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A study of the civil and criminal justice system in
Northern Ireland in relation to domestic violence
cases

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CHAPTER ONE

INTRODUCTION

CHAPTER ONE: INTRODUCTION

1.0 Introduction

This dissertation will attempt to find out more about domestic violence and the civil and criminal justice system in Northern Ireland. The criminal justice system includes the police, lawyers, probation service and judiciary. Then it will attempt to determine if much has really changed over the last few years in policies and practice, the law and implementation of it. More recent developments include the Family Homes & Domestic Violence (NI) Order 1998 which came into force in April 2000. The research will be an exploration of the attitudes and beliefs surrounding the civil and criminal justice system in Northern Ireland, including the new legislation and the more controversial topic of “women who kill” when they have been in a violent relationship with their partner and the sentencing of these women.

1.1 Thesis Structure

The research process will be conducted through a number of steps, structured and managed through each one of the six chapters outlines:

1.1.1 Chapter One: Introduction

This chapter sets an overall scene to the thesis, explaining the rationale and justifying this choice of such a research topic by briefly examining some of the literature already existing in this field parallel with recent developments in the law, policy and practice within the criminal justice system in Northern Ireland. Research aims and objectives will then be set out in accordance with and originating from, the rationale.

1.1.2 Chapter Two: Literature Review

This chapter sets out a detailed review of existing literature relevant to the research topic. It examines parent literature to the research topic, such as theories as to why men are abusive, different policing policies around the world and why women do not bring cases to trial. Conclusions will be made, and gaps identified from the literature already in existence, which will hopefully reinforce the importance of this area of research.

1.1.3 Chapter Three: Women Who Kill

This chapter outlines research into the area of women who kill their abusive partners. The area of self-defence is examined and the current reform proposals surrounding provocation. The successful defence of provocation reduces murder to manslaughter. In the case of battered women who kill, this can mean a great reduction in sentences. The question is ongoing – Why should battered women who kill their abusive partners have the defence of provocation?

1.1.4 Chapter Four: Methodology

The methodology will describe the research positions which exist and why I chose the particular methods for this thesis. It will justify the type of research chosen and will describe how it was carried out.

1.1.5 Chapter Five: Analysis and Findings

Chapter Four will analyse all the results collected from the fieldwork carried out in accordance with the methodology outlined in Chapter Three. The issues arising from the analysis will then be explored in relation to the research objectives and appropriate methods will be used to analysis the findings.

1.1.6 Chapter Six: Conclusions and Recommendations

The final chapter will interpret and draw conclusions to the findings gained from Chapter Four. An overall conclusion for the research will be stated and implications leading to future research will be discussed.

1.2 Rationale

The main issues the research is concerned with are developments in the civil and criminal justice system in Northern Ireland and the attitudes and feelings towards new legislation, including the Family Homes & Domestic Violence (NI) Order 1998. The issue around “women who kill” and inconsistent sentencing. The area of determining why domestic violence occurs will be briefly outlined, though the primary issue is to discover if women get a fair trial in all kinds of domestic violence cases. Domestic violence has been a problem in society as far back as the fourteenth century when “reference was made to a case where a woman sought refuge from an abusive partner”. (McKiernan and McWilliams, 1993: 3). In the eighteenth century a husband had almost total rights over the members of ‘his family and was entitled to privacy in his own home which was written into and protected by law.

1.3 Justification of the Research Topic

The above rationale helps to illustrate the problems within the civil and criminal justice system in Northern Ireland and the extent to which victims can seek help from the current system. The attitudes of the police, lawyers, probation services and courts to women in trials of a domestic violence nature are a very important element of the research. The attitudes of women in relation to their treatment by the criminal justice system and their confidence in seeking justice is of particular interest and something which has not been researched in great detail in past studies.

1.4 Aims and Objectives

The aim of this research is to assess the attitudes and opinions of women who have accessed the civil and criminal justice system and to ascertain the positive and negative points of it. The attitudes and opinions of the court service, lawyers and barristers are also important especially if the system is to change to be more ‘victim friendly’. Their attitudes were examined in relation to cases of domestic violence and their opinions on taking on such cases and further training. The attitude of the police service to cases of domestic violence and how they have developed their service to women was also an important part of the research as they do act as the gatekeeper for many women in crisis.

In conclusion this research will ascertain the attitudes and beliefs of women who have been through the system and in turn the attitudes of the system towards the women.

1.5 Conclusion

This chapter provides an outline to the rest of this thesis and an outline of the research topic, providing a rationale and justifying the importance of the topic. An outline of the aims and objectives were provided, which the rest of this report will follow. The next chapter is the literature review, which investigates in greater detail the academic grounding of this thesis.

CHAPTER TWO

LITERATURE REVIEW

CHAPTER TWO: LITERATURE REVIEW

2.0 Introduction

From the beginning of the feminist movement and the emergence of women's groups such as Women's Aid in the early 1970's domestic violence has been the subject for much research. This research has covered many different aspects of domestic violence. This chapter is concerned with the history and extent of domestic violence, giving a brief overview of literature. Also examined in this chapter will be the change in the law and the civil and criminal justice system as a whole. The response of the criminal justice system in dealing with domestic violence and their attitudes towards it. Other criminal justice models will be compared including America, Republic of Ireland and England. Finally, we will conclude with the topic of 'women who kill', a very controversial, but very real part of domestic violence research.

The literature review is concerned with the changing legislation in civil and criminal justice in Northern Ireland. The extent to which victims of domestic violence feel they can seek help from the current system, both in terms of policing and prosecution and the confidence they feel when they seek justice, whether in civil or criminal justice proceedings. Do women have the right to a fair trial?

2.1 Brief History and Overview

"Domestic violence is behaviour that seeks to secure power and control for the abuser and to undermine the safety, security and self-esteem and autonomy of the abused person. Domestic violence contains elements of the use of any or all of physical, sexual, psychological, emotional, verbal or economic intimidation, oppression or coercion. The most important factor is the effect of the behaviour as experienced by the individuals involved". (Northern Ireland Forum on Domestic Violence October 1997)

"Domestic violence is the use of physical or emotional force or threat within close adult relationships in a way that causes harm or distress to victims. In addition to actual or threatened physical or sexual assault and damage to property, domestic violence includes non-physical intimidation, such as persistent verbal abuse, emotional blackmail and enforced social or financial deprivation. Having abused once perpetrators usually persist: intensifying and escalating the maltreatment." (HMSO, 1995)

Domestic violence is a problem that has been documented for centuries. "It was legitimate for a man to use any means to control his wife, including force and violence". (Dallos, 1993:9) Women were responsible for nurturing, caring and providing a decent home in which the husband had to be kept satisfied and content, which could mean both domestically and sexually. Society did not dispute these beatings received by women and it was often seen as her failure in being the ideal wife. There was no form of protection and no law on the wife's side, women were controlled by men in a society which women were dependent on men, fathers or husbands for shelter, housing and basic requirements. The whole structure of society failed the women through major inequalities through the distribution of power. "Wife beating is not just a personal abnormality, but rather has its roots in the very structuring of society and the family; that is in the cultural norms and in the sexist organisation of society". (Straus cited in Edwards, 1988:184)

The laws however changed and in 1878 legislation was introduced accepting domestic violence as grounds for an official separation. Even when this new legislation was passed there were still implicit assumptions about domestic violence. "Women who were sexually immoral, unfaithful to their husbands, prostitutes or drunken were seen as undeserving of help or sympathy but deserving of the beatings they received or even of being raped". (Dallos, et al, 1993:9) Many perpetrators comment that their partner was nagging or manipulative by refusing sex. A recent

example of this was at the trial of Joseph McGrail in 1991, who punched his “nagging” wife to death, the Judge said that the murdered woman “would have tried the patience of a saint”. McGrail was found guilty of manslaughter, not murder, and walked free with a two year suspended sentence

Domestic violence is a very large-scale problem and was not taken seriously until the emergence of the feminist movement. They took the lead in “bringing to light the extent of domestic violence and raising challenges to some of the implicit assumptions about domestic violence and ‘privacy’ in our society”. (Yllo cited in Dallos, 1993:7) Many feminist writers have focussed on “the nature of economic and ideological structures which make physical violence against women possible”. (Edwards cited Abbott et al, 1991:134) This was the beginning in raising awareness of the extent of domestic violence.

From the introduction of The Domestic Proceedings (NI) Order 1980, for the first time the police had a role to play in enforcing the law in cases of domestic violence. Though this was only the beginning it was realised that women needed help through local authorities, including housing and health services, but most importantly the justice system whereby perpetrators would be challenged and dealt with accordingly.

To examine the problem fully the root causes need to be analysed beginning with the civil and criminal justice system. The services often let the women down and fail to respond to cases of domestic violence. Strategies need to be put in place so all the above agencies and service providers know how to work together to help women and their families through the provision of effective support services. Current legislation needs to be changed in order for women to feel support instead of victimisation.

Polsby (1992) states:

“If the problem of intrafamilial violence does not yield to simple changes in law enforcement policy, no one should be amazed. The problem is almost by definition hard to deal with, rooted as it usually is in the subtle nuances and private complexities of familial relationships, about which law enforcement authorities-and for that matter close friends and family members-typically lack much crucial information”. (Polsby, 1992:251)

In 1999 the police attended 15,304 incidents, 7,402 violent incidents and made 1,471 arrests. In 2000, the first quarter there were 3,679 incidents attended, 1,825 violent incidents and made 418 arrests. (RUC Domestic Violence Statistics, 2000) Alarming high statistics, which cannot go un-noticed. In Britain every year an average of 70 women are killed by male partners, compared to 12-15 men being killed by their women partners. Though the Crown Prosecution Service state that 40% of women are found guilty compared to 25% of men. So the effectiveness and consistency of the law has to be considered.

The above evidence for abuse in relationships is an important factor. Through criminal statistics and research studies it is revealed that there is a significant representation of violence against women within the family. Though the accuracy of statistics and ‘unreported incidents of domestic violence’ would show that the problem is large scale and a definite area of criminal justice that needs to be addressed by government in the change to current policies to overcome domestic violence. In Northern Ireland it is accepted that current knowledge of the nature and prevalence of domestic violence is still somewhat limited. Domestic violence is still largely hidden by both the victim and the perpetrator.

In the last twenty years there have been legal reforms and efforts and efforts to recognise domestic violence as a public, rather than a private issue. The government has published various reports and studies and there has also been more media attention around domestic violence incidents. Overall it has moved into the private sphere challenging people’s assumptions about

family life, and heightening awareness that it is amongst the most serious social problem in Northern Ireland. The problem has been allowed to occur by the legal system and professional agencies, which for so long have ignored or trivialised domestic violence. If policy is to change “it is clear that both the judicial system and the police, operating with the authority of the state, have a major role to play not just in providing assistance to victims of domestic violence but in driving forward policy in this area”. (McWilliams and Spence, 1996:5)

There are many problems within the civil and criminal justice system in Northern Ireland in relation to domestic violence cases. The problem lies within this system, the Northern Ireland Office, The Royal Ulster Constabulary, Northern Ireland Probation Board and the Prison Service, lawyers, barristers and judges and their lack of interest in dealing with such crimes. The criminal and civil law which have failed to protect women and children of domestic violence.

2.2 Lawyers

In Nan Seuffert’s research “Lawyering and Domestic Violence” she found that there was an interest in domestic violence within the majority of feminist lawyers who wished to obtain further knowledge of women’s experiences and integrate theories and practices of lawyering with these. Research was undertaken in New Zealand with women in refuge going through their experiences with legal representation in domestic violence cases. They interviewed these women and also refuge workers to identify consistent themes, which could be identified to develop the role of the lawyer in such cases.

An example of an interview from the research:

Betty also felt that her lawyer lacked understanding of the dynamics of domestic violence. She described her abuse in this way:

The abuse went on for the duration... of the twelve year relationship. It was physical, it was emotional, it was verbal, it was sexual ... So every type of abuse was involved. My children were abused in all those ways as well except for my son who wasn't sexually abused ...

Betty describes what happened at the final hearing on the non-molestation order:

[before] the non-molestation hearing, my lawyer said to me that I would probably come out without it, without any protection orders because [during] the interim period between the ... interim order being put on him, and the [final] hearing ... he actually hadn't done anything terrible ... the only thing he'd done was to find out our phone number somehow, which was confidential, and wait until Louise's birthday and ring her on the morning of her birthday and abuse her. But he'd hadn't done anything physical to warrant having [the non-molestation order] being permanent ...

Betty noted that her lawyer did not make any argument to the judge that the non-molestation order should be made permanent, with the result that she was left without any protection orders.

Now a refuge work, Betty concluded:

I think [lawyers] need to have a really good understanding of abuse, to have a really good analysis of what that is. I also think that they should have some sort of training of skills in listening, nor necessarily counselling, but being able to kind of use some feedback or some sort of creative listening skills, so that you know that what you are saying is being understood and you know that they hear what you are saying.

(Seuffert, cited in Stubbs, 1994:92)

There is little research available on the development of the legal profession in domestic violence cases. The above passage gives a small example of the experiences of a woman dealing with a solicitor and their representation of a client. Many solicitors and barristers do not understand the

dynamics of domestic violence and this is evident throughout the above research. (Seuffert, 1994) suggested “that lawyers who work in family law, and particularly in representing survivors of domestic violence, educate themselves about the dynamics of domestic violence is consistent with the on-going self-education that is the responsibility of all lawyers”. (Seuffert cited in Stubbs, 1994:93-94)

2.3 Policing of Domestic Violence in Northern Ireland

In 1975 a Select Committee on Domestic Violence was set up and put in place in the form the Domestic Proceedings (NI) Order 1980. This Order gave women new rights and for the first time the police force had a new role to play in enforcing the law in the cases of domestic violence. The police force had a major part to play in developing change in domestic violence incidents. Police were often seen as reluctant to intervene in a domestic dispute and were unlikely to take action, as it was look upon as a ‘private’ dispute. The police today in Northern Ireland have now undertaken an interagency approach and are in contact with the courts, probation services, housing departments and social security as well as voluntary organisations such as Women’s Aid.

“No other agency has such a power of condemnation of wife assault than the police”. (Montgomery, 1985:11) They are a powerful agency available 24 hours a day and often the first contact for a woman suffering domestic violence. Unfortunately the police force has not always used this power and control as it was look upon as a family matter.

“Twenty years ago the police took their attitude that it was not their business, it was a private matter”. (Karen Porter, RUC Community Affairs Branch, Belfast Telegraph, Tuesday, 27/10/98)

Domestic violence was not seen as a crime and was not an offence taken seriously by the police under criminal law. “Police were reluctant to intervene because it was a domestic dispute”. (Pahl cited in Montgomery, 1985) It was also less likely that an arrest would be made and if arrested in most cases no further action would take place. (Edwards, 1985) states that “when women report domestic violence police often do not regard such incidents as sufficiently serious to warrant police action, and even where they are considered serious, police forces lack any coherent policy regarding the arrest, detention and charging of such offenders. Finally, police action may be thwarted by prosecutors, who do not always prosecute those cases the police report to them.” (Edwards cited in Abbott, 1991:134)

So not only were the police failing women but the whole judicial system was. Many feminists would state that the law itself is “the embodiment of patriarchal attitudes – inequality in power relationships which fails to confer rights on women but indeed has disempowered women and empowered men.” (O’Donovan cited in Abbott, 1991 : 135)

Margaret Thornton argues that:

“In the light of the privileged status of law within our society, it cannot be neglected or social relations will continue to be reproduced within legal discourse as they always have been, that is from a masculinist point of view”. (Thornton cited in Stubbs, 1994:9)

The police force is a male dominated workforce. In Northern Ireland the RUC is 90% male and 10% female. Many officers report that “domestic disputes and traffic control were frustrating”. (Reiner cited in Montgomery, 1985:19) It was not seen as real police work. Most evidence in relation to police attitudes towards domestic violence did show serious inadequacies in training officers to deal with domestic violence.

“Another factor which may influence handling of wife assault cases is the considered reluctance of the women to press charges in the initial stages of the police investigation, and later, in proceeding with a prosecution up to the court hearing”. (Montgomery, 1985:19) Women are

often frightened and vulnerable and more often if brought to court, it does not necessarily result in the perpetrator's imprisonment. It is often lack of support by the courts and the police force that encourage women to drop charges.

Ferraro (1989) states that if they [police officers] believe that failure to provide adequate protection will result in complaints that include their name and badge number and may lead to disciplinary action, they may be more thorough in their response to victims' complaints. Education and organising of battered women's advocates can likely influence police perceptions of the power of battered women. (Ferraro, 1989:72)

In the table (Figure 2.3) it can be seen that in Northern Ireland the sentences for domestic violence offences are not taken seriously enough. This is a clear statement that the only terms of deterrence are the police arresting and charging violent men. The details of sentences for domestic violence at Bangor Magistrates' Court is an example of one of the five magistrates' courts in Northern Ireland, the other courts are Coleraine, Downpatrick, Lisburn and Newtownabbey.

Women do not have confidence in the criminal justice system due to experiences they have had in attempting to get their partner prosecuted, enduring long time limits and then if it even reaches court a lack of evidence gets their partner off on a technicality. Improved measures are needed in relation to domestic violence prosecutions. Evidence (as Figure 2.3) shows a leniency towards perpetrators of domestic violence and sentencing which is much less than if the crime had been committed against a stranger. In McWilliams and Spence (1996) study they found through their research that "at five Magistrates Courts in Northern Ireland shows that on average 14% of all prosecutions for Offences against the Person and 64 % of prosecutions for violence by men against women before these courts is domestic violence related. Of the 77 defendants in their study, of those whose cases were not adjourned or sent for trial to a higher court, none received a more severe penalty than a suspended prison sentence (maximum nine months) or fines ranging generally from £10-£100. No defendant was given an immediate prison sentence or community service. (McWilliams and Spence, 1996:80-81)

Details of Sentences for Domestic Violence Offences at Magistrates' Court Bangor

Offence	No. of Defendants	No. of Charges	Comments
Assault	6	6	Adjourned, remanded in custody (found guilty of manslaughter of female partner on a subsequent charge). Sent for trial to Crown Court on attempted murder charge Conditional discharge, 12 months Prison 3 months, suspended 2 years Dismissed (2)
AOABH	4	5	Prison 4 months, suspended 2 years Withdrawn (but returned for trial at Crown Court on attempted murder and assault charges) Returned for trial at Crown Court (+ other charges) Adjourned on bail and conditions
GBH W/I	1	2	Adjourned to Crumlin Road,

Remanded in custody.			
GBH	1	1	Withdrawn (but returned to Crown Court on other charges)
Criminal damage	2	2	Prison 1 month, suspended 2 years Conditional discharge 12 months + Compensation
Attempted Murder	1	1	Returned for trial to Crown Court

Figure 2.3

Source: (McWilliams and Spence, 1996:124)

Though recent studies have begun to question prison terms for perpetrators of domestic violence. In Polsby's (1992) research into domestic violence and law reforms, he examined criminal punishment in relation to domestic violence crimes and came to the conclusion that mandatory arrest can in fact make matters worse. "The new research suggests that the sort of man who is undeterred by the prospect of arrest may actually be provoked into further acts of aggression against family members who are perceived as having been the cause of trouble with the police". (Polsby, 1992:251)

With changing government policy in Britain came special Domestic Violence Units, the first of which was established in Tottenham, London in 1987. "Domestic Violence Officers see the care and protection of victims as their main function whilst arrest or prosecution is not a priority for them". In Northern Ireland the introduction of Domestic Violence Units came a little later than 1987. When the first ceasefire was declared in Northern Ireland, came the introduction of Domestic Violence Units. The police had now more time for community policing with a reduction in terrorism. Today police officers in the RUC undertake domestic violence training and there are 34 Domestic Violence Officers within each of its 38 sub-divisions. It must be stated though that these posts are 9am-5pm positions and half of the officers are only employed on a part-time basis. These Domestic Violence Units are still seen by the police force as pilot schemes and have not therefore been fully recognised.

In Frisch (1992) research into arrest experiments in New York, a letter was written to a battered woman to the chief of a department that had recently changed their policies towards domestic violence. In it the woman wrote:

"The emotional support the Officer offered at a time when I was desperately in need of it, is what really prompted this letter ... I felt that he sincerely cared about me and frankly, without that support, I don't know if I would have appeared in court the following morning". (Frisch, 1992:215) This stresses the importance of a strong police service within a community supporting women and children who are victims of domestic violence. They are an essential service.

The police in Northern Ireland have been seen in recent years to have improved their service to victims of domestic violence, but of course have still much room for improvement and change. There are of course specific factors relating to domestic violence in Northern Ireland including community relationships with the RUC and the availability of firearms in relation to paramilitaries, which may deter a complaint by a woman. Social, religious and cultural factors towards marriage and divorce are also difference here. (DHSS: Tackling Domestic Violence: A Policy for Northern Ireland)

McKiernan and McWilliams (1993) state that there are additional needs of specific groups within Northern Ireland. "Women living in rural areas, Traveller women and Asian women all have

specific problems which need to be addressed. The lack of police response poses specific problems for women living in nationalist areas when looking for support in crisis situations. The particular needs of elderly women and disabled women living with violent partners are further issues which must be help providers”. (McKiernan and McWilliams, 1993:124)

Statistics show from January to March 1998 that the RUC attended 3,254 domestic disputes and 1,293 domestic violence incidents. These statistics include 3 murders, 3 rapes and 14 GBH. (RUC Statistics on Domestic Violence, 18/9/1998) “Criminal Statistics provide information on the crimes the police record and the resulting court action. This however, does not give a true incidence of crimes of violence as these statistics are incomplete due to under-reporting of crimes and failure by the police to arrest”. (Montgomery, 1985:13)

RUC Statistics 1996-1999

	1996	1997	1998	1999
Domestic incidents attended by police	6,727	8,509	14,429	15,304
Physical violence involved	3,681	3,805	6,385	7,411
Female Victims %	89	90	89	88
Murders	2	8	10	7
Rapes	4	10	21	20
GBH	26	51	60	86
Breach of Orders	184	472	603	723
Criminal Damage	444	504	884	916
Other (i.e. Breach of Peace etc)	839	693	767	768
Harassment			147	427
Common Assault	1,758	1,899	3,223	3,784

Source: PoliceStatistics.htm

There are many problems within the criminal justice system and the present policies that look very good on paper, but do not always work so well in practice. The criminal justice system in Northern Ireland has four core sectors, Northern Ireland Office, Royal Ulster Constabulary, Northern Ireland Probation Board and the Prison Service. One of the major criticisms of the criminal justice system was that of the police and “the reluctance to intervene in domestic disputes, an in particular their reluctance to arrest the perpetrators of the violence”. (Newburn: 1995:156)

The many cases of domestic violence, the police are the first point of contact for many women. They are a 24-hour service. As such they perform the role of gatekeeper, not only to the criminal justice system but to other helping agencies. This is why their response is so important. They have the power of arrest, which unfortunately they do not use enough. “It is the authority of the police to condemn a man’s behaviour which women call on”. (Montgomery, 1985: 12) The police force has the power to openly condemn domestic violence and change the social attitudes of the public in relation to ‘private’ domestic incidents. It also would show support towards women and may be the crucial help she needs to deal with the situation.

Mitchell (1992) states in conclusion:

“In a sense, the police can serve as society’s “point” agency, handling the task of stabilizing critical situations and then making referrals for follow-up action by one or more appropriate resources. This approach is working in many communities, but it ultimately depends upon having sufficient follow-up resources and mechanisms in place. Where domestic violence is

concerned, many of those resources now exist but are under-utilized, and many more could readily be established”. (Mitchell, 1992:245)

2.4 Civil Law

2.4.1 The Domestic Violence and Matrimonial Proceedings Act 1976

Section 1(1) This Act provided that a county court could, in the application of a party to a marriage, grant an injunction containing one or more of certain provision; these could restrain the other party from molesting the applicant or any child, exclude the other party from molesting the applicant or any child, exclude the other party from the home or from a specified area in which the home was included, and require the other party to permit the applicant to enter and remain in the home.

A huge flaw in civil law was the gap that was left in not protecting many women from domestic violence. It was paramount that this be taken into account as a huge proportion of people experiencing domestic violence were unprotected by law.

“The civil remedies are largely restricted to co-habiting and/or married couples: partners living apart and not under the same roof, ex-cohabitees, ex spouses and girlfriends with the result that relationships are not protected by any of the aforementioned Acts notwithstanding the remedies in tort”. (Edwards, 1996:222)

Section 2 of the Act permitted a county court judge to attach a power of arrest to such an injunction, if he or she were satisfied that the respondent had caused actual bodily harm to the applicant or a child concerned, and considered that he was likely to do so again”. (Bourlet, 1990)

“In drawing the criteria so narrowly the 1976 Act provides a very restrictive view of the range of applicants eligible for protection and mirrors a concept of a legal rather than a social family”. (Edwards, 1996:215)

Domestic Violence and Matrimonial Proceedings Act 1976 - Statistics

Year	Applications	Ousters	Non-molestation	Power of Arrest
1981	7,110			1,774
1982	7,691			1,876
1983	10,820			2,501
1984	14,510			3,568
1985	13,531	3,818	9,202	3,314
1986	16,046	4,759	10,826	4,005
1987	16,474	4,903	11,081	4,623
1988	19,329	5,633	13,133	4,996
1989	20,030	6,180	14,239	5,870
1990	21,023			
1991	21,205			
1992	20,648			
1993	20,462			
1994	25,034	3,946	24,566	9,793

Source: *Judicial Statistics 1981-1994*

“Common instances include persistent pestering and intimidation through shouting, denigration, threats or argument, nuisance, telephone calls, damaging property, following the applicant about

and repeatedly calling at her home or place of work ... filling car locks with superglue, writing anonymous letters and pressing one's face against a window whilst brandishing papers was held to amount to molestation". (Law Commission No.207, p.4, para 2.3)

"Prior to 1976, the only orders which could be made were interlocutory injunctions, re injunctions made once legal proceedings, such as divorce or action for damages had been commenced". (Bourlet, 1990:8) The 1976 provision enabled women to seek protection from their violent husbands without having to go through divorce proceedings, so there was a positive movement forward for women within civil law, but certainly a long way to go.

Applications for exclusion orders are made under s.2(i)(c) of the 1976 Act. S.2(2) extended the protection of the Act to "a man and woman who are living with each other in the same household as husband and wife".

"Though the DVMPA contained no specific guidelines as to how the court should exercise its jurisdiction ... although some case law developed". (Bird, 1996:3) The courts were also reluctant to grant injunctions *ex parte*, where there is a 'real immediate danger of serious injury or irreparable damage'. The courts have been extremely reluctant to grant them, a resistance reflected in the attitude of the Council of Circuit Judges:

"... it is a fundamental principle of natural justice that a court should not grant an order which involves a person's civil liberties and rights without giving them the opportunity to be heard". (see Home Affairs Committee 1993, p xxxvii)

As Edwards (1985) stated in her research "women have won some limited protection within civil law, from violence partners, husbands or cohabitantes with the introduction of the Domestic Proceedings and Magistrates Courts Act (1978)". (Edwards, 1985:195)

Though non-molestation injunctions and orders are not always the answer and do not always give security and protection required. As Ritchie (1979) observed through research with Women's Aid Refuge in Cambridge, they said "rather than inhibiting a man, obtaining the injunction provokes him to subject the women to further assaults". (Ritchie, 1979:1079)

2.4.2 Domestic Proceedings and Magistrates' Courts Act 1978

The Domestic Proceedings and Magistrates' Courts Act 1978 (DPMCA) provided injunctive relief in the Magistrates' Court, again to applicants who were married and living in the same household. The Act was very similar to the 1976 Act. The differences are that the powers of arrest under the 1978 Act are much more restrictive: mental cruelty or molestation is not enough, it must involve threatening or using violence (s.16(3)). Molestation was not included in the 1978 Act as magistrates were considered unable to adjudicate on matters requiring expert evidence. (para. 3.12., Law Com No. 77, 1976)

The law had a number of defects. The separation order was merely declaratory and was not enforceable. There was no power to evict a husband. It could not be used anyway if the complainant had committed adultery, unless the defendant had condoned it, connived at it or been guilty or wilful neglect or misconduct to it. "The DPMCA 1978 put an end to all this. It abolished the separation order and created two new remedies: the personal protection order and the eviction order". (Freeman, 1987:902)

Personal Protection Orders

(Law Com No. 77, para.3.13) describes personal protection orders as follows:

"Either party to a marriage may apply for a personal protection order, whether or not an application is made by that party for an order for financial provision (see s.16(1)). Both wives and husbands may apply: cohabitants may not".

Though even if conditions are satisfied that the respondent has used or threatened to use violence against the person or the applicant or a child or the family it is still up to the magistrate, who have a discretion whether to make a personal protection order or not. “Full personal protection orders can be granted with no expiry date but are normally made for a fixed term of two years”. (McWilliams and Spence, 1996:83)

Exclusion Orders

The exclusion order is provided in the power to exclude a violent party from the matrimonial home for a short time, obtainable under the Domestic Violence and Matrimonial Proceedings Act 1976 and Domestic Proceedings and Magistrates’ Courts Act 1978. [In Northern Ireland this comes under Art. 18 of the Domestic Proceedings (NI) Order 1980 and Family Law (Miscellaneous Provisions (NI) 1984]

Exclusion Orders have time limited attached to them. Parker (1985) feels that judges themselves undermine the effectiveness of both exclusion orders and arrest clauses by attaching time limited to them. Secondly, Parker suggests that the judiciary are spilt as to what evidence is required for a man to be excluded, often requiring more than the Act appears to specify. Thirdly, before a power of arrest is attached, judges again require evidence that actual bodily harm has been caused. (cited in Bourlet, 1990:9-10)

Figures in Northern Ireland from 1991-1994 are shown below. These figures indicate the scale of marital violence in Northern Ireland, they show a real and serious problem, which is growing.

Personal Protection and Exclusion Orders 1991-1994 Northern Ireland

Year	Personal Protection		Exclusion		Total	
	Interim	Full	Interim	Full	PP	EO
1991	1582	918	1535	837	2500	2372
1992	1800	1029	1764	929	2829	2693
1993	1962	1001	1954	968	2963	2922
1994	2190	889	2141	836	3079	2977

Source: Northern Ireland Court Information Service

These figures do not show the true figures of domestic violence as a crime as many incidents are unreported and many women are not granted personal protection orders or exclusion orders in the court, due to lack of evidence of violence.

Limitations to the 1978 Act (compared to 1976 Act) are:

- (1) it does not apply to cohabitants;
- (2) it is circumscribed by reference to ‘violence’ as apposed to ‘molestation’;
- (3) a respondent may not be restricted to a part of the matrimonial home;
- (4) a respondent cannot be barred from the neighbourhood of the matrimonial home;
- (5) powers to make emergency orders are restricted.

(Freeman, 1987:908)

2.4.3 The Matrimonial Homes Act 1983

This Act had extreme importance in relation to domestic violence and showed that the subject was being taken more seriously by policy makers. This Act provided yet another form of relief for people who were married, that is where one spouse has either a right of occupation, or a beneficial interest, and the other does not, but the first spouse gives the non-owning spouse statutory rights of occupation”. (Edwards, 1996:218)

The court may make such an order as it thinks, ‘just and reasonable having regard to (a) the conduct of the spouses in relation to each other and (b) otherwise their respective needs and

financial resources, (c) to the needs of any children and (d) to all the circumstances of the case' (s.1(3)) So there is a shift from the emphasis being on the protection of a party from violence or threat of violence. *Richards v Richards* [1984] AC 174 provided a precedent whereby an applicant must proceed under The Matrimonial Homes Act 1983 if she is seeking an ouster order and is married. Given the above criteria the women at risk may be at a disadvantage with this new legislation.

"It is arguable that protection of battered women, at least for the married spouse who seeks an ouster injunction, has now reverted to a pre-Davis v Johnson state, where the court is required by statute to take into account broader ranging criteria". (Edwards, 1996:219)

2.4.4 The Family Homes and Domestic Violence (Northern Ireland) Order 1998

This Order came into effect in April 1999 and has changed the law quite significantly. It is the statute, which will be used in most cases of domestic violence relating to civil law, though criminal law will still be used to protect victims of domestic violence.

Key Changes.

- Non-molestation orders prohibit molestation of an 'associated person' or a 'relevant child'.
- Can run for 12 months – previous maximum length was 6 months.
- Violent partner may be ordered to keep away from other areas e.g. the school which children attend, the street their school is located or abused partner's place or work etc.
- Occupation Orders – Courts confer occupation rights on one party and restrict occupation by another.
- Even if the home is in the violent partner's name, he or she can still be served with an occupation order and told to vacate the family home.
- In Northern Ireland breaches will be regarded as a criminal offence whereas in England and Wales will still be treated as a civil offence.
- Cohabitees will now be able to apply for these Orders.
- Courts will be given powers to remove a suspected abuser from the home rather than removing a child or children.
- The rights of the child are paramount in all these cases.

Northern Ireland Court Service	
Orders Applied for January to April 2000	
Non-Molestation	4299
Occupation	1756

Source: Northern Ireland Court Service, May 2000.

Domestic violence was seen as fitting into civil law better than criminal law. Civil cases were dealt with in family courts focusing on the individual and family problem rather than reaction to abusive behaviour. "Up until the mid 1980's, the police generally regarded domestic violence exclusively as a civil matter. But the civil law appeared largely ineffective in preventing the reoccurrence of violence". (Hoyle, 1998:221)

2.5 Criminal Law in Northern Ireland

Within the criminal justice system in Northern Ireland assaults upon women are dealt with under the Offences Against the Person Act of 1861. A man may be charged who violently assaults his partner.

Common Assault under (Section 42)

Maximum Sentence – 6 Months in Magistrates' Court

Maximum Sentence – 1 Year in Crown Court

Assault Occasioning Actual Bodily Harm (Section 47)

Maximum Sentence – 12 Months in Magistrates' Court

Maximum Sentence – 5 Years in Crown Court

In the Crown Court if intent is not proved the maximum sentence is 5 years imprisonment under Section 20. If intent is proved the maximum sentence is life imprisonment under Section 18.

2.6 Other Models of Justice Around the World

2.6.1 The Duluth Domestic Violence Intervention Project

This project originated in Duluth, Minnesota in 1980 and is widely regarded as the international leader in combating domestic violence. The Duluth Project has been at the forefront of pioneering techniques in developing an interagency cooperation. Ellen Pence is a director of the Duluth Domestic Violence Intervention Project (DAIP) and has carried out much research in the area of domestic violence.

“The remarkable success of the Duluth Project is primarily due to its achievement in altering the manner of the response of the police, courts and human services groups. The introduction of a co-ordinated criminal justice response brought closer ties between police, prosecutors and judges, and introduced a mandatory rehabilitation programme for abusers”. (Dempsey, 1998 Patrol, An Garda Siochana)

The police service had a major part to play in the success. They had the power to make arrests even though they did not actually witness the assault. As far as collecting date and criminal statistics, the police were required to make out detailed arrest reports and photograph injuries to help secure a conviction. The statistics showed a great success. Arrests of the aggressors increased by over 1,000 per cent to approximately 230 in 1981. In the years that followed, the arrest figures stayed consistently between 200-250 per cent per annum. The conviction rate in domestic abuse and assault cases also rose dramatically from 5 per cent in 1980 to about 80 per cent in 1998.¹

When an offender is convicted in court under the DAIP they can be dealt with by imprisonment, probation, or suspended sentence with mandatory attendance at batterers' group meeting. The Duluth Model has been duplicated throughout the USA and the world, including Canada, Australia and New Zealand. We can learn many lessons from Duluth and their criminal justice system.

“An intervention project is an interagency effort to change the climate of tolerance to domestic violence by institutionalising practices and policies which centralise the notion of accountability and promises victim's safety in the processing of criminal and civil relation domestic violence cases”. (Ellen Pence, 1997)²

2.6.2 An Garda Siochana: “Cork Domestic Violence Intervention Project”.

The Cork Domestic Violence Project began in 1990 and is heavily influenced by the work of the Duluth Programme. An Garda Siochana does have a pro-arrest policy and does have a published policy in relation to cases of domestic violence. The pro-arrest policy was enforced in 1993, so it did take some time for progress to happen. In the policy document, members are advised of procedures for arrest, court orders, bail, reporting, welfare of children and follow-up advice and support for the victim. The need for coordination with other agencies is also mentioned.

¹ Figures taken from 'Prevention Protection Provision' NIWAF Conference in 1997.

² Taken from Ellen Pence's speech at 'Prevention Protection Provision' NIWAF Conference in 1997.

2.6.3 The Quincy Model

In 1992 after a number of domestic violence murders, the Governor declared a domestic violence state of emergency in Massachusetts. Though one month later another death occurred because of the breakdown of communication that existed in the criminal justice system. Kristen Lardner was shot and killed at the age of 21 years by her ex-boyfriend, Michael Carter in May 1992. Through research by her father it was found that Carter had a criminal record right across Massachusetts. Shortly before her murder, Kristin Lardner had obtained a restraining order due to his violent behaviour. Carter was actually on probation, so in actual fact he should have been in jail at the time of the murder. The Massachusetts criminal justice system was in a state of chaos.

In 1992 Massachusetts introduced a Domestic Violence Registry Bill, with a Governors' Committee on Domestic Violence established which included government leaders, court representatives, police, social services and other voluntary and statutory organisations. It was the first state in America to develop a computerised domestic violence registry. It is extremely important as the registry contained information on restraining orders and violations of these orders. The information is available to the police and judicial system providing instant access about previous offences and is part of a criminal justice database. It is now an established interagency project, which has the combined efforts of police departments, district attorney's office, the courts probation department and the sheriff's office.

Once charged the perpetrator is assigned to probation and the role of the probation officer is to make sure that the conditions of probation are implemented. These conditions include being assigned to a batterer treatment programme. In Quincy the victim is an important part of the probation system unlike Northern Ireland where the victim does not have a place. This indeed provides greater support and comfort to the victim.

The great impact of the Quincy Model is without a doubt the record keeping where all statistics on domestic violence are kept accurately. Monica Williams (1997) states "that if we are going to do anything about domestic violence, we have to start keeping rigorous records".³

2.6.4 Leeds Domestic Violence: Cluster Court Project

Leeds Domestic Violence Cluster Court is the first of its kind in United Kingdom. The initiative directs domestic violence cases into one specifically designated Magistrates Court, where cases are heard on a specific day each week from June 1999 to June 2000. It involves an inter-agency approach and involves methods to monitor cases and outcomes and in turn designing training packages for all involved. "The advantages are seen as two fold: firstly, identifying and feeding domestic violence cases through to one destination in a way of ensuring quality of information and efficiency; secondly, such a process enables dedicated probation and support workers to be present and provide information that the court requires. Support in court includes help and legal advice for victims".⁴

The project will be evaluated to see if the aims and objectives of the project have been achieved. The evaluation will compare current cases going through the Magistrates' Court compared to those that have gone through the Leeds Domestic Violence Cluster Court.

2.7 Human Rights Law and Domestic Violence

"Domestic violence is an international problem. In most of the world's countries domestic violence is the cause of most attacks on women. In many countries it remains the main source of

³ Taken from speech at 'Prevention Protection Provision' NIWAF Conference in 1997.

⁴ Leeds Domestic Violence Cluster Court Project: Information Sheet – 1999.

violence against women. In many countries domestic violence is not treated seriously. It crosses borders, cultures and classes”. (Taken from Amnesty International – Human Rights are Women’s Rights”) Domestic violence is a human rights issue concerning social and criminal justice systems. It is a large-scale problem that concerns the whole community. It affects the welfare and lives of women and their children. Domestic violence is a crime.

When the Human Rights Act comes into force many elements will have to be taken into consideration in relation to the criminal justice system and domestic violence. The Human Rights legislation will give legal effect to convention rights. All police action, as well as all public authorities’ action must be compatible with the Convention. There are both positive and negative obligations.

Relevant Convention Rights

- Article 2 – The Right to Life
- Article 3 - Prohibition of Torture and Inhuman or Degrading Treatment
- Article 5 - The Right to Liberty
- Article 6 - The Right to a Fair Trial
- Article 8 - The Right to Respect for Private and Family Life
- Article 1(Protocol 1) – Right to Enjoy Property and Possessions

Unfortunately this research does not lend enough time to develop this area further. The reason for this section was to make the reader aware of the introduction of the Human Rights Act into our legislation and the inevitable impact on domestic violence cases. Our government and state will have new responsibility in relation to the protection of women, but it is of course too early to make comment if the Human Rights Act and the European Convention on Human Rights will make a positive impact for women who are victims of domestic violence.

The Inter-American Court of Human Rights referred to “the duty of the State Parties to organise governmental apparatus and, in general, all the structures through which public power is exercised. It continued:

“An illegal act which violates human rights and which is initially not directly imputable to a State (for example, because it is the act of a private person...) can lead to international responsibility of the State ... because of the lack of due diligence to prevent the violation or to respond to it ...This duty to prevent includes all those means of a legal, political, administrative and cultural nature that promote the protection of human rights and ensure that any violations are considered and treated as illegal acts”. (Charlesworth and Chinkin cited in Stubbs, 1994:17)

It is time for the government to debate its responsibility in relation to domestic violence and to empower women in their fight for the right to a fair trial in domestic violence cases.

7

CHAPTER THREE

WOMEN WHO KILL

CHAPTER THREE: WOMEN WHO KILL

3.0 Introduction

“I could always tell when he was going to be cranky, you know. I’d get this real sick feeling in my stomach and by the time he got up to the house, because we lived off the road a bit, I could always feel the fear building up in me. You know, like I was going to choke and my heart was in my mouth or something. I don’t know what it was like. And then I could hear the door slamming on the car, and so I knew that was it. I never knew what for, but I think sometimes someone might have picked on him at the club or something. But he’d never pick on anyone there himself. So he’d come out and take it out on me. But it’d usually start by name calling, then he’d start hitting me about the face and then he’s knock me to the floor and start kicking. Then he’d try to strangle, push you outside and try to shoot me”. (Cheryl)

After twenty years of this abuse, Cheryl (not her real name) shot and killed her husband. She was charged with murder, but found not guilty by reason of ‘diminished responsibility’ and convicted of manslaughter. Cheryl was sent to gaol. Evidence of her husband’s violence was introduced in Court, but the defence put forward by her lawyers was not that she was ‘not guilty’ or murder because of the abuse she had suffered, but because she was sick. So it was not the strain of living in a violence relationship for twenty years, but according to the psychiatrist, the disease of being unable to cope that made her kill her husband. (Bacon and Lansdowne cited in O’Donnell and Craney, 1982:67)

This is an example of a woman who suffered domestic violence at the hands of an abusive partner for many years and killed him. This case, unfortunately has many similar characteristics to other spousal homicides where the court is often shown a distorted picture of the events leading up to the murder and an incomplete picture is often shown which can have terrible consequences for the women on trial for murder.

Justice for Women is a feminist organisation set up to campaign against discrimination within the legal system towards women subjected to domestic violence. They have supported and campaigned rigorously on behalf of women who have fought back against men or even killed men, after suffering domestic violence in different forms including physical, sexual and emotional abuse. These women have been doubly victimised when treated unfairly by the legal system.

It is a huge problem that appears to be growing. Statistics show that the law in relation to women who kill in cases of domestic violence needs to be examined further and the three main defences to a charge of murder; provocation, self-defence and diminished responsibility need to be looked into further. Provocation and diminished responsibility have passed into statute law with the Homicide Act 1957.

“In each year from 1989 to 1998 on average 120 men have killed (former) wives or partners and as a part of ongoing domestic violence; and 10 women have killed violent men while resisting, defending themselves or attempting to survive that violence”. (London Justice for Women – Information Sheet) Justice is Women are campaigning for a statutory defence to the charge of murder which fully recognises the context of domestic violence. It has proposed a “new defence

to murder to be called ‘self-preservation’, which would be available to someone who kills a partner who has subjected them to continuing sexual and/or physical abuse, to the extent that they believe there is no future or protection from the abuse, and they are convinced that they will not continue to live while the aggressor is alive”. (Justice for Women)

These women survive the violence at home and then have to face the courts who are often unsympathetic to their case, unwilling to bring in an expert on domestic violence to explain in detail what the women are going through at the time. One such high profile case was that of Sara Thornton in 1990. Sara stabbed and killed her violent husband, as he lay drunk. She had endured repeated beatings and threats, had sought help from numerous agencies including the police and had finally charged him with assault. Sara was convicted of murder and sentenced to life imprisonment. The Judge said that Sara could have walked out or gone upstairs. Her first appeal was rejected and in July 1995 she was freed pending her Appeal in December. In June 1996, after a second trial lasting three weeks, the jury found her not guilty of murder, but guilty of manslaughter. She walked free having already served five year.

Another case was that of Emma Humphreys who was convicted of murder in 1985 and sentenced to be detained at her Majesty’s Pleasure. She killed her boyfriend with a single stab wound to forestall another rape and beating. In 1995 she was freed by the Court of Appeal and had served over ten years in prison. Sadly, Emma Humphreys died aged 30 on July 11, 1998 after an addition to high doses of medication. She was also severely anorexic and died in her sleep. This case created an important legal precedent, and her struggle gave hope to thousands of women experiencing domestic violence.⁵

3.1 Provocation

The law has long recognised that a cold-blooded killing should be distinguished from a killing that is provoked. However, the law of provocation has not developed in accordance with a clear guiding principle:

The limited of the doctrine have always, it would seem, been stretched here or constrained there, depending upon whether in the individual case, it appear just and merciful to extend its folds to cover the particular accused, or whether it appeared unjust to do so.

The defence of provocation may be seen as the law’s concession to ‘human frailty’ or alternatively as a recognition of the victims’ contributory fault in provoking the accused. In the dichotomy of defences, provocation is usually regarded as a partial excuse”. (Bradfield, 1998:73-74)

“The defence of provocation reflects a compromise in the criminal law. It is the result of a balancing of competing values and interests. On the one hand are the value we place on human

⁵ The Guardian, Tuesday July 14 1998 – 18 Obituaries.

life, society's interest in maintaining order, and the state's interest in its own preservation.” (Greene, 1989:145)

A successful defence of provocation reduces murder to manslaughter. Men who have been in a familial or intimate relationship with a woman they have killed have used provocation very successfully for many years. The man argues that he had been provoked by the woman, lost his temper and killed her in the heat of the moment. This has worked for many men in getting a reduced or even suspended sentence. A few examples of such cases include Joseph McGrail who killed his common-law wife, Marion Kennedy in 1991. He repeatedly kicked her in the stomach while she lay in a drunken stupor. He was convicted on manslaughter and was sentenced to two years suspended. Joseph McGrail walked free. The Judge expressed every sympathy for McGrail stating “this lady would have tried the patience of a saint.”

Singh Bisla strangled his ‘nagging’ wife Abnash to death to ‘shut her up’ after two hours of verbal abuse. He was convicted of manslaughter and got eighteen months suspended. Singh Bisla walked free. The Judge commented “you have suffered through no fault of your own a terrible existence for a very long time.

So provocation seems to have worked quite successfully for men in the past and has dramatically reduced their sentences allowing them to walk free. The excuses used by men in a court of law to avoid a murder conviction include; nagging, she was unfaithful, he thought she was unfaithful, she was going to leave him or was in the process of moving out. These defences to murder are male-biased and in most cases where men kill their partners or wives they have previously been violent towards them.

The legal system around the world has failed many women who have committed murder in response to domestic violence, and have attempted to defend a criminal charge. “The historical failure by courts to understand women’s resort to lethal self-help as self-defence has been explained by numerous commentators largely in terms of the many levels to which such women’s life experiences are either not heard or distorted by the legal system.” (Stubbs, 1994:193) So the legal system would appear to minimise the importance of domestic violence in the relationship before the murder. This comes back to a problem encountered by many women experiencing domestic violence where it was treated as a trivial and private matter. It was treated differently to other criminal assaults outside the home. Women tried for homicide usually are referred to as being ‘sick’ or ‘out of control’. In research by the Law Foundation of New South Wales this was very true. As Cheryl’s story points out at the beginning of this chapter.

3.2 Self-Defence

Traditionally self-defence has been used in cases of stranger assaults in a public place, usually where men are more at risk of violence. “Self-defence is rarely accepted in cases where women kill violent male partners. Like provocation, it relied on the concept of ‘reasonableness’, but further difficulties arise with the legal concepts of ‘imminence’ and ‘proportionality’”. (Justice for Women)

Imminence requires that the fatal act was to be a defensive response to a threat or assault, so a woman who waits until a time when she can 'catch him off guard' cannot claim self-defence. So many women are seen as 'cold blooded' and 'calculated killers' because they were premeditated. In the Bacon and Lansdowne (1982) study, six out of the sixteen cases studied, the husband had been asleep at the time his wife killed him, and in most of these there had been some delay, possibly some hours, from the last threat or assault offered by the man. In every case the women had used a weapon to kill her husband, and in most cases had not been threatened immediately before the incident by the husband with a weapon, other than his fists and feet. These women were not premeditated and cold-blooded killers, they were terrified to fight back during an assault and physically incapable of doing so. (cited in Stubbs, 1994)

The requirement of proportionality of force has been developed through case law as requiring the perpetrator to use a weapon before the defendant is justified in responding herself with a weapon. There is of course the difference of physical strength between a man and women; a man can kill with his fists and feet whereas a woman will always have to use a weapon to defend herself. So with self-defence comes a certain amount of gender bias in how self-defence has been applied to men and women and outcomes have been inconsistent.

“When a person is unlawfully assaulted in such a way as to cause reasonable apprehension of death or grievous bodily harm and the person assaulted believes on reasonable grounds that they cannot otherwise save themselves the use of deadly force against the assailant is justified.” (Code S.248)

Self-defence reflects a right of each person to protect themselves from unwanted force. “A killing in self-defence is excused, unless the self-defence was excessive, and a person who kills in self-defence is entitled to an acquittal.” (Bradfield, 1998:74) Self-defence, unlike provocation relies on the concept of reasonableness and again this usually works in favour of men who kill their partners: -

In 1998 Kevin Nutler killed Diana Miller whom he had repeatedly attacked throughout their relationship by stamping repeatedly on her head. He was convicted of manslaughter having pleaded lack of intent and sentenced to four and a half years imprisonment.

“Killing in self-defence is a fundamental right for men and nations ... but when women kill their husbands because they are afraid for their lives and those of their children, it's considered shocking-and criminal. According to the popular myth, a wan, mousy wife suddenly loses it and kills the hapless guy in his sleep. Or she hires a friend to blow him away and stuffs his body in a garbage can. It's all very weird and female.”⁶

⁶ Abigail Trafford, *Why Battered Women Kill: Self Defense, Not Revenge, Is Often the Motive*, Washington Post, February 26, 1991, Health (Magazine) p.6.

We have to remember that provocation and self-defence have their origins in regulating the behaviour of men. This is due to the fact that men commit most homicides. Courts did not recognise domestic violence or ‘battered women syndrome’ as a defence to murder. “There is a failure to appreciate the serious threat posed by domestic violence. The courts have not recognised the potentially fatal nature of domestic violence and accordingly have not had to reassess the circumstances in which society is willing to recognise killing as excused. ... The courts have trivialised the violence and explained the killings in terms of individual pathology. The killings were the result of a loss of self-control, rather than a all-encompassing and legitimate fear that must be the terror of living in a violent relationship.” (Bradfield, 1998:80)

Though there are scholars who believe that the law in relation to domestic violence is not gender bias and does not ignore the context of a woman’s defendant’s actions. “In the area of substantive law, most scholars focus on four aspects of self-defence jurisprudence: the definitions of the standard for measuring the reasonableness of the defendant’s actions, of the temporal proximity of danger facing the defendant, of the proportionality or force used to meet the threatened harm, and of the defendant’s duty to retreat. These factors are not in fact generally defined in a way that excludes consideration of the circumstances in which battered women kill.” (Maguigan, 1991:385)

3.3 Self-Preservation

This proposed defence is a partial defence, reducing the charge of murder to one of manslaughter. This proposed new defence has created a lot of interest amongst politicians and lawyers. Submissions have been prepared for the Home Affairs Select Committee (1993) and the Royal Commission on Criminal Justice (1993) and a decision is currently awaited from the House of Lords regarding the new Self-Preservation Defence.

If this goes through and becomes law it will have fulfilled several of the obligations stated in the Beijing Platform for Action, the document from the UN Fourth Conference on Women, to which the UK is a signatory, including:

- access to just and effective remedies;
- ensure that revictimisation of women victims of violence does not occur because of gender-insensitive laws or judicial or enforcement practices;
- provide women who are subjected to violence with access to mechanisms of justices and, as provided for by national legislation, to just and effective remedies for the harm they have suffered.

The statistics for women who kill in Northern Ireland is very difficult to access. This is the reason for inserting this extra paragraph in this research. Much more work needs to be carried regarding spousal homicide in Northern Ireland, and more clear statistics from both the police and the court service regarding it. This is a growing problem and also a hidden problem, which needs to be addressed.

The judiciary needs to be examined in relation to women who kill their abusive partners. Another example to finalise this chapter is that of a woman in Australia who killed her husband after many years of abuse. The woman lived in an isolated country house, some distance from the nearest small town and had been forced to cut off all contact with her family because of her husband's abuse. In passing sentence the judge commented:

“Given your domestic troubles, which as I find, were present but are not to be accepted in their entirety, the law itself is not without remedy and was not without remedy to you. There are friends; there are relations; there are community and Church and other avenues of advice; there are policemen; there are Chamber Magistrates; there are solicitors; there are means of protection in the community.” (cited in O'Donnell and Craney, 1982:123)

This judge did not know the dynamics of domestic violence or would not have made such a statement to the court. This is an area for further research and an area in which the judiciary needs to be challenged.

The proposed self-preservation defence

It shall be a defence to a charge of murder, reducing the charge of manslaughter, if:

- a) the deceased person had subjected the defendant or another person, with whom the defendant was at the time of the deceased person's death in a familial relationship, to continuing sexual or physical violence and
- b) the deceased person was at the time of their death or had at any time been in a familial or intimate relationship with the defendant or with the person as described in (a) above and
- c) the defendant believed that, but for their action, the deceased person would repeat the violence as stated above, so that their life or that of the person as described in (a) above was in danger.

2. In Section 1 above:

'familial' means related, cohabiting or living in the same household

'continuing' means any act of violence as defined below on more than one occasion

'violence' means any act that would constitute an offence under the Offences Against the Person Act 1861, the Sexual Offences Act 1975 (as amended), or the Protection from Harassment Act, 1997

'intimate' means any sexual relationship not included in the definition of 'familial'

'belief' must be reasonable in the context of ongoing abuse and violence

3. It shall be for the defence to raise the issue where the circumstances are as outlined in Section 1 above, and it will then be for the prosecution to prove that Section 1 does not apply.

(Taken from an article entitled "Self-preservation: A proposal for a new defence for those charged with murder in the context of domestic violence" by Jill Radford and Liz Kelly for Justice for Women)

CHAPTER FOUR

METHODOLOGY

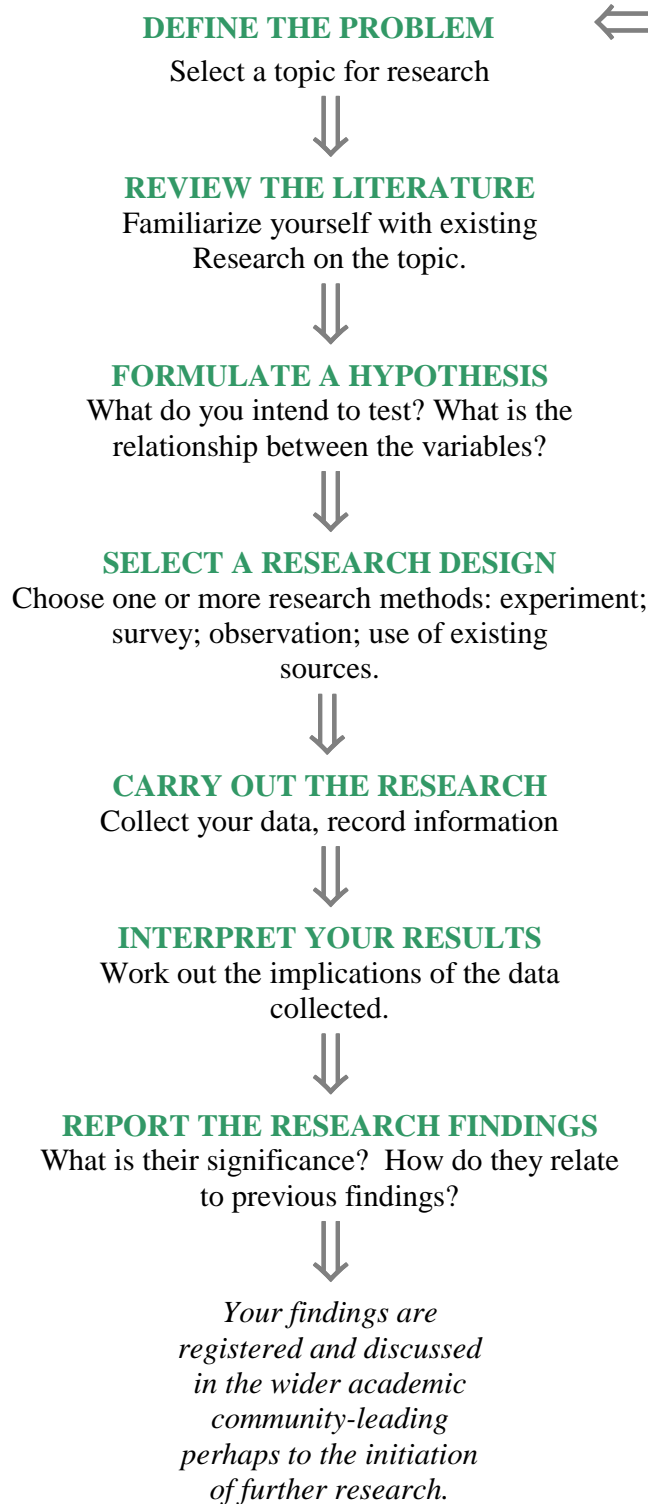
CHAPTER FOUR: METHODOLOGY

4.0 Introduction

This chapter contains an outline of the methodology and research design. There are many potential choices to make when developing a research design. It is about the best way to collect and organise data for individual research in order to achieve research objectives and aims. These of course vary depending on theoretical orientation and the timeframe allowed to carry out the research. (Sarantakos 1998:15) states the driving force behind any type of social research is its philosophical framework. This dictates not only the general perception of reality and social relations but also the type of methods and techniques available to researchers and the motives and aims of social research.

There are two main philosophical positions in the social sciences from which methods of research can be derived. These are positivism/quantitative research procedures and phenomenology/qualitative research procedures. Both research methods are useful tools through which is best for this research. The aims and objectives will have to be examined and thought out before deciding which procedure to employ.

As we can see from the following table “Steps in the research process” it is a guideline to research and this piece of work is following the basic format outlined in the table. It is a very simplistic table, but essential for anyone carrying out a piece of research at any academic level.



Steps in the research process (Giddens, 1994:678)

4.1 Quantitative Research

Quantitative research procedures are reflected by the positivist perspective. Positivism is linked with the work of A. Comte (1798-1857) and E. Durkheim (1858-1917) and was expanded later by other theorists either of the same school but a different branch (e.g. logical positivism, methodological positivism or neopositivism) or from another school of thought (e.g. functionalism and exchange theory). (Sarantakos, 1998:35)

(Haralambos, 1996:14) highlights that the positivist approach supposes that human behaviours can be objectively measured and such measurement is essential for explaining behaviour. This positivist approach places emphasis on behaviour that can be directly observed, and those factors that are not observable, such as meanings, feelings and purposes, are not particularly important.

“Although probing qualitative interviews will give a better picture of the nature and context of victimisation, they can only realistically be done on a small scale and are not, therefore, appropriate for estimating the extent of victimisation at a national level.” (HMSO, 1999)

An understanding of qualitative research is important when considering which research method to use. Coolican (1994:60) states that quantification means to measure on some numerical basis, if only by frequency. When we count or categorise, we quantify. Separating people according to astrological sign is quantification. So quantitative research methods presuppose that any data gathered is susceptible to numerical measurement.

“Because quantitative research works on the principles of natural sciences (i.e. objectivity, neutrality), research objects are seen as scientific objects and are treated as such. Respondents are therefore treated as objects and as informants or producers of data. But social sciences are not natural sciences, and respondents are not objects but partners and ‘experts’ whose views are sought.” Sarantakos (1998:44)

Cassell and Symon (1994:231) highlight how quantitative techniques use standardised procedures, large numbers of subjects, validate questionnaire measures and powerful computer packages to establish the statistical significance of associations between variables in tightly controlled environments. Bowman (1992) states “the quantitative approach not only misses the voice of the victim; it loses her perspective as well. Even amidst the seeming neutrality of statistics, the authors of these reports appear automatically to assume the male perspective from which to explain data”. (Bowman, 1992:204)

4.2 Qualitative Research

Qualitative methods might concentrate on exploring in much greater depth the nature and origins of peoples’ viewpoints. They are devices whereby the researcher can gain insights into the people and situations he/she requires. Qualitative research methods are more intrusive and less structured than quantitative research techniques and thus are appropriate when the research is exploratory in nature. Qualitative research draws on techniques from the social sciences particularly from psychology and has its roots in humanistic, phenomenological and relativist philosophies (Cooper, 1999).

Qualitative techniques emerge from phenomenological paradigms, which emphasises that it is impossible to measure objectively any aspect of human behaviour. Phenomenologists believe that it is impossible to produce factual data and it is therefore impossible to produce and check causal explanations. (Haralambos, 1996:16) They believe that humans do not react passively to external society, but actively create their own meanings through interaction. In comparison to quantitative data, qualitative data is usually seen as richer, more vital, as having greater depth and more likely to present a true picture of people’s experiences, attitudes and beliefs. (Haralambos,

1996:814) Qualitative data obtained through various methods of field research including interviews or observation which allow the researcher to obtain reasonings as to people's motivations and decision making. (Coolican, 1994:382)

Features of qualitative research	
Qualitative inquiry means:	
1.	Naturalistic inquiry, which studies real-world situations as they unfold.
2.	Inductive analysis in which the evaluator is immersed in the details and specific of data to discover important categories.
3.	Holistic inquiry, in that the whole phenomenon under study is understood as a complex system that is more than the sum of its parts.
4.	Qualitative data, detailed, thick description.
5.	Personal contact and insight, with the researcher getting close to the people, situation and phenomenon under study.
6.	Dynamic systems, with attention to process and change.
7.	Unique case orientation, assuming each case is special and unique.
8.	Context sensitivity, placing findings in a social, historical and temporal context.
9.	Empathetic neutrality, with the researcher passionately seeking understanding of the world, rather than either ephemeral objectivity or a subjectivity that undermines credibility.
10.	Design flexibility, with the evaluator open to adopting inquiry as understanding deepens.

Source: M. Patton (1990) *Qualitative Evaluation and Research Methods*, Newsbury Park, CA: Sage, pp.40-1.

4.3 Primary Research Aims and Objectives

At this point I would reiterate my research aims and objectives as outlines in Chapter One, as this Chapter continues to describe the method used to achieve these aims and objectives.

4.3.1 Overall Aim

“Do women get a fair trial in cases of domestic violence in connection to the civil and criminal justice system”.

4.3.2 Objectives

- 1) To assess the attitudes and opinions of women who have accessed the civil and criminal justice system and to ascertain positive and negative points of same.
- 2) To examine the attitudes and opinions of court service, lawyers and barristers in relation to domestic violence cases.
- 3) To investigate the current attitude of the police service in cases of domestic violence and how, if any, their service is developing.

4.4 Rationale for Using Qualitative Research

For the purposes of this study, the researcher has chose to employ qualitative research techniques. (Coolican, 1994:382) cites this method allows a researcher to analyse data for its meaning and the unique qualities and insights it provides. (Haralambos, 1994:814) suggests that qualitative research renders richer data, as it provides a detailed analysis of peoples experiences, attitudes and beliefs. Quantitative research, would allow for the collection of statistical data and

consequently the formulation of apparent correlation's between different social facts. (Haralambos, 1996:809) This research is concerned with individual attitudes and opinions of the civil and criminal justice system in Northern Ireland, the application of qualitative techniques including questionnaires and interviews would presume to be more appropriate in the course of this study.

4.5 Research Procedure

My research consisted of in-depth interviews and questionnaires. The interviews were on the same format of the questionnaires. Qualitative research through interview surveys, according to King 1992, (cited by Cassell and Symon, 1994:14) is a highly flexible method producing great depth of knowledge ... and was consequently used as the principle method of research in this study. As it would be impractical to engage in interviews with all of the sample, several people were chosen from each category and were interviewed.

The questionnaires were faxed, posted and e-mailed to the remaining group of people. The questionnaire was sent with a covering letter outlining the research, explaining the procedure and assuring confidentiality to all participants. These open-ended questionnaires were designed to provide the researcher with a more in-depth understanding of the attitudes and opinions of women who are victims of domestic violence who have accessed the civil and criminal justice system and the attitudes and opinions of the civil and criminal justice system towards the women themselves.

In an attempt to improve response rates, the researcher contacted the organisations and individuals in advance to make them aware of the research and enclosed a self addressed envelope with all postal questionnaires. As expected not all of the questionnaires were returned and a response rate of just over 50 per cent was achieved, which nevertheless allows for a detailed and factual piece of research to be published.

Reinharz (1992), argues that interviewing is 'particularly suited to female researchers' and feels that it 'draws on skills in the traditional female role' (p.20). She goes on to say that this method is very useful when conducted by a woman; for a woman to be understood it may be necessary for her to be interviewed by a woman (p.23). (cited in Sarantakos, 1998:246)

This was particularly useful when I was interviewing woman who had suffered domestic violence and this is also evident in policing where women are given the opportunity to speak to a female police officer. It is also evident within the court system whereby victims feel more comfortable being represented by a female solicitor and barrister.

4.5.1 Sampling

"Sampling enables the researcher to study a relatively small number of units in place of the target population, and to obtain data that are representative of the whole target population. In most cases, however, researchers opt for an incomplete coverage, and study only a small proportion of the population, a sample". (Sarankatos, 1998:139)

For the research in this dissertation random samples were selected in relation to questionnaires 1, 3 and 4. In relation to questionnaire 2 the women were selected by workers who dealt with them as victims and felt they were ready to talk and willing to fill out a questionnaire. So this was up to the workers themselves to select women who were no longer in crisis. The women who were interviewed were selected by workers within Women's Aid who felt they were ready to talk to me and agreed to do so on a confidential basis.

The sampling process was considered very appropriate as the researcher had to make sure the women felt comfortable and not at risk. "The researcher should always be concerned with the

welfare of the respondent, including mental and physical health and safety. The researcher should also avoid questions or issues that may cause embarrassment, guilt, discomfort, hazards or risks to the respondent. (Bailey, 1982, 1988; Sproul, 1988; Vlahos, 184: cited in Sarantakos, 1998:23)

- A random selection of women's organisations dealing with women who are victims of domestic violence in both urban and rural areas of Northern Ireland was used. It was very difficult to access women who have been victims of domestic violence, so research was focused on refuge workers, aftercare workers, counsellors and support workers for women who have been victims of domestic violence and work closely with them.
- Women who were victims of domestic violence were selected for the research by people who work closely with them, and felt they were ready to discuss the matter. They forwarded the questionnaires to them and I interviewed two women personally.
- A random selection of solicitors in both urban and rural areas of Northern Ireland and both male and female were sent questionnaires. I interviewed several solicitors in the Belfast area using the same format as the questionnaire.
- A random selection of both Barristers-at-law and Queen's Counsel, both male and female were sent to the Bar Library, Royal Courts of Justice, Chichester Street, Belfast were sent questionnaires. I interviewed several barristers in the Belfast area using the same format as the questionnaire.
- Two domestic violence officers were contacted by telephone and agreed to participate in a interview with myself using the format of the questionnaire. They then forwarded questionnaires on to other domestic violence officers within the Royal Ulster Constabulary.

I attended Dunmurry Police Station and interviewed two domestic violence officers, one from Dunmurry RUC Station and one from Woodbourne RUC Station. The questionnaire was used as a structure for the interview, though other areas were developed and discussed during the interview process.

As the population under investigation can not all be interviewed, the population has been chosen according to stratified random sampling. (O'Donnell, 1992:27) explains this sampling design: "Stratification means that before any sample selection takes place, the population is divided into a number of mutually exclusive groups or 'strata' – each stratum is then sampled randomly". (O'Donnell, 1992: 27)

Within this research the groups were stratified into different professions, as listed above and then randomly selected from the telephone book, legal directory and community services directory. According to (O'Donnell, 1992:28) this technique of stratified random sampling has a greater chance of being representative of the total population than a sample, which is merely random.

4.5.2 Questionnaire and Interview Technique

Questionnaire 1 – Women's organisations.

Questionnaire 2 – Victims of domestic violence.

Questionnaire 3 – Solicitors.

Questionnaire 4 – Barristers and Queen's Counsel.

Questionnaire 5 – Domestic Violence Officers in the Royal Ulster Constabulary.

The questionnaires were designed to cover the areas of the police, lawyers, judges and their attitudes towards women and the civil and criminal justice system and were slightly adapted to

relate specifically to each sample selected and five questionnaires were developed which are shown in Appendices 1-5.

They consisted of both fixed and open-ended questions. (Coolican, 1994:137) states that open-ended questions have several advantages:

1. They deliver richer information.
2. The respondent does not feel frustrated by the constraint imposed with a fixed choice answer.
3. There is less chance of ambiguity, since the respondent says what he or she thinks and doesn't have to interpret a statement and then agree or disagree with it.
4. The questioning is more realistic. We rarely have simply to agree to disagree, or say how strongly, without giving our reasons.

The interviews were informal and as stated previously followed the same format of the questionnaires. The researcher felt it would be useful to select random members of the sample to meet personally and take part in in-depth interview surveys and gain a truer picture of people's attitudes. When interviewing, (O'Donnell, 1992:30) highlighted that a researcher must enter an interview with a large degree of flexibility, allowing the interview to be fairly spontaneous; although the interviewer must shape the course of the interview to a certain degree, by addressing pre-determined topic areas.

(Babbie, 1994:265) notes that there are a number of advantages to interviewing as a social research tool:

- Firstly, interview surveys typically attain higher response rates, as often respondents seem more reluctant to turn down a pre-arranged interview. Also interviewing is a research technique accepted by most participants.
- Within the context of a questionnaire, the presence of an interviewer generally decreases the number of "don't knows" and "no answers".
- Interviewers can also guard against confusing questions as they can clarify matters, thereby obtaining relevant responses.
- The interview can observe as well as ask questions – e.g. observations can be made regarding quality of the dwelling, the respondents general reaction to the study, and so forth.
- The interviewee has the opportunity to fully express their views, and it allows for the possibility of new themes to emerge.

The above characteristics outlined by Babbie (1994) make the use of interviews in this particular research useful and extremely practical. Although Babbie (1994) is keen to highlight that the researcher must be aware of the pitfalls, which accompany this research procedure. These pitfalls include the effect of the interviewer on the respondent and interview bias which can cause major problems in the interview process. (Cassell and Symon, 1994:14) suggested that interviews allow the researcher to focus on experiences, such as discrimination or examine broader issues such as organisational culture, in order to receive a clear understanding of individual perceptions.

In this study, interviews allow the researcher to obtain detailed information on the area of the civil and criminal justice system in relation to domestic violence cases with the interviewees. In addition, the open-ended questionnaires sent to the remaining organisations and individuals should further enhance an understanding of the attitudes and opinions of women who have accessed the civil and criminal justice system and in turn the attitudes and opinions of the civil and criminal justice system towards the women as victims of domestic violence.

4.6 Data Analysis

Both the interviews and questionnaires employed in this study, will be analysed according to the emergent themes. As qualitative research procedures have been employed, it is vital that the attitudes and opinions which emerge concerning the civil and criminal justice system, are analysed further, and that the revelation of trends are fully explained. The findings of the study will be displayed in a written context, rather than statistically, though within the context of qualitative research, certain statistical references can be made.

CHAPTER FIVE

ANALYSIS AND FINDINGS

CHAPTER FIVE: ANALYSIS AND FINDINGS

5.0 Introduction

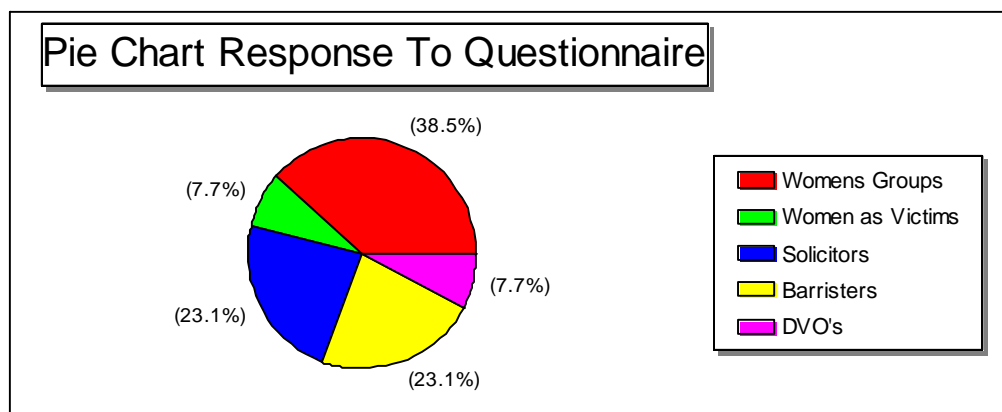
This chapter is concerned with the findings obtained from the interviews and questionnaires carried out as described in the previous chapter. The framework for the analysis shall be based on the questionnaires as seen in Appendix one to four, and on the research aims and objectives previously illustrated. This chapter will state the findings, and various themes and trends that emerged from the research.

5.1 Analysis of the Qualitative Data

The method chosen to analyse the data, was to organise the data by issues and themes, based on the structure of the questionnaire and the research aims and objectives. Although the interviews and questionnaires were altered slightly for each category the underlying issues and themes were identifiable in all the interviews and questionnaires. Figure 5.1 illustrates the response rate to questionnaires by the various groups.

Figure 5.1 Pie Chart illustrating response rates to questionnaires

5.2 Findings



The following section of findings are organised according to the issues and themes previously described.

5.3 Women's Groups and Organisations

Approximately 50 questionnaires were forwarded to women's organisations and groups in Northern Ireland. Three respondents were interviewed using the same format as questionnaire 1. Of the questionnaires distributed 27 were returned. This represented a return rate of 54%. Five questionnaires were received from women as victims of domestic violence. Their response is included in this section as it was such a small response rate and the answers were in line with the questionnaires forwarded to women's groups and organisations.

5.3.1 Police

Q.1. Do you feel in your experience, dealing with women who are victims of domestic violence, that the police are a first point of contact for most women? Please explain your reason.

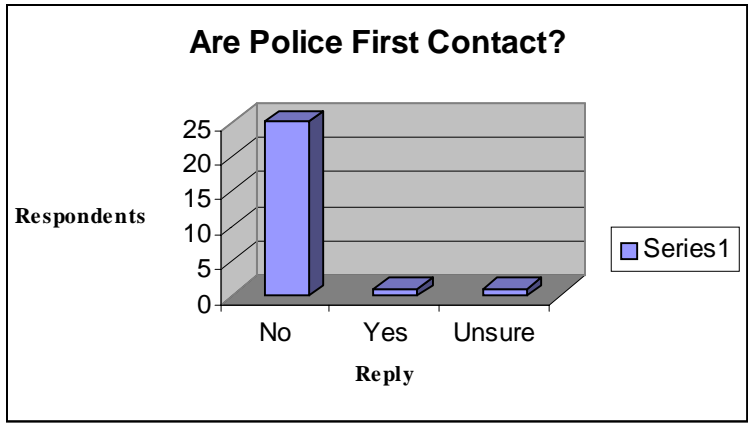


Figure 5.3.1 Bar Chart illustrating response rate to police being first contact for women who are victims of domestic violence

The police are definitely not seen to be the first point of contact for women. Quite a few respondents felt this was due to the political situation in Northern Ireland and this is illustrated in Figure 5.3.1 above.

Respondent three:

“In our experience police have not been a first point of contact, this is mainly to do with the political climate in this area (South Armagh)”

Q.2. How do you feel women are being treated when the police are called to an assault on a woman in the home?

In general the response to question 2 was mixed. Some women stating that they have found the police response to be good. Other respondents state that they are still getting mixed feedback from victims of domestic violence regarding police treatment. Though the evident trend emerging from this question was that there was definite improvement in police treatment. Five questionnaires complained of long delays in attending domestic violence incidents. Many questionnaires also mentioned it was up to individual police officers attitudes and personal prejudices towards domestic violence incidents.

One refuge worker in Women’s Aid states:

“I am still getting mixed feedback from women. Some women relate positive, supportive experiences, some relate negative, non-supportive experiences. Feedback I’m being given generally relates to individual officers personal attitudes”

Q.3 Do the police give the women options and information?

Figure 5.3.1(a) shows the overall reaction to this question which was mixed and it appeared that there was a good response from the police towards the women and giving them appropriate information.

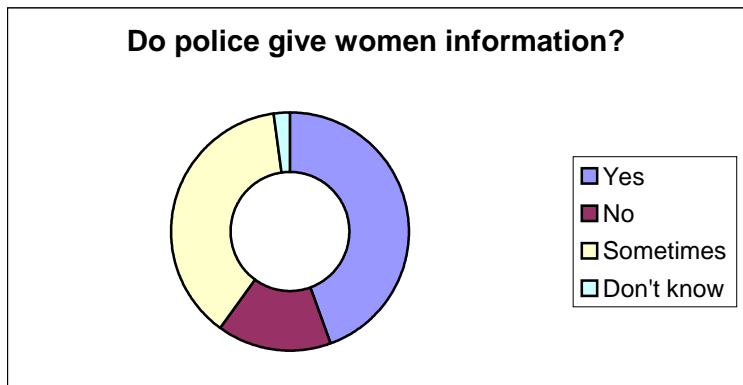


Figure 5.3.1(a) Chart illustrating if police gave options and information to women who are victims of domestic violence.

5.3.2 Police Training

The general consensus was that police training has helped the police to understand domestic violence better and understand a women's fear better. Training is believed to be essential in keeping up to date with changing legislation and creating a greater understanding of domestic violence within the police force.

Q.4. In your experience has police training in domestic violence made an impact on their treatment of domestic violence incidents? Please explain your answer.

One of the respondents states:

"Most certainly. Officers now know how potentially dangerous a situation can be for a woman and training has made them more sympathetic to women's plight"

Q.5. How do you believe training could be improved to create a better understanding of domestic violence within the police force?

"It should continue and be given to all officers, not just those who have been designated"

Only constables have to attend compulsory domestic violence training

There appears to be general consensus that training needs to be ongoing and is essential for improvement in policing of domestic violence incidents.

5.3.3 Domestic Violence Officers

Q.6. In what way have the introduction of Domestic Violence Officers in the police force had an impact of policing of domestic violence in Northern Ireland?

The implication of introducing Domestic Violence Officers to the police force is seen to have had a major impact on policing of domestic violence in Northern Ireland. Domestic violence officers are seen to be a good development within domestic violence and have been seen to heighten the seriousness in which domestic violence is beginning to be treated.

Major trends emerging are that the local Domestic Violence Officer is not always easy to contact and that there are not enough of them, especially in rural area. There is a definite improvement with the introduction of Domestic Violence Officers and when they make follow up calls they give women more confidence in the system.

There was a very interesting response from a Team Leader with Women's Aid:

"It has made an issue of domestic violence. There is one person to contact rather than having to deal with numerous officers. The impact does depend on how strong the domestic violence officer is, so the effect can vary from station to station. I get the feeling theirs is not any easy task within the force and can suffer quite a lot of ridicule and resentment from colleagues"

Q.7. Do police treat domestic violence as seriously as other forms of violence?

This question was designed to find out if people thought domestic violence was treated differently to other forms of violence. As domestic violence is seen to be taken more seriously by the police now, it was interesting to note the response to this question.

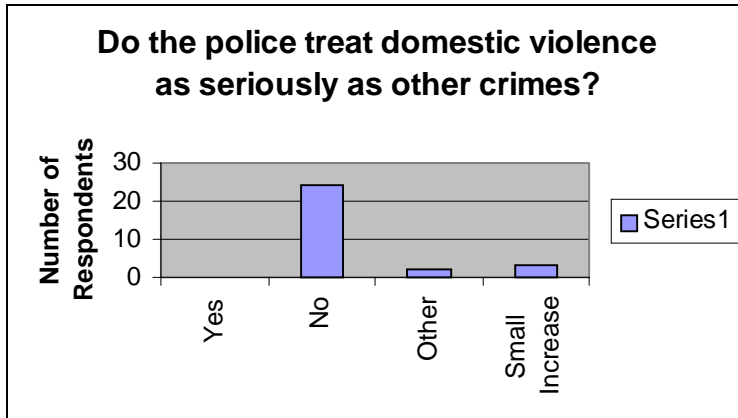


Figure 5.3.3 Graph illustrates respondents view on how the police treat domestic violence compared to other forms of violence.

Figure 5.3.3 shows that from the experiences of women in crisis that the police do not treat domestic violence as seriously as other forms of violence and this is evident .

5.3.4 Family Homes & Domestic Violence (NI) Order 1998

Q.8. With the recent introduction of the Family Homes and Domestic Violence (NI) Order 1998 do you think it has had a positive impact for domestic violence incidents?

This question was examining the new legislation which came into place in April of last year. The researcher was aiming to see if there had been any change since the introduction of the new legislation.

The general response to question 8 in relation to the new legislation was that it is really too early to say as it has only been in place a short time and if it was implemented fully it should make a difference to both women and children’s lives.

5.3.5 Solicitors and Barristers

This section was to examine the attitudes and opinions regarding solicitors and barristers in Northern Ireland in relation to acting in cases of domestic violence.

Q.11. Are you aware of solicitors who are specialists in domestic violence in your area?

The response to this question was unanimous. Each of the 27 respondents was aware of solicitors in their local area who specialised in domestic violence cases. The solicitors that specialise are seen to provide a good service to women and are knowledgeable about current and changing legislation in relation to domestic violence.

Q.12. In your experience do women feel that solicitors are knowledgeable about current changes in domestic violence legislation, specifically the Family Homes and Domestic Violence (NI) Order 1998?

Most respondents felt that the solicitors who they knew specialised in domestic violence were also knowledgeable about new legislation.

Q.13. Why do you think solicitors would rather stay away from cases of domestic violence?

The answers to this included problems such as:

- Can be long drawn out cases
- Not much prestige attached to domestic violence cases
- Personal prejudices
- Most domestic violence cases are Legal Aid

- Hard to prove emotional abuse

Q.14. If solicitors had to undertake some form of domestic violence training when they are qualifying, do you feel that they would be more sympathetic to women in domestic violence cases?

All respondents felt that domestic violence training should be compulsory when qualifying in law and it would improve their attitude towards women and have a greater understanding of domestic violence. Training for solicitors and barristers may prevent negative encounters in cases of domestic violence as examined in question 15.

Many respondents did not find solicitors to be sensitive and having little knowledge of what the women is going through. I feel this is the most evident trend in all the replies and one which causes much concern. There is an evident lack of understanding of domestic violence and its complexities within the legal system.

One respondent states:

“Lack of understanding of the dynamics of domestic violence and impact on women. Solicitors being too directive – no choices given to women – moving forward too slowly – solicitors advising women to remain in the family home until financial agreements finalised – irregardless of safety issues and issues of emotional abuse – for her and her children”

Q.15. What kind of problems have you or women you have dealt with encountered (if any) when dealing with solicitors in cases of domestic violence?

One respondent states:

“A women may have to change solicitors several times before she finds one who has an understanding of domestic violence and its complexities”

There is of course positive feedback from women regarding solicitors who have an empathetic understanding of a women’s plight in relation to domestic violence cases and actively work for the women through the court process. These solicitors are generally keen to attend training and gain further knowledge of domestic violence.

This reflects current literature on the role of solicitors and barristers in relation to domestic violence. Training is very important and a greater knowledge of domestic violence – though not always possible if they are unwilling to attend and this can be a problem as it is not a compulsory subject at university.

A response from a refuge worker to question 14 reiterates this fact:

“Yes – very strongly. About 18 months ago myself and colleague held training for solicitors in our area. Although the overall response and turn out was poor, the solicitors who attended- stated the learnings were significant for them. As a refuge worker, I could see the benefits for our women”

5.3.5 Judges

Again like the literature in such research as that of Helena Kennedy (1992) show that judges are very variable in decisions in relation to domestic violence cases. There appears to be a lack of consistency across the board in relation to the granting of non-molestation and occupation orders and the sentencing in relation to criminal cases. “If the judges can control the legal profession as well as the courtroom, and can influence the advance or otherwise of barristers, this is inevitably likely at times to have an impact on the conduct of cases. Forceful advocacy is suspect in some parts of the contemporary Bar, but happily most of the young people who enter the profession and practise criminal law are vigorous in championing their clients’ cases”. (Kennedy, 1992:7)

Q.17. In your experience of dealing with women who have gone to court to press charges in cases of domestic violence do you consider that the judge has been fair in his final decision?

The response to the above question was unanimous with all respondents answering “No”. A typical response as follows:

“Very variable. Judges are a law unto themselves? Arguably the changes in the law have not been reflected by judges decisions. There appears to be no consistency”

Q.18. Do women feel that Orders – such as non-molestation order and occupancy orders are granted fairly by judges?

One respondent states:

“Depends on the individual judge”

Q.19. Do women feel that assault charges such as GBH, Wounding with Intent and Common Assault are dealt within an appropriate time frame and with appropriate lengths of sentencing when they reach court?

“Women sometimes have to wait a very long time before a final hearing. (This can have the effect of withdrawing charges, it not mattering any more, wanting to move on, have got back with partners etc.) It is a trauma so my guess is the time frame can be too lengthy for women. Support essential”

Question 18 and 19 were also answered unanimously with an overwhelming feeling that orders are not granted fairly and that other criminal charges are not dealt with in an appropriate time frame and if sentencing takes place it is never enough.

5.3.6 Women Who Kill

This is a very topical subject at the moment and there is always much media attention around such cases. Groups such as Southall Black Sisters and Justice for Women have highlighted the problem surrounding the legal definitions of provocation, diminished responsibility and self-defence. Not surprisingly all the respondents answered yes to question 20.

Q.20 “In six out of seven murder cases in Northern Ireland from 1989-1994 in which women were charged with the murder of their male partners, there was evidence of a previous history of domestic violence. These cases all led to manslaughter charges and one acquittal.” (McWilliams and Spence, 1996 :60) This makes us think that Northern Ireland is very different from the rest of the United Kingdom and indeed the rest of the world. In your experience do you think sentencing is too harsh in relation to women who kill their partners and indeed inconsistent?

An advice and support worker states:

“If women have experienced domestic violence over the years and murder their partner due to the consequence of that abuse and are then sentenced to long imprisonment then it is too harsh. Would like to see the law changed – the provocation law. Yes, there is inconsistency, but reflective of all response to domestic violence? I would think that the re-experiencing of trauma over a period of years would affect the person psychologically”

Q.21. In relation to men who kill, there is also quite a high record of manslaughter prosecutions. A verdict of manslaughter is often returned on the grounds of diminished responsibility or provocation. Provocation has often been seen as ‘persistent nagging’ or ‘sexual taunts’. Other examples of leniency include extra-marital relationships, which have been understood to constitute provocation and have worked to the advantage of men.

(McWilliams and Spence, 1996 :57) How do you feel about men being given more lenient sentences in relation to killing a partner where there has been a history of violence against his partner?

An outreach worker and counsellor/support worker both state:

“In our experience men have been given more lenient sentences. But provocation for persistent nagging and the effects of continuous domestic abuse, possibly for years does not seem relevant grounds for such leniency in cases where men murder or such harshness in cases where women murder”
Also in many cases men will be advised to plead guilty which considerably reduces sentencing and means evidence from family, police and other professionals who where aware of circumstances do not get to put forward dead women’s case”

Overall the response to the questionnaires was very good and most of the women were thinking along the same lines. Many interesting trends emerged from the research including the need for more domestic violence liaison units in rural areas and a general need for improvement of police response, again a point reiterated in rural areas. It was generally felt that training was essential for the police force and the legal profession as a whole to educate awareness of domestic violence which is paramount for professionals dealing with women and children who are victims of domestic violence.

5.4 Solicitors and Barristers

Approximately 50 questionnaires were forwarded to solicitors and barristers in Northern Ireland. Two respondents were interviewed using the same format as questionnaire 3. Of the questionnaires distributed 30 were returned. This represented a return rate of 60% which was very good and more than expected. Figure 5.4.1 shows the gender composition of the respondents.

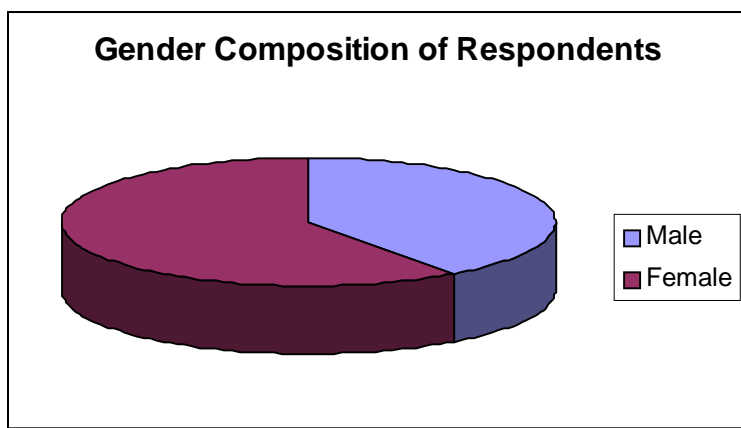


Figure 5.4 showing the gender composition of the respondents.

The average age of all the respondents was 35-40 years old and the average practising time for both solicitors and barristers was 7 years.

Q.1. Do you ever do any work for women in cases of domestic violence?

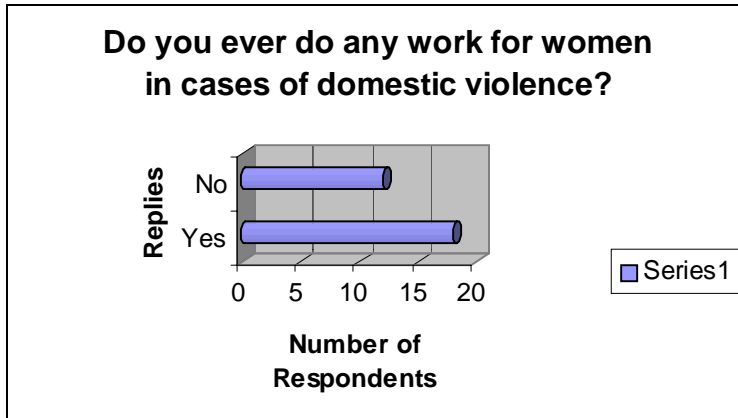


Figure 5.4.1 showing the response to dealing with domestic violence cases

Figure 5.4.1 shows that the majority of respondents do work for women in cases of domestic violence, though quite a large amount also stay away from this type of legal work.

Q.2. Are you aware of solicitors who are specialists in domestic violence?

Most of the solicitors and barristers were aware of other practitioners who were specialists in domestic violence, though several mentioned that they were only aware of themselves in the local areas, this response was from mainly rural solicitors.

Q.3. Are you knowledgeable about current changes in domestic violence legislation, specifically the Family Homes and Domestic Violence (NI) Act?

The response was that they were all knowledgeable about the new legislation. Though two respondents did state that they had no knowledge of the new legislation.

Q.4. Why do you think solicitors would rather stay away from cases of domestic violence?

The main reasons seem to be that domestic violence cases are very time consuming and often a women when telling her story can break down and become very emotional. The solicitor or barrister does not feel it is their role to comfort or counsel their client.

One solicitor states:

“I think many solicitors are turned off by what they perceive to be the “emotional grief” that goes along with this type of work. I often get asked by colleagues “how do you put up with that crying and moaning all day?” They see this work as more counselling than being a lawyer.

Other respondents made comments such as:

- Very time consuming work
- Not financially rewarding
- Not cost effective
- Soul destroying
- Having to listen to people for too long
- Lack of recognition
- Problem with obstructive partners
- Distraught clients

5.4.1 Training

Q.5. If solicitors had to undertake some form of domestic violence training when they are qualifying, do you feel that they would be more sympathetic to women in domestic violence cases?

There was an overwhelming response to this question. The majority of the respondents felt that training was unnecessary and would not change their attitude towards domestic violence. I feel the research here was attempting to grasp if solicitors and barristers were willing to undergo training because I feel that training would be beneficial to the legal system in that they would have a clearer picture of what a woman goes through. They would then be able then to give a better service to her. They would be more knowledgeable and then be able to be more empathetic and create a better understanding of the problem.

In response to question 5, one respondent states:

“Not necessarily, training is not the same as real life experiences. It would have to be more personal. If solicitors actually experienced domestic violence in private life – may make a difference in their outlook”

Q.6. Have you ever undertaken any formal training in domestic violence?

No respondents had undertaken any formal training in domestic violence and only one solicitor asked about the availability of same.

“No, but I would be quite interested in pursuing this. If you know of any such programmes could you let me know?”

This particular solicitor has actually got involved in the formation of a Justice for Women group in Northern Ireland and has expressed her interest in acting for them in an advisory role, if the group gets up and running in Northern Ireland.

Q.7. What kind of problems would you feel you might encounter if you were dealing with a domestic violence case?

The problems encountered were outlined and repeated as in question 4.

Q.8. Would you feel that you have any positive feelings towards working with women who have been victims of domestic violence?

This question was aimed at job satisfaction the respondents may feel through accessing services for women and helping them through the legal process. The process which most women feel doubly victimises them. Though the majority of the respondents said they had no positive feelings towards this work. One barrister stated in response to question 8:

“Why is this questionnaire dealing with women? 95% of my work is for men and they can be victims too”

The questionnaire did state at the beginning that the research was concerned with women and domestic violence.

The majority of the respondents felt that judges have been fair in their final judgements and sentencing. Most literature would state otherwise and would show that judges are very inconsistent in their sentencing of criminal offences and also inconsistent in their granting of orders.

5.4.2 Judges

The response to question 9 in this section was very interesting. The literature reviewed quite strongly stated that judges had been inconsistent and sentences were too light for perpetrators

of domestic violence. This does not come across in the research collected and the response actually went to the other extreme, as one respondent was concerned that the law was too favourable to women.

Q.9. In your experience of dealing with women who have gone to court to press charges in cases of domestic violence, do you consider that the judge has been fair in his final decision?

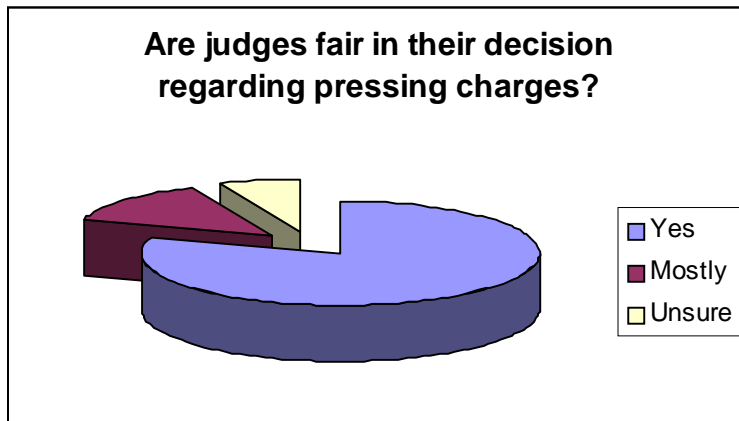


Figure 5.4.2 illustrating the breakdown of responses in relation to question 9

Q.10 Do you feel that Orders – such as non-molestation order and occupation orders are granted fairly by judges?

The response to these questions again gained the same reaction as that of question 9 and most of the respondents felt that the judges were fair in all their decisions. One solicitor states:

“In general, yes. I do feel however, that there is a degree of inconsistency between the magistrates on smaller points of the orders which can, nevertheless be very significant for the applicant e.g. exclusion zones and whether or not they can be granted ex-parte; the duration of final orders whether or not they should only be made for 18 months or until further notice”

This respondent was then admitting that there are some loopholes in the law especially in the granting of orders. This is very evident through my work at Women’s Aid that women are finding loopholes in the new legislation and sometimes finding it difficult to be granted an occupation order or a non-molestation order.

Q.11. Do you feel that assault charges such as GBH, Wounding with Intent and Common Assault are dealt with in an appropriate time frame and with appropriate lengths of sentencing when they reach court?

This question sparked a wide response which was closer and comparable to the answers given by the women’s organisations – agreeing that the sentencing is inconsistent and that the time frame is too long.

One respondent states:

“No. The length of time elapsing between commission of offence, charge and trial can place immense pressure on women particularly and can frequently lead to intimidation and threats directly or indirectly”

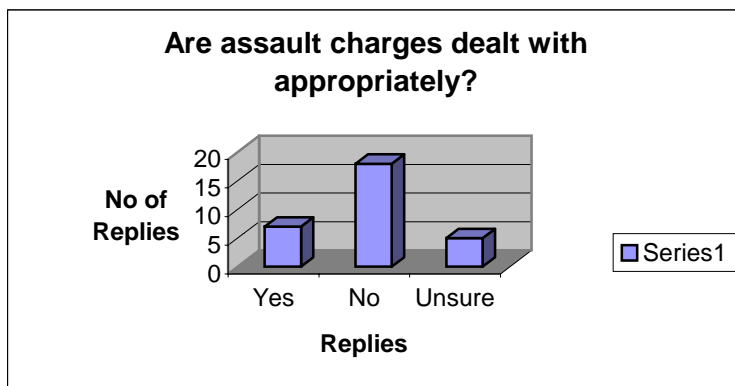


Figure 5.4.2.1 illustrates the response to charges being dealt with in an appropriate time frame and appropriate length of sentence

Figure 5.4.2.1 shows that the response to question 11 was mixed and was very accurate to real experiences of many women who are victims of domestic violence. This is an area in the criminal justice system, which needs to be examined further. The whole area of the court is a topic for more detailed research regarding women’s treatment in court including appropriate facilities and their participation in trials in relation to testifying etc.

5.4.3 Women Who Kill

The response to the two questions were very mixed with many respondents feeling that there was no real evidence of inconsistency in Northern Ireland, but in fact this has been proven in research carried out. There was a real tension surrounding these questions and a reluctance to answer both was quite evident. Several respondents left this section blank. A few respondents felt they were not knowledgeable enough to answer them and felt they were not

equipped with the right information to answer both questions. Again I feel this reflects a lack of understanding within the legal profession to the idea of self-preservation and indeed the area of domestic violence in which a woman reaches the stage of killing her partner. Several solicitors did recognise the need for a change in the law in relation to provocation.

One solicitor states in relation to question 12:

“I feel this whole area of the criminal law is in need of review. The defences available to women in these circumstances are extremely limited. Provocation is available in a “snap” situation where there has been an incident that has acted as a catalyst to an explosion of temper. This pattern of behaviour rarely if ever happens in domestic violence situation where it is normally a gradual wearing down of the women where she feels she can no longer bear to live like that and takes matters into her own hands”

Question 13:

“The law is desperately in need of review – it is a great jailing of the system that there is no recognition taken of the impact on a woman of persistent domestic violence – the defence of provocation is not open to her – it is more suited to the psyche of a man who is more likely to snap in a fit of anger – this is highly discriminatory”

In conclusion to this section on solicitors and barristers it is interesting to note one response from a solicitor regarding the police force which I thought was really pushing the blame to another agency, rather than themselves.

“Whilst I believe that the system has improved greatly since I first began practising I still feel that in the area of the initial contact with the victims of domestic violence the police “on the beat” are not properly trained or informed to deal with these situations. There is now an excellent domestic violence liaison unit within most divisions but this does not mean that the officers who work on the ground are properly trained. The very first contact that most women have with the civil and criminal justice system is as a result of the very first telephone call they make to the police for assistance and depending upon the personal attitude of the officer who attends at the scene I have found that there has often been a degree of equivocation about rendering assistance to a victim of domestic violence unless such violence is obvious and substantial.

The police in fact have to attend compulsory domestic violence training in the police academy and all constables now attend ongoing training throughout their career. This will be examined further in the next section.

5.5 Police

In order to gather information and carry out research within the Royal Ulster Constabulary the researcher had to contact Gary White, Community Affairs Section, RUC Headquarters, Belfast and fill out a contract and vetting documents, then return them before information could be accessed. They were very helpful and willing to let me interview officers and obtain any relevant documentation I needed for my research.

I interviewed several domestic violence officers in the Belfast area. I carried out the interviews in the police stations and went along the format of questionnaire 4. They were structured interviews using the above format, but because they were structured interviews

certain areas were looked at in more detail than others. The officers interviewed were all constables and were all female. There are both male and female officers in the domestic violence liaison unit and this sample does not reflect an adequate gender composition of same.

The domestic violence officers I spoke to reflected a very positive attitude towards the changing role of the police force in cases of domestic violence, but were also very realistic stating that there was a long way to go. They seemed interested in their work though found it very challenging. It appears that most domestic violence officers were approached regarding the positions and therefore were seen to be more empathetic and interested in the community relations section of policing. I feel this answers questions 1 to 6.

5.5.1 Training

Q.6. Have you ever undertaken any formal training in domestic violence?

All police constables have to attend compulsory police training. They attend initial training on domestic violence with Women's Aid and Police Trainers in the Training Centre learning the theory behind domestic violence. When they go into the station they have post foundation training in domestic violence a year after they finish the academy. When out of probation they attend divisional training which highlights new legislation e.g. the Family Homes and Domestic Violence (NI) Order 1998. The training is compulsory for constables and if above this rank it is not compulsory.

Q.7. What kind of problems would you feel you may encounter if you were dealing with a domestic violence case?

This question was highlighting maybe the obvious problems which police encounter on a day to day basis when called out to a domestic violence incident. One police constable responded to this question as follows:

“There are many problems for the police force in this situation, they have to calm everyone down and ensure that everyone is safe. Though if there is no orders out against a partner/husband the police cannot charge a man if there is no criminal damage or the incident did not happen in the view of the police. Many people do not know this. When the Human Rights Act comes into force we cannot remove a man from the home and take him around the block to calm down. We are accountable and the end result will always be open to scrutiny”

Q.8. Would you feel that you have any positive feelings towards working with women who have been victims of domestic violence?

The respondents enjoyed the challenge of the work but did find it very demanding. There were not very positive comments on the work other than the positive change that has come in policing of domestic violence in Northern Ireland over the last few years and the progress they have made with the introduction of Domestic Violence Liaison Units into all the subdivisions within the police force.

5.5.2 Judges

Q.9. In your experience of dealing with women who have gone to court to press charges in cases of domestic violence, do you consider that the judge has been fair in his final decision?

The response to this question was mixed, though the general consensus was that judges were not fair in their decisions but there were many factors to consider including:

- the evidence given,

- what was accepted as evidence can change and could be raised
- the tariff could be lowered
- judges were not held accountable
- were not subjective enough

Q.10. Do you feel that Orders – such as non-molestation order and occupation orders are granted fairly by judges?

Most officers felt that Orders were granted fairly but of course could not confirm this. This question actually led into the areas of the actual court as discussed in the previous section. The officers interviewed found that the waiting areas in the court were very inappropriate for domestic violence cases and there should be a private allocated area for women in each court. The women has a right to be heard but should not have to go through a long wait to reach court and then go through the gruelling task of giving evidence.

Q.11. Do you feel that assault charges such as GBH, Wounding with Intent and Common Assault are dealt with in an appropriate time frame and with appropriate lengths of sentencing when they reach court?

One constable commented:

“There should be dedicated courts for domestic violence such as in Leeds. This is definitely the way forward where there is a video link up and the women do not have to give evidence and be cross-examined in front of hmi”

Other comments include:

- court facilities very bad
- separate waiting areas
- Domestic Violence Officers can attend court as well for moral support
- access to areas of court

The Domestic Violence Officers interviewed had a great understanding of what a women is going through and this has been obtained through ongoing training and development in their unit. This is reflected in their answers and shows a much more positive attitude to women who are victims of domestic violence to the majority of the solicitors and barristers in the last sample.

5.5.3 Women Who Kill

The officers interviewed again felt that they did not have a great knowledge of this area in relation to Northern Ireland and were only aware of certain cases through the media coverage or if the incident happened within their area.

The general response was that the system was unfair for both male and female and the system around domestic violence and criminal law needs to be examined and further developed to take into consideration the area of provocation.

CHAPTER SIX

**CONCLUSIONS
AND
RECOMMENDATIONS**

CHAPTER SIX: CONCLUSIONS AND RECOMMENDATIONS

6.1 Conclusion

“Over 120 women were killed by their partners or ex-partners in 1991. In the same year, according to the British Crime Survey (BSC), there were a minimum of 530,000 incidents of domestic violence in England and Wales, 80 per cent of which involved female victims. This represents 20 per cent of all BCS violent incidents. We also know that a minimum of ten per cent of women had experienced some form of domestic violence at some time in their lives”. (HMSO, 1995)

In Northern Ireland the picture is no different. Domestic violence crosses class, culture and country and unfortunately it is a growing problem within our society, which is not addressed adequately by the civil and criminal justice system.

The civil and criminal justice system in Northern Ireland has developed slowly over the last decade, the attitudes of the police and the judicial system are definitely improving, but like other developments within the system there are evident loopholes which have to be examined and researched in order to change policy. The attitudes of the police, the legal profession and the judiciary need to be challenged and further developed within Northern Ireland.

Domestic violence is a serious problem in Northern Ireland. There are of course agencies with expertise in the area including Women’s Aid, but they alone cannot protect women and children and raise awareness of the extent of the problem. The civil and criminal justice system need to respond to victims and develop their services to work closer with women and understand the dynamics of domestic violence. As Foyle Women’s Aid recent campaign states “love shouldn’t hurt – changing hurt into hope” – this is what the system need to turn around.

6.2 Recommendations

- Through this research there is an evident trend that education and understanding of domestic violence is lacking within certain parts of the legal profession. Training could be introduced to undergraduate law students and law courses should incorporate a small module on domestic violence awareness, especially if the students intend to practise family law or indeed criminal law. The legal profession should also keep up to date with changing legislation and domestic violence issues again to gain a greater understanding of what a woman is thinking and going through. This is very evident in relation to cases of verbal and emotional abuse. Many legal professionals recognise physical abuse as being the only form of domestic violence, again education and knowledge will create a better awareness of the dynamics of domestic violence.
- This also applies to magistrates and judges who are in a powerful position to be able to condemn the perpetrators of domestic violence. In examples of cases throughout this work it is evident that they too lack knowledge of domestic violence. Their sentencing and attitude seem to portray little movement forward in comparison to that of the law itself, and it is perhaps time that they recognised domestic violence as the criminal offence it is and to treat it as seriously as other criminal offences they deal with.
- The court itself needs to be changed to adapt to the needs of women and children. Women often describe feelings of being on trial themselves and are of course being doubly victimised by the court system. An area for women to sit and wait away from their partners would be ideal, as many women are fearful of partners who can be very manipulative and intimidating. Many women have been unable to carry on proceedings because of the intimidation they face when entering court and coming into contact with their partner. Video-link ups in court are another idea so the women do not have to be in court at the

same time as their perpetrator. The domestic violence courts in Leeds as outlined earlier in this work would be a good precedent for the court system in Northern Ireland to look at and consider.

- The area of provocation and self-defence needs to be examined further and pressure groups such as Justice for Women need to make their voice heard. If enough campaigning is acknowledged the proposed self-preservation defence could indeed come into force and change a law, which was made by men for men.
- The police force in Northern Ireland is developing their expertise in the area of domestic violence through training and development. Their domestic violence officers are still only a pilot scheme, so the officers in these positions do not have the knowledge that they will be a permanent fixture within the police force. The development of the domestic violence liaison units within the police force have indeed created a greater service to women and children, but it would appear that an on-call domestic violence officer would be needed for out of office hours when a lot of incidents occur. The rural areas within Northern Ireland would also need to have more access to these units as well and more positions created within the sub-divisions. It is of course important that training reaches all ranks of the police force and not only constables.
- The police record keeping system needs to be developed and become a computer system whereby information on previous domestic violence offenders can be accessed at any police station in Northern Ireland.
- Court service records at all levels need also to be more accessible and again a computer system put in place for the collection of statistics in relation to domestic violence cases so that accurate figures can be accessed and the true extent of the problem can be seen.
- Further research would need to be undertaken in relation to The Family Homes and Domestic Violence (NI) Order 1998 and how it has developed over the last year. There is current research just beginning in this area in the Office of Law Reform in Belfast. They have sent questionnaires to various professionals involved in the operation of the legislation. They will be examining what problems have arisen and how it is working in practice. Through my own research I can see the importance of this piece of work being undertaken, as there is evidence of certain loopholes.

Appendices

Appendix one: Questionnaire 1

QUESTIONNAIRE 1

- All contents of this questionnaire are confidential and the respondent will be known as random number.
- A copy of final dissertation and findings will be available, if required.
- Questionnaire is based on semi structured, open-ended questions.

The aims and objectives of this questionnaire are to ascertain the confidence of women, who are victims of domestic violence, in the criminal justice system in Northern Ireland. As it is not appropriate to send questionnaires to women in crisis, I am hoping as women who work closely on a day to day basis with victims of domestic violence that you could fill in this questionnaire to the best of your knowledge from your everyday experiences.

I am researching for a MSc dissertation in Human Rights Law and Criminal Justice.

- (i) Age: 20-25
26-30
31-35
36-40
41-50
51+

- (ii) What organisation do you work for either on a voluntary or paid basis?

- (iii) What position do you hold within your organisation?

Police

1. Do you feel in your experience, dealing with women who are victims of domestic violence, that the police are a first point of contact for most women?
Please explain your reason.

2. How do you feel women are being treated when the police are called to an assault on a woman in the home?

3. Do the police give the women options and information? e.g.
 - (i) the man can be removed from the home
 - (ii) information on the law and new legislation
 - (iii) encouragement to press charges
 - (iv) information on Women's Aid and services available
 - (v) information on solicitors in the local area
 - (vi) information on Domestic Violence Officers in the local police station

Please list your experiences of the above incidents taking place.

4. In your experience has police training in domestic violence made an impact on their treatment of domestic violence incidents? Please explain your answer.

5. How do you believe training could be improved to create a better understanding of domestic violence within the police force?

6. In what way have the introduction of Domestic Violence Officers in the police force had an impact on policing of domestic violence in Northern Ireland?

7. Do you feel from your experience of dealing with women in crisis that the police treat domestic violence as seriously as other forms of violence?

8. With the recent introduction of the Family Homes & Domestic Violence (NI) Order 1998 do you think it has had a positive impact for domestic violence incidents?

General Answer

- (i) in relation to police response e.g. pro arrest?
 - (ii) in relation to women pressing charges/is there more women feeling confident with the system to take it to court?
 - (iii) do you think women have more power with the introduction of the non-molestation order and occupancy order rather than personal protection orders and exclusion orders?
 - (iv) do you think more orders are granted under this legislation?
9. What negative views or experiences have you come across in relation to the police and their handling of domestic violence cases?
10. What positive views or experiences have you come across in relation to the police and their handling of domestic violence cases?

Lawyers

11. Are you aware of solicitors who are specialists in domestic violence in your area?

If Yes, Do the solicitors provide a good service to women?

12. In your experience do women feel that solicitors are knowledgeable about current changes in domestic violence legislation, specifically the Family Homes & Domestic Violence (NI) Order 1998?
13. Why do you think solicitors would rather stay away from cases of domestic violence?
14. If solicitors had to undertake some form of domestic violence training when they are qualifying, do you feel that they would be more sympathetic to women in domestic violence cases?

15. What kind of problems have you or women you have dealt with encountered (if any) when dealing with solicitors in cases of domestic violence?
16. What positive feedback (if any) have you or women you have dealt with had when dealing with solicitors in cases of domestic violence?

Judges

17. In your experience of dealing with women who have gone to court to press charges in cases of domestic violence, do you consider that the judge has been fair in his final decision?
18. Do women feel that Orders – such as non-molestation order and occupancy orders are granted fairly by judges?
19. Do women feel that assault charges such as GBH, Wounding with Intent and Common Assault are dealt with in an appropriate time frame and with appropriate lengths of sentencing when they reach court?
20. “In six out of seven murder cases in Northern Ireland from 1989-1994 in which women were charged with the murder of their male partners, there was evidence of a previous history of domestic violence. These cases all led to manslaughter charges and one acquittal.” (McWilliams and Spence, 1996 :60) This makes us think that Northern Ireland is very different from the rest of the United Kingdom and indeed the rest of the world. *In your experience do you think sentencing is too harsh in relation to women who kill their partners are indeed inconsistent?*
21. In relation to men who kill, there is also quite a high record of manslaughter prosecutions. A verdict of manslaughter is often returned on the grounds of diminished responsibility or provocation. Provocation has often been seen as ‘persistent nagging’ or ‘sexual taunts’. Other examples of leniency include extra-marital relationships, which have been understood to constitute provocation and have worked to the advantage of men. (McWilliams and Spence, 1996 :57) *How do you feel about men being given more lenient sentences in relation to killing a partner where there has been a history of violence against his partner?*

22. In general, what are some of the changes you feel still need to be made to our civil and criminal justice system as a whole to improve the needs of women who are victims of domestic violence?

Thank you very much for your co-operation in completing this questionnaire. A stamped addressed envelope has been included for your convenience. Your early response would be much appreciated.

Please continue overleaf on any page if you wish to add anything further.

Appendix two: Questionnaire 2

QUESTIONNAIRE 2

- All contents of this questionnaire are confidential and the respondent will be known as random number.
- A copy of final dissertation and findings will be available, if required.
- Questionnaire is based on semi structured, open-ended questions.

The aims and objectives of this questionnaire are to ascertain the confidence of women, who are victims of domestic violence, in the civil and criminal justice system in Northern Ireland. Could you please fill in this questionnaire to the best of your knowledge from your experience of system.

I am researching for a MSc dissertation in Human Rights Law and Criminal Justice.

- (i) Age: **20-25**
 26-30
 31-35
 32-40
 41-50
 51+
- (ii) How long did you suffer domestic violence in a relationship?
- (iii) Who was your first point of contact e.g. police, friend, Women's Aid etc.
- (iv) Did you seek refuge with Women's Aid?

Police

11. Do you feel in your experience that the police are a first point of contact for most women?
Please explain your reason.
12. How do you feel women are being treated when the police are called to an assault on a woman in the home?

13. Do the police give women options and information? e.g.

(vii) the man can be removed from the home

(viii) information on the law and new legislation

(ix) encouragement to press charges

(x) information on Women's Aid and services available

(xi) information on solicitors in the local area

(xii) information on Domestic Violence Officers in the local police station

Please list your experiences of the above incidents taking place.

14. In your experience has police training in domestic violence made an impact on their treatment of domestic violence incidents? Please explain your answer.

15. How do you believe training could be improved to create a better understanding of domestic violence within the police force?

16. In what way have the introduction of Domestic Violence Officers in the police force had an impact on policing of domestic violence in Northern Ireland?

17. Do you feel from your experience that the police treat domestic violence as seriously as other forms of violence?

18. With the recent introduction of the Family Homes & Domestic Violence (NI) Order 1998 do you think it has had a positive impact for domestic violence incidents? If you have any experience of the above Order can you please explain.

- (iv) in relation to police response e.g. pro arrest?
 - (v) in relation to women pressing charges/is there more women feeling confident with the system to take it to court?
 - (vi) do you think women have more power with the introduction of the non-molestation order and occupancy order rather than personal protection orders and exclusion orders?
- (iv) do you think more orders are granted under this since the law has changed?

19. What negative views or experiences have you come across in relation to the police and their handling of domestic violence cases?

20. What positive views or experiences have you come across in relation to the police and their handling of domestic violence cases?

Lawyers

11. Are you aware of solicitors who are specialists in domestic violence in your area?

If Yes, Do the solicitors provide a good service?

12. In your experience do you feel that solicitors are knowledgeable about current changes in domestic violence legislation, specifically the Family Homes & Domestic Violence (NI) Order 1998?

13. Why do you think solicitors would rather stay away from cases of domestic violence?

14. If solicitors had to undertake some form of domestic violence training when they are qualifying, do you feel that they would be more sympathetic to women in domestic violence cases?
15. What kind of problems have you encountered (if any) when dealing with solicitors in cases of domestic violence?
16. What positive experience (if any) have you had when dealing with solicitors in cases of domestic violence?

Judges

20. In your experience when women have gone to court to press charges in cases of domestic violence, do you consider that the judge has been fair in his final decision?
21. Do you feel that Orders – such as non-molestation order and occupancy orders are granted fairly by judges?
22. Do women feel that assault charges such as GBH, Wounding with Intent and Common Assault are dealt with in an appropriate time frame and with appropriate lengths of sentencing when they reach court?
20. “In six out of seven murder cases in Northern Ireland from 1989-1994 in which women were charged with the murder of their male partners, there was evidence of a previous history of domestic violence. These cases all led to manslaughter charges and one acquittal.” (McWilliams and Spence, 1996 :60) This makes us think that Northern Ireland is very different from the rest of the United Kingdom and indeed the rest of the world. *In your experience do you think sentencing is too harsh in relation to women who kill their partners are indeed inconsistent?*

23. In relation to men who kill, there is also quite a high record of manslaughter prosecutions. A verdict of manslaughter is often returned on the grounds of diminished responsibility or provocation. Provocation has often been seen as 'persistent nagging' or 'sexual taunts'. Other examples of leniency include extra-marital relationships, which have been understood to constitute provocation and have worked to the advantage of men. (McWilliams and Spence, 1996 :57) *How do you feel about men being given more lenient sentences in relation to killing a partner where there has been a history of violence against his partner?*
22. In general, what are some of the changes you feel still need to be made to our civil and criminal justice system (i.e police, lawyers, probation service and judiciary) as a whole to improve the needs of women who are victims of domestic violence?

Thank you very much for your co-operation in completing this questionnaire. A stamped addressed envelope has been included for your convenience. Your early response would be much appreciated.

Please continue overleaf on any page if you wish to add anything further.

Appendix three: Questionnaire 3

QUESTIONNAIRE 3

- All contents of this questionnaire are confidential and the respondent will be known as random number.
- A copy of final dissertation and findings will be available, if required.
- Questionnaire is based on semi structured, open-ended questions.

The aims and objectives of this questionnaire are to ascertain the general feelings of solicitors and barristers in Northern Ireland in relation to victims of domestic violence in the civil and criminal justice system in Northern Ireland.

As practising solicitors and barristers I would appreciate your assistance in completing this questionnaire on your experiences and knowledge of the civil and criminal justice system in Northern Ireland in relation to domestic violence. The research is for a MSc dissertation in Human Rights Law and Criminal Justice focusing on “A Women’s Right to a Fair Trial in Cases of Domestic Violence”.

Name:
(optional)

Position in Firm:
(optional)

Length of time practising as a solicitor/barrister?

-
1. Do you ever do any work for women in cases of domestic violence?
 - If yes, do you enjoy this work?
 - If no, why do you not do this work?
 - Would you consider doing work for victims of domestic violence in the future?
 2. Are you aware of solicitors who are specialists in domestic violence?
 3. Are you knowledgeable about current changes in domestic violence legislation, specifically the Family Homes and Domestic Violence (NI) Act?
 4. Why do you think solicitors would rather stay away from cases of domestic violence?

5. If solicitors had to undertake some form of domestic violence training when they are qualifying, do you feel that they would be more sympathetic to women in domestic violence cases?
6. Have you ever undertaken any formal training in domestic violence?
7. What kind of problems would you feel you may encounter if you were dealing with a domestic violence case?
8. Would you feel that you have any positive feelings towards working with women who have been victims of domestic violence?
9. In your experience of dealing with women who have gone to court to press charges in cases of domestic violence, do you consider that the judge has been fair in his final decision?
10. Do you feel that Orders – such as non-molestation order and occupancy orders are granted fairly by judges?
11. Do you feel that assault charges such as GBH, Wounding with Intent and Common Assault are dealt with in an appropriate time frame and with appropriate lengths of sentencing when they reach court?
12. “In six out of seven murder cases in Northern Ireland from 1989-1994 in which women have been charged with the murder of their male partners, there was evidence of a previous history of domestic violence. These cases all led to manslaughter charges and one acquittal.” (McWilliams and Spence, 1996 :60) This makes us think that Northern Ireland is very different from the rest of the United Kingdom and indeed the rest of the world. *In your experience do you think sentencing is too harsh in relation to women who kill their partners and indeed inconsistent?*

13. In relation to men who kill, there is also quite a high record of manslaughter prosecutions. A verdict of manslaughter is often returned on the grounds of diminished responsibility or provocation. Provocation has often been seen as 'persistent nagging' or 'sexual taunts'. Other examples of leniency include extra-marital relationships, which have been understood to constitute provocation and have worked to the advantage of men. *How do you feel about men being given more lenient sentences in relation to killing a partner where there has been a history of violence against his partner?*

14. In general, what are some of the changes you feel still need to be made to our civil and criminal justice system as a whole to improve the needs of women who are victims of domestic violence?

Thank you very much for your co-operation in completing this questionnaire. A stamped addressed envelope has been included for your convenience. Your early response would be much appreciated.

Please continue overleaf on any page if you wish to add further.

Appendix four: Questionnaire 4

QUESTIONNAIRE 4

- All contents of this questionnaire are confidential and the respondent will be known as random number.
- A copy of final dissertation and findings will be available, if required.
- Questionnaire is based on semi structured, open-ended questions.

The aims and objectives of this questionnaire are to ascertain the general feelings of the police force in Northern Ireland in relation to victims of domestic violence in the civil and criminal justice system in Northern Ireland.

As police officers in Northern Ireland I would appreciate your assistance in completing this questionnaire on your experiences and knowledge of the civil and criminal justice system in Northern Ireland in relation to domestic violence. The research is for a MSc dissertation in Human Rights Law and Criminal Justice focusing on “A Women’s Right to a Fair Trial in Cases of Domestic Violence”.

Name:

Rank in Police Force:

Length of time as police officer?

2. Have you ever acted in cases of domestic violence?

- If yes, do you enjoy this work?
- If no, why do you not do this work?

2. Are you aware of solicitors who are specialists in domestic violence?

3. Are you knowledgeable about current changes in domestic violence legislation, specifically the Family Homes and Domestic Violence (NI) Act?

4. Why do you think solicitors would rather stay away from cases of domestic violence?

5. If solicitors had to undertake some form of domestic violence training when they are qualifying, do you feel that they would be more sympathetic to women in domestic violence cases?

6. Have you ever undertaken any formal training in domestic violence?

7. What kind of problems would you feel you may encounter if you were dealing with a domestic violence case?

8. Would you feel that you have any positive feelings towards working with women who have been victims of domestic violence?

9. In your experience of dealing with women who have gone to court to press charges in cases of domestic violence, do you consider that the judge has been fair in his final decision?
10. Do you feel that Orders – such as non-molestation order and occupancy orders are granted fairly by judges?
11. Do you feel that assault charges such as GBH, Wounding with Intent and Common Assault are dealt with in an appropriate time frame and with appropriate lengths of sentencing when they reach court?
12. “In six out of seven murder cases in Northern Ireland from 1989-1994 in which women have been charged with the murder of their male partners, there was evidence of a previous history of domestic violence. These cases all led to manslaughter charges and one acquittal.” (McWilliams and Spence, 1996 :60) This makes us think that Northern Ireland is very different from the rest of the United Kingdom and indeed the rest of the world. *In your experience do you think sentencing is too harsh in relation to women who kill their partners and indeed inconsistent?*

13. In relation to men who kill, there is also quite a high record of manslaughter prosecutions. A verdict of manslaughter is often returned on the grounds of diminished responsibility or provocation. Provocation has often been seen as 'persistent nagging' or 'sexual taunts'. Other examples of leniency include extra-marital relationships, which have been understood to constitute provocation and have worked to the advantage of men. *How do you feel about men being given more lenient sentences in relation to killing a partner where there has been a history of violence against his partner?*

14. In general, what are some of the changes you feel still need to be made to our civil and criminal justice system as a whole to improve the needs of women who are victims of domestic violence?

Thank you very much for your co-operation in completing this questionnaire. A stamped addressed envelope has been included for your convenience. Your early response would be much appreciated.

Please continue overleaf on any page if you wish to add further.

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