

Domestic Homicide Reviews

Bar Council – Consultation Response

Introduction

1. The Bar Council is the representative body of the Bar of Northern Ireland. Members of the Bar specialise in the provision of expert independent legal advice and courtroom advocacy. Access to training, experience, continual professional development, research technology and modern facilities within the Bar Library enhance the expertise of individual barristers and ensure the highest quality of service to clients and the court. The Bar Council is continually expanding the range of services offered to the community through negotiation, tribunal advocacy and alternative dispute resolution.
2. The Bar Council welcomes the opportunity to contribute to the Department of Justice's consultation on a proposed model for the introduction of Domestic Homicide Reviews (DHRs) in Northern Ireland. This response also incorporates the views of the Criminal Bar Association, representing the views of prosecuting and defence counsel, which serves to ensure an independent and quality source of specialist criminal law advocacy in Northern Ireland. The Bar's response is structured with an initial overview followed by our comments on the relevant questions outlined throughout the consultation document.

Overview

3. The Police Service of Northern Ireland reported 29,913 domestic abuse incidents and 14,560 domestic crimes in 2017-18; these are the highest recorded levels since 2004-05.¹ Meanwhile the consultation paper highlights that around five people a year are killed by a partner, ex-partner or close family member. These statistics show that domestic and sexual violence and abuse remain prevalent across society in NI despite considerable progress in recent years in increasing the number of convictions linked to such offences.
4. We welcome the zero tolerance approach to domestic and sexual violence and abuse detailed in the 'Stopping Domestic and Sexual Violence and Abuse Strategy' published by the Department of Justice and Department of Health in 2016. Important progress had also been made in recent years to improve the general public's understanding and knowledge of the criminal justice system. This includes steps taken to promote the protection of victims with the publication of the Victim Charter in January 2015 which has subsequently been placed on a statutory footing under the Justice Act (Northern Ireland) 2015 and sets out the

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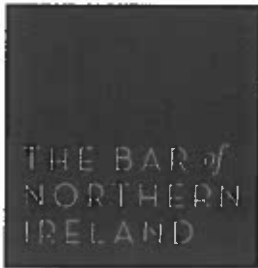
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¹ Police Service of Northern Ireland, 'Domestic Abuse Incidents and Crimes Recorded by the Police in Northern Ireland: Quarterly Update to 31 March 2018', May 2018, at <https://www.psni.police.uk/globalassets/inside-the-psni/our-statistics/domestic-abuse-statistics/2017-18/quarterly-domestic-abuse-bulletin-period-ending-mar18.pdf> (last accessed 19 September 2018)



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standards of service and entitlements that a victim of crime can expect to receive from a range of service providers.

5. By way of background, the Bar previously responded to the Department's consultation on the creation of a domestic abuse offence in April 2016. We noted the need to be mindful of addressing any concerns which victims may already have in accessing the criminal justice system and some of the consequences associated with the creation of a new offence. In addition, we also highlighted the need to prioritise prevention and early intervention aimed at preventing abuse, supporting victims and delivering change through responsive specialist multi-agency services. However, we are disappointed that the lack of an Assembly has prevented this important policy proposal from being progressed.

1. Do you have any comments to make about the purpose of a Domestic Homicide Review?

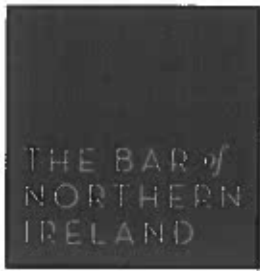
6. Members of the Criminal Bar Association are often instructed in serious court proceedings involving the death of a person which has resulted from violence, abuse or neglect by a person they were related to, were in an intimate relationship with, or were living with. Barristers appearing in these cases, which will typically be in the Crown Court, possess considerable experience and expertise in criminal law and are adept at conducting the most complex and difficult trials. These members have indicated that the lack of arrangements for Domestic Homicide Reviews in Northern Ireland is an area of concern; a multi-agency approach is essential to ensure lessons are learned from these cases in order to help prevent similar crimes in the future.
7. The Bar recognises that health providers, law enforcement, support services, helplines, employers, family and friends all have a role to play in raising awareness and responding to domestic violence and abuse. We believe that DHRs can play a key role in this given that their main purpose, as outlined by this document, is to prevent domestic violence and homicide and improve service responses for victims by developing a coordinated multi-agency approach to ensure that abuse is identified and responded to effectively at the earliest opportunity. Section 5 of the Department's paper helpfully sets out the proposed focus of DHRs, including identifying lessons for organisations and capturing potential learning points.
8. In addition, we note references in this section to ensuring that the review process allows organisations to "change how they work as a direct result" and that "lessons learned are shared and practice changed regionally". Whilst it is necessary to state this focus, we believe that it will also be vitally important that

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there will be clear and targeted outcomes emanating from DHRs that can be put into practice. It should be recognised that this could even include the implementation of new policies and practice guidelines within the court system, for example learning points could emerge in relation to child arrangements and contact orders dealt with in the family courts. It will be necessary to ensure that there will be adequate funding and resources within the system to allow for these to be effectively actioned.

2. Do you have anything to say about when a DHR will or will not be commissioned?

9. The Bar notes the proposal to establish a multi-agency Senior Oversight Forum to commission and oversee the DHR process and ensure the implementation of associated findings. In terms of the decision to commission a DHR, we believe that it will be important for the SOF to develop appropriate guidance on the circumstances in which there should be a DHR and this should include recognition of any other review processes or criminal proceedings which may be relevant. In cases where there are criminal proceedings, we would highlight that it may be necessary for the DHR to be paused until after any outcome. Alternatively the SOF could also develop guidance to allow the scope of the DHR to be temporarily restricted until after the outcome of any criminal proceedings, such as consideration being given to not interviewing people who may be witnesses or defendants in criminal proceedings, as is possible under the DHR model in England and Wales.

10. In either circumstance, the SOF might decide that an overview report could be considered in draft form until after the criminal trial has concluded allowing organisational learning to take place. However, it will be necessary to ensure that every effort is taken to ensure that learning arising from the homicide is taken forward where this does not compromise the integrity of any relevant criminal proceedings. In addition, it will be necessary to consider whether any appeal, particularly against conviction, is pending and also the potential for significant delays in cases in which retrials are ordered. Therefore the Bar believes that it will be important for the SOF to fully consider the issues that could arise in circumstances where a DHR is conducted in parallel with any criminal investigation, particularly in relation to the possible disclosure of material gathered in the course of a DHR.

11. It might also be worth giving consideration to placing some timeframes around this commissioning process. We note that paragraph 6.5 states that “following

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notification of a domestic homicide SOF would assess, as promptly as possible, whether there should be a DHR". The guidelines in England provide for the decision on whether or not to proceed with a review to be taken within one month and it may be worth the Department implementing a similar timescale for the SOF with due regard for any ongoing criminal justice proceedings.

3. Do you have anything to say about what may 'typically' be outlined within the terms of reference?

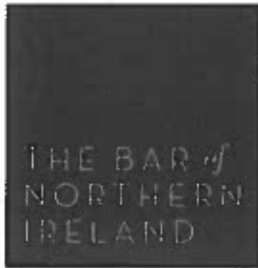
- 12. The Bar considers that the typical terms of reference outlined at paragraph 6.12 are comprehensive. We would suggest some additional factors that it might be useful to consider adding to this list. There is reference to considering "how the review will interact with other investigations/reviews that are running in parallel". This might include recognition that it should be the responsibility of the DHR Chair to ensure that contact is made with the Chair of any parallel investigation processes that are ongoing (or relevant criminal justice agencies if appropriate). The terms of reference may also need to highlight how the DHR will take account of any criminal investigation and/or coroner's inquiry related to the death, including disclosure issues, to ensure that relevant information can be shared without incurring significant delay in the review process.
- 13. We note the reference to any evident equality and diversity issues, such as gender identity, ethnicity, disability, etc. that may require special consideration and the possibility of engaging an outside expert to assist in understanding these aspects of the case. We believe that it might also be necessary to consider within the terms of reference in certain cases whether a victim's or perpetrator's immigration status impacted on how agencies responded to their needs.
- 14. Furthermore, we believe that in certain cases it may be necessary to consider who will take responsibility for managing matters concerning the public and the media before, during and after the DHR as these cases are often very high profile. Once the DHR model is in place it would also be possible to add to this list around the need to consider how the review process will take account of previous lessons learned, perhaps from research and recommendations made from previous DHRs in Northern Ireland. The typical terms of reference may also need to acknowledge the need for the DHR panel to be able to obtain independent legal advice on any aspect of the proposed review.
- 15. We note the reference at paragraph 6.13 of the need to keep the terms of reference under review as the DHR progresses. It is also important to highlight that some of the above issues may need to be revisited as the review progresses

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and new information emerges. It may be worth stating that this reconsideration of the issues may in turn mean that the terms of reference will need to be revised and agreed by the review panel as the DHR progresses.

4. Do you have anything to say about:

- the knowledge and skills of the chair
- the recruitment and contingency for the role of chair?

5. Do you have any comments to make about DHR panel membership?

6. Do you have any comments to make about the consideration of equality and diversity issues by the Panel?

16. The Bar agrees that the DHR panel Chair should be an experienced individual who is independent from all of the agencies involved in the review. We also accept the suggestion that a regional panel and Chair would work well, given the size of Northern Ireland and the presence of a range of province-wide bodies. The preferred way forward of having more than one Chair, with cases allocated appropriately, to provide contingency if the Chair is absent for a period of time or there is an increased number of DHRs also appears to be a sensible solution.

17. In terms of the skills of the Chair outlined at 6.16, it might also be worth including something around strategic vision to allow for opportunities to be identified to link in and inform strategies such as the DOJ and DOH 'Stopping Domestic and Sexual Violence and Abuse Strategy'. We note there is no reference in this section to any additional training that might be required and consider that the Department should develop practical sessions for Chairs, as well as more widely for panel members working in statutory organisations and the voluntary and community sector.

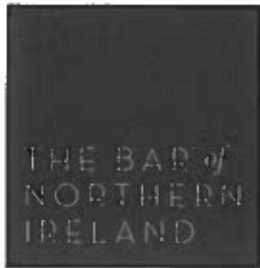
18. The Bar agrees with the suggestion that there should be a core panel membership of individuals from key relevant organisations and bodies with the potential for individuals to sit on the panel for a period of three to five years; yet again the size of Northern Ireland and the presence of a range of province-wide statutory bodies means that this is likely to be the best model to adopt. We also recognise the merit in organisations from the voluntary and community sector forming part of the core membership of the panel, particularly from groups representing both male and female victims of domestic violence and abuse. The inclusion of some degree of flexibility as referenced at 6.23 to allow for ad hoc membership as and when necessary should also allow for DHR panel composition

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needs to be sufficiently configured to bring relevant expertise in relation to the particular circumstances of the case.

7. Do you have anything to say about family involvement in the process?
8. Do you have anything to say about the involvement of other individuals in the process?

19. The Bar agrees that families should be given the opportunity to be integral to reviews and should be treated as an important stakeholder. The DHR Chair should make every effort to include the family and ensure that when approaching and interacting with the family that the panel follows best practice in terms of clear communication about the process. We also believe that it will be important for those conducting the review to consider specialist, independent and expert advocates for the families in contributing to the DHR process. In addition, children should also be given specialist assistance and an opportunity to contribute as they may have information to offer.

20. Furthermore, guidance should also be developed in relation to any decision taken around whether to interview family members, friends and other individuals. For example, the DHR panel must take into account that these individuals could be potential witnesses or even defendants in any future criminal trial which may impact on timescales for any potential interviews. These individuals should also have the benefit of independent representation.

9. Do you have any comments about the two key elements of the DHR process:
 - (i) initial findings, learning and identification of actions needed; and
 - (ii) identification of key findings, learning, actions and longer terms changeto improve service and the response in future cases of domestic violence and abuse?

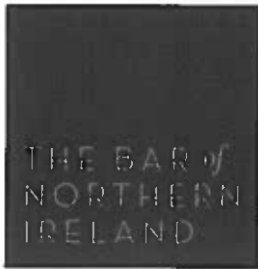
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21. It seems appropriate that consideration should be given to any immediate findings or actions to be undertaken at the initial DHR panel meetings with longer term change/findings addressed as part of the review outcome report. We would suggest that progress around any initial findings/actions should also be detailed in the review outcome report. We have made a number of suggestions elsewhere



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in this response in relation to the work of a DHR involving any associated criminal proceedings and how this may impact on possible actions for learning.

10. Do you have any comment on the approach proposed regarding gathering information, or any suggestions as to how best this could be undertaken?

22. The Bar notes the suggestion at 6.30 to adapt the Individual Management Review process from England and Wales to obtain information in a “more dynamic way”. It is unclear from the information provided as to what format each organisation’s “summary narrative” will take and we would suggest that it might be beneficial to consider developing some form of short outline template for completion. This would allow each organisation to chart involvement with the victim, the perpetrator and their families over the period of time set out in the DHR’s terms of reference. Whilst identifying good practice should be a key focus of DHRs, we believe that it would still be useful to summarise the events that occurred, information known to the organisation, any decisions reached and the services offered and provided to the victim, the perpetrator and their families.
23. As part of this process, we also consider that it will be important for the DHR panel to meet an appropriate number of times to ensure there is robust oversight and rigorous challenge. For example, a review panel that only met at the beginning and end of the review would imply a limited role in the DHR process.

11. Do you have any comment on the suggested approach around publication of the DHR report and do you have any views on the frequency of report publication?

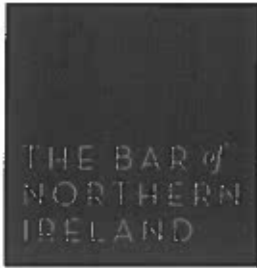
24. The Bar agrees with the suggestion of a single DHR report that is concise, focused and proportionate. The suggestion that a final report should include only relevant information and good practice as well as opportunities for learning will hopefully allow for the focus to be on the change needed to improve services and the response in future cases of domestic violence and abuse. We would welcome the development of a template DHR report for stakeholders to comment further on.
25. We would query whether it might be possible to place timescales around the publication of an individual DHR report. For example, in England an overview report should be completed within six months of the date of the decision to proceed with the DHR unless the review panel formally agrees an alternative timescale.

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26. We note that the consultation also seeks views on what the frequency of report publication should be, that is whether a report is published after each individual DHR, an 'end of year report' focusing on the key themes and commonalities across the DHRs that have been completed in that year, or a combination of both. The Bar sees no difficulty in exploring a combination of both of these given that there is likely to be merit in compiling an annual report style document focusing on key themes and learning from domestic homicide cases collectively. The frequency of this, whether every year or every two years, may ultimately depend on the number of DHRs conducted.

12. Do you have any comment on the potential outcome of the reviews through the development of reports?

27. The Bar welcomes the point at paragraph 6.35 that the reports will include actions that make a difference to victims, provide improvements and importantly are achievable and proportionate. It will be important for good practice to be highlighted and consideration given to how this can best be disseminated. It will also be vital for organisations to be held to account for the delivery of actions. We would suggest that a short and targeted action plan could be devised by the SOF or Department to ensure the consistent interpretation and application of any learning objectives identified.

13. Do you have any comment on the role and scope of the Senior Oversight Forum?

14. Do you have any comment on the organisations that would make up the Senior Oversight Forum, particularly the additional bodies that could be considered, or others that should be considered?

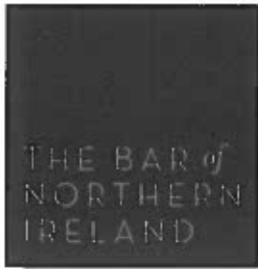
28. We agree that quality assurance for completed DHRs should sit with an expert panel made up of statutory and voluntary sector organisations under the SOF and managed by the Department. The functions of the SOF will be wide-ranging as acknowledged in paragraph 6.38 but we consider that it will be vital for a system to be put in place to allow for the monitoring and auditing of actions against recommendations and intended outcomes from each DHR. Whilst the focus on the functions is very much on the dissemination of good practice, we believe that it may also be necessary for the SOF to recognise that there could be a role for it

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in identifying serious failings and common themes in some instances to help ensure that the likelihood of a repeat homicide is minimised.

29. The Bar takes the view that the makeup of the SOF through the organisations listed at 6.40 seems appropriate. This could also be expanded to include others, such as the Public Prosecution Service, Probation Board or Policing Board. It will also be important that if any SOF member is directly involved with a review, or if there is any conflict of interest in a particular case, they remove themselves from discussions.

15. Do you have any comment on the potential implications the proposed model may have on equality or human rights?

30. If successful, the identification of actions and learning points which have the effect of reducing instances of domestic homicide must be welcomed as making a significant contribution to both equality and human rights. However, it is essential that all investigations and actions are sensitive to victims and their families and are balanced with careful consideration that no party's right to a fair trial should be adversely impacted by the process.

16. Do you have any further comment to make about the proposed model?

31. We would welcome further information on the cost and resource implications of the proposed new model and note that the Department intends to explore this through a regulatory impact assessment. The Bar looks forward to reviewing this in due course.

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