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An Evaluation of the 'Access to Justice' Pilot Project

Research Summary

Social research

Number: 46/2012

A principal objective of the 'Access to Justice' Pilot is to enable older, vulnerable victims of domestic abuse to access criminal or civil justice processes in seeking protection from further abuse.

This objective is founded on the need to ensure that the human rights of older people are protected. In *The Right to be Safe*, the Welsh Government noted that there are 'few more basic human rights than that of being protected from violence or exploitation' (2010: 4).

A multi-method research design was adopted, which employed both qualitative and quantitative methods of data collection and analysis. Data was collected from a variety of sources: case management records (CMRs); case file analysis; process maps; semi-structured qualitative interviews with managers and practitioners and older people; a focus group and police recorded incidents of domestic abuse.

Findings:

- A total of 145 separate incidents, involving 131 individual victims, were recorded between 3rd December 2010 and 31st January 2012. Data was available for 127 victims (in four cases a second victim was identified as being present at the time of the incident).
- It was evident from the case files that the police responded sensitively and positively to victims of elder abuse. In some instances, the police paid regular visits to the homes of victims. These safety checks were considered to have a potential deterrent effect.
- In terms of consent, options discussed, 'active engagement' (i.e. when a victim engages with an agency to which they had been referred) and legal and welfare outcomes, the cases referred to the Multi-Agency Risk Assessment Conference (MARAC) fared very well.

Dadansodi ar gyfer Polisi



Analysis for Policy

Aims and methodology

In evaluating the 'Access to Justice' Pilot both process and outcome issues were explored in examining how risk, capacity and consent are dealt with by criminal justice and civil agencies involved in providing services for older victims.

Twenty semi-structured interviews were undertaken with managers and practitioners from eleven statutory and nine third sector groups. Twelve older people and one victim of elder abuse were interviewed, using anonymised scenarios drawn from the recurrent themes emerging from the content analysis of the CMRs.

Findings

- Initially some statutory agencies were slow to engage with the Pilot. In addition, there was a perception amongst the practitioners interviewed that, in some instances, organisations did not always send the appropriate personnel to the training session to ensure that the information imparted was effectively disseminated throughout the organisation. There was a clear recognition of, and support for, the general ethos underpinning the 'Access to Justice' Pilot.
- Of the 131 victims, 95 were female and 36 were male. This is a higher proportion of male victims than usually found in younger age groups. Ages of victims ranged from 55 to 91 years. Nearly one-third of all victims had a disability. Ten individuals were recorded as lacking mental capacity.
- When comparing male and female victims, a greater proportion of men (56%) than women (33%) experienced physical violence.
- Of the perpetrators, 109 were men and 44 were women. There were 50 sons and 20 grandsons. Sons were more likely to have substance misuse issues than any other perpetrator. In only one case was there evidence that both the victim and the perpetrator were under the influence of alcohol at the time of the incident. This pattern of substance misuse appears to differ from that found in cases of domestic abuse in younger age groups.
- When exploring the victim - perpetrator dynamic, two broad types of perpetrator behaviour were identified: reactive perpetrator behaviour and proactive perpetrator behaviour.
- Spouses/ex-spouses displayed a proactive type of perpetrator behaviour and these cases had the highest level of physical violence in the whole sample. As a sub-group, intimate partners appeared to have the poorest outcomes.

- Across all agencies Domestic Abuse, Stalking and 'Honour'-Based Violence: Risk Indicator Checklist (DASH RIC) forms were completed in 66 cases, of these the police completed 58 and social services completed six.
- In at least 30 cases, given the gravity of the incident described in Section C of the CMR, the level of risk recorded in Section B was lower than one might expect. It was felt that the DASH RIC tool needed to be slightly adapted to meet the needs of older victims.
- An adapted version of the DASH RIC was developed and social service personnel trained in its use. However, as only six adapted DASH RIC forms were completed by social services during the Pilot it is difficult to draw any firm conclusions as to whether the adapted tool provided a more accurate measure of risk in the context of elder abuse.
- Where there was involvement from third sector organisations positive welfare outcomes were more likely.
- In the vast majority of instances (70%), the CMR indicated that the original form did not show if consent had been obtained. The failure to record whether consent was given may affect the ability of the initial referring agency to involve specialist domestic abuse agencies and other third sector groups in helping to ensure that the needs of victims are addressed.
- Once a disclosure was made, there was a view that practitioners should be more proactive in establishing whether consent was genuine, and that the choice victims made were a true reflection of their wishes and not coerced choices brought about by their circumstances.
- In 43 incidents victims were recorded as having capacity; there were 10 cases where the victim was found to lack capacity. Carer stress¹ featured in five of these cases. Eight cases involved physical abuse.
- In a significant number of cases where the victim lacked capacity and abuse occurred, the victim was without friends, and the perpetrator was a close relative, either residing with the victim or living within close proximity. There was no evidence from the records that the involvement of an Independent Mental Capacity Advocate (IMCA) had been sought in any of these cases.
- Interview data also raised concerns as to some

¹ 'Carer stress' is a term used to describe the physiological, psychological and emotional symptoms that can result from the ongoing strain of caring for a dependent adult.

misconceptions around the practice of delaying the involvement of an IMCA during the investigative process. The early involvement of an IMCA is critical as a range of decisions occur early in the investigative process that heavily influences the outcome.

- In two-thirds of all relevant cases, criminal or civil justice options were not discussed with victims.
- It was evident from the case files that the police responded sensitively and positively to victims of elder abuse. In some instances, the police paid regular visits to the homes of victims. These safety checks were considered to have a potential deterrent effect.
- In terms of consent, options discussed, 'active engagement' (i.e. when a victim engages with an agency to which they had been referred) and legal and welfare outcomes, the cases referred to the Multi-Agency Risk Assessment Conference (MARAC) fared very well.
- The data suggests that the quality of engagement with agencies varied considerably both in terms of ensuring that the victim was kept fully informed and that their wishes were central in the decision-making process.
- It was recognised by a wide range of practitioners and managers that statutory agencies do not always have the necessary staffing resources to develop a strong relationship with their clients.
- Third sector involvement appeared to generate the best engagement by the older person and in the majority of cases where a conviction occurred there was evidence of third sector support. The general perception was that third sector practitioners could provide impartial, independent support that empowered the older person. Building a relationship was considered essential to enable victims to reflect on the range of options available and engage effectively with services.
- Concern was expressed by practitioners that victims were being denied the opportunity to work with the range of agencies with a specialism in domestic abuse because the Protection of Vulnerable Adults (POVA) and MARAC were not well-integrated processes.
- Where victims had consented to support, there did not appear to be any mechanism in place to monitor their route through the POVA and MARAC processes. In cases where consent was not given, but

the level of harm was severe, it was in the best interests of the victim to override consent to share information and activate the MARAC process.

- Eleven perpetrators were charged and ten were convicted. Of the convicted perpetrators five were grandsons, four were sons and one was a wife. Financial abuse was the most frequent type of abuse recorded in these cases. In eight cases, there was evidence of either illicit drug use and/or alcohol misuse.
- There was a marked increase in the number of cases of elder abuse recorded by the police over the twelve-month period. Risk assessments were conducted in three-quarters of these cases, which represents an increase in the average figure for the three years prior to the introduction of the Pilot.
- It was difficult from the data available to form a view as to whether the potential for using special measures was considered, and if so, by whom.
- All of the decisions not to prosecute that were reviewed were supportable based on the information on the file. Typically, the reason for not proceeding was the lack of corroborating evidence and refusal on the part of the victim to testify.
- There were very few examples where criminal and civil law options were pursued. There seemed to be a lack of awareness among practitioners about how the civil law could be used in cases of elder abuse.
- There was limited information provided on the case management records by agencies to indicate whether the abuse had ceased or changed in severity at case closure.
- The common perception was that 'Access to Justice' gave some impetus to increasing practitioners' knowledge about elder abuse as a form of domestic abuse. Although agencies supported the ethos of the Pilot, it was recognised that there still needed to be a shift in practice to address the needs of older people experiencing abuse.
- Participants from the Older People's Ageing Network (OPAN) felt that successful outcomes should be highlighted and information on victims' positive experiences of using the civil and criminal law should be more widely

Recommendations

- Consideration should be given by the Welsh Government to how domestic violence and elder abuse procedures, policies

and guidance can be integrated more effectively.

- Practitioners should aim to adopt a model that ensures greater integration by POVA of the MARAC process in cases of domestic abuse to increase welfare and justice opportunities for victims.
- Practitioners should record the basis for a conclusion that the victim has legal capacity to participate in the investigative process.
- Practitioners need to ensure, when considered appropriate, that issues of capacity are considered throughout the investigative process.
- In cases where a victim lacks capacity, there should be a presumption that an IMCA will be involved, and at an early stage rather than towards the end of the investigative process. This presumption should be rebuttable by, for example, evidence that some other suitable person is representing the victim's interests.
- There should be an evaluation of statutory agencies responses to older victims who lack capacity. Particular attention should be given to the uptake of the IMCA service by adult services and health services and the impact of the IMCA role in supporting incapacitated victims of abuse.
- The decision on whether to use special measures² in criminal proceedings should be based on assessments of the victim's vulnerability made throughout the investigative process. Practitioners should ensure that all information relevant to that decision is available to the Crown Prosecution Service (CPS).
- Consideration should be given to extending the 'Access to Justice' Pilot for a further two years and this should include a pilot in a rural area.
- Statutory agencies should be more aware of the support and services provided by the third sector and in appropriate cases, with the consent of the victim, that the third sector should be part of the interdisciplinary response.
- Consideration should be given to providing resources to the third sector to fund support for awareness raising, training and advocacy support.

² Special measures are available for certain categories of vulnerable witnesses appearing in court. They include the use of pre-recorded interviews, video link cross-examination, the use of a support person and assistance in communication.

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