idea that a 'right to ask' like this is effective. A controversial evaluation of Sarah's Law by the Home Office (Research Report 32) suggested there was no evidence that it protected children from abuse.
 - 11.6 Should this option be taken forward then it would need to be promoted, encouraged and communicated effectively to ensure the maximum number of people take up the scheme. This promotion would need to include details about support and services available to those requesting and/or receiving disclosed information.
 - 11.7 In order for the scheme to work effectively it would also require properly trained staff to administer it. For example it will be especially important for Step 2 in the proposed process, where A is met face to face, to be handled sensitively. Those involved will need to reassure A that B will not find out about this disclosure, and will need to be sensitive in confirming the nature of the relationship.

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12. Option 3:

- 12.1 This option would provide potential victims with the maximum information possible, and would take away the onus on them to ask for information. It would however mean that they did not have any choice about whether they get the information. However it would be up to A to decide whether to act on the information or not, and to aid them in making a decision they would need to know what support and services were available to them.
- 12.2 If a duty is placed on the police to tell anyone involved in an intimate relationship with B about B's history that suggests some requirement on the police to keep track of B's relationships, with potentially significant resource and privacy implications.
- 12.3 There is the question of how information available to other services is passed on to the police. Often schools and the health service will be aware that A is in a relationship with B before the police. Is there a need for a process to ensure the police are told of information made available to partner organisations?
- 12.4 As with Option 2 there is a risk that this option could result in worse outcomes instead of reducing incidents of domestic violence.

13. This consultation also raises a number of more general issues, which the LGA could raise in its response:

- 13.1 There should be consideration of a time span in which to ask for/disclose such information, otherwise there could be requests or disclosures many years after such an intimate relationship has begun, which could be destructive of relationships if B has successfully dealt with any domestic violence issues that may have occurred a long time in the past.
- 13.2 Should disclosure encompass intelligence, including allegations, and sources of such information so that A has the maximum amount of knowledge and context to make informed decisions?
- 13.3 Disclosure should also cover all violent behaviour by Person B – not just domestic violence - because any violence could be targeted at Person A constituting domestic violence within an intimate relationship.
- 13.4 Balancing the interests of potential victims and rehabilitating offenders suggests that information should only be disclosed to Person A. Consideration then needs to be given to whether A should then be able to share the information with third parties, or if they should be required to agree not to disclose it to third parties.
- 13.5 With many more references in the consultation to women than men, it needs to be clear that the scheme is equally open to anyone in an intimate relationship - men, women and those of transgender.

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- 13.6 It is assumed that disclosed information will be accurate but the consequences of any inaccuracies could be extremely serious. There will therefore need to be sufficient checks to ensure any information disclosed is completely accurate and where accuracy cannot be assured, for that to be conveyed accordingly to A, especially if Option 3 is adopted.
- 13.7 The need for the police to inform the relevant council or councils of any disclosures they have made, and the name and details of A to ensure that any safeguarding issues are dealt with.

Suggested LGA response

14. The consultation's focus is on the police, and there are no proposals for councils to have a direct role in administering the scheme. However, it is proposed that the LGA responds given the role councils play in addressing domestic violence issues, and in the interests of safer communities, safeguarding and protecting victims more generally.
15. It is difficult to assess the impact and effectiveness of these options and there are significant risks with each option which are not fully addressed. Our overriding objective should be that whatever option the Home Office adopts it must protect the outcomes for victims and reduce domestic violence, and not increase the risk of it. Piloting a new approach in one or two areas might be the best approach. In our response therefore rather than endorsing any of these options we may wish to set out our concerns and signal that there may be alternative solutions, yet unexplored, which could be more effective - such as placing a duty on the police to disclose information to A about B's history where A had reported an incident of domestic violence to the police and given a statement.

Conclusion and next steps

16. LGA officers will finalise the LGA's response in light of members' comments.

Financial Implications

17. Any subsequent work emerging from the LGA's response to this work will be met from existing budgets and resources.