

Understanding the Domestic Violence Disclosure Scheme

A national Domestic Violence Disclosure Scheme now allows partners of former offenders to have information disclosed to them by the police. The scheme was introduced following a campaign for 'Clare's Law', named after Clare Wood, who was murdered in 2009 by a man she had met on an internet dating site. The man had convictions for the harassment and assault of former partners and, in the months preceding her murder, Ms Wood had contacted the police alleging the man had caused criminal damage, harassed her, threatened to kill her and sexually assaulted her (Strickland, 2013).

One in four women experience domestic abuse at some time in their lives (Taket, 2004). It happens to women in all walks of life, across all ages and ethnic groups. Domestic violence accounts for a fifth of violent crime and claims the lives of two women every week (Simmons and Dodd, 2003). As well as the primary adult victim, children are also abused in 45% of cases (Mullender, 2000).

Domestic Violence Disclosure Scheme

The national scheme provides a formal framework for the lawful disclosure of information to a person for the purpose of preventing a serious crime.

The police have always had common law powers to disclose information relating to previous convictions or charges to the public where there is a pressing need for disclosure of the information concerning an individual's history in order to prevent further crime.

The law therefore allows:

- Any member of the public to ask the police for information about a third party's violent history

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- The police to have discretion on whether to disclose the information if there is a need to prevent a further crime.

The law has been little used in practice, owing to a lack of public knowledge about the power and reluctance on the part of police to exercise their discretion to disclose information (Strickland, 2013).

The Domestic Violence Disclosure Scheme provides recognised and consistent procedures for disclosing information that enable a new partner of a previously violent individual to make informed choices about that relationship. It enhances the previous arrangement, where disclosure was largely reactive when agencies came into contact with information about an offender having a history of previous violence. The scheme provides two methods for initiating a review of whether information should be disclosed to a woman at risk of domestic violence (Figure 1).

The 'right to ask' method allows members of the public to proactively seek information with an expectation that the agencies responsible for safeguarding victims of domestic violence will check to see whether relevant information exists and, if it does, that consideration will be given to its disclosure where necessary to protect the victim (Home Office, 2012).

The 'right to know' process is initiated where a safeguarding agency comes into the possession of information about previous violent behaviour that may cause harm to another woman, who can now expect the safeguarding agency to consider whether any disclosure should be made and to disclose information if it is lawful, necessary and proportionate to protect the potential victim from further crime (Home Office, 2012).

Right to ask

The right to ask process provides a formal mechanism for a woman to make enquiries about her partner where she is worried that the partner has been violent or abusive in

the past. A request for disclosure under the right to ask process is not limited to the likely victim; any concerned third party can make an application. To initiate disclosure, it is essential to make contact with the police, who will take some general details about the woman and her partner, the nature of the relationship and what prompted the request. They will also ask how to make safe contact with the woman (Home Office, 2012). This initial contact will result in some preliminary checks being carried out by the police to establish whether there are any immediate concerns. No disclosure will be made at this stage unless immediate protection is necessary. Midwives should ensure women are aware that if they allege that they have been subject to domestic violence then the police will investigate that offence, and may arrest their partner as part of that investigation.

These initial checks will be completed within 24 hours and, if a decision to proceed is made, the request will then be passed to the police public protection unit and a face-to-face meeting with the applicant arranged within 10 working days. At that meeting, the applicant will have to provide proof of identity and, if the applicant is a third party, provide proof of their relationship with the woman at risk. A full risk assessment is carried out by the police following the face-to-face meeting and a final decision made on referring the matter to the local decision-making forum.

Right to know

The right to know route is triggered where police receive indirect information from a current investigation or information provided by a partner agency. Where there is concern that the information gives cause for concern about the likelihood of domestic violence, it is open to the police to refer the matter to the local decision-making forum for a decision on disclosure (Strickland, 2013).

Local decision-making forum

The decision-making forum is the local forum consisting of safeguarding agencies, police, probation and relevant charities that is constituted to consider making a disclosure under the scheme. In practice, the forum should be the Multi-Agency Risk Assessment Conference (MARAC). These are regular local meetings where information about high-risk domestic abuse victims is shared between local agencies. There are currently more than 270 MARACs operating across England, Wales, Scotland and Northern Ireland, managing more than 64,000 cases a year (Home Office, 2012).

Details about a person's criminal past are confidential. Midwives will know from their duty of confidence that, although confidentiality is not absolute, there must be lawful reasons for disclosing information and disclosure must be kept to the minimum necessary information (*Cornelius v DeTaranto* [2001]). Local decision-making forums decide whether the disclosure of information under the Domestic Violence Disclosure Scheme is:

- Necessary to protect the public from crime; that is, the applicant needs to be protected from becoming a victim of domestic violence
- A pressing need for the disclosure
- A necessary and proportionate response for the prevention of crime in keeping with the requirements of the Data Protection Act 1998 and the Human Rights Act 1998, schedule 1 part 1 article 8(2).

The local forum will also consider whether the person about whom the application is made should be informed that their previous criminal history will be disclosed to their new partner. If that decision is made, they must be informed in person, giving the local forum agencies an opportunity to signpost the individual to support services that will help address their behaviour (Home Office, 2012).

What will be disclosed

Where a decision to disclose information is approved, the local forum must be satisfied that the wording of the disclosure will allow the applicant to make an informed choice about continuing the relationship. It will be accompanied by a safety plan for the applicant that identifies the services to be provided for ongoing support.

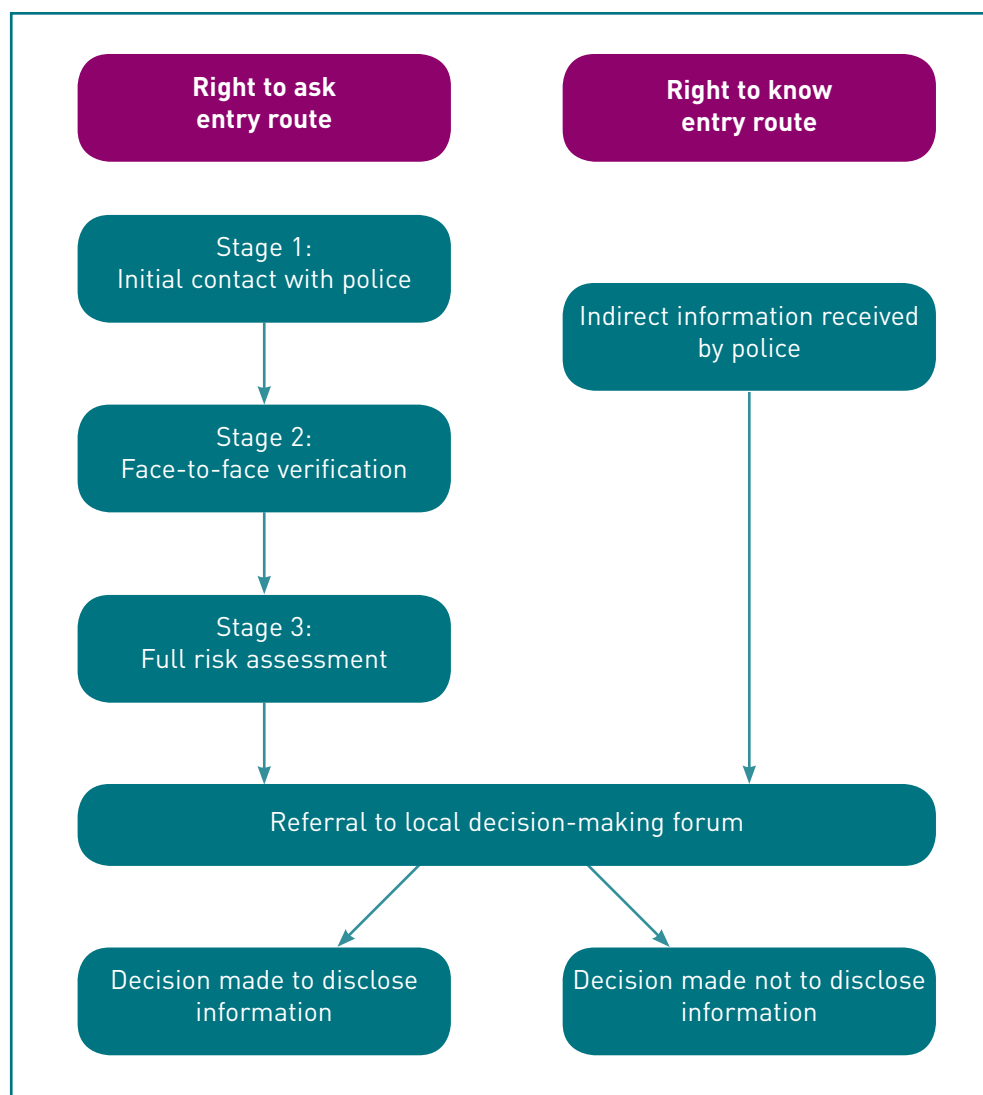


Figure 1. Stages of the Domestic Violence Disclosure Scheme

The woman receiving the information must undertake to keep it confidential and understand that it is an offence under the Data Protection Act 1998, section 55 if she unlawfully discloses the information.

Where the local forum decides there is no relevant information to disclose because the woman is not considered at risk from domestic violence, that decision will also be passed on in person (Strickland, 2013).

Conclusion

The national Domestic Violence Disclosure Scheme gives people the opportunity to obtain information about a new partner's past history if they fear they are at risk of domestic violence. It is hoped the scheme will reduce episodes of domestic violence because the potential victim will be able to make an informed choice about the relationship.

General guidance for midwives on best practice response to domestic violence can be obtained from the latest National Institute for Health and Care Excellence (2014) guidelines.

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- Cornelius v DeTaranto* [2001] EWCA Civ 1511
 Home Office (2012) *Domestic Violence Disclosure Scheme: guidance*. Home Office, London
 Mullender (2000) *Reducing Domestic Violence... What Works? Meeting the Needs of Children*. Home Office, London
 National Institute for Health and Care Excellence (2014) *Domestic violence and abuse: multi-agency working*. www.nice.org.uk/guidance/ph50 (accessed 22 March 2016)
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 Taked A (2004) *Tackling Domestic Violence: the role of health professionals*. 2nd edn. Home Office, London