

Disclosure of criminal records – will it prevent domestic violence?

By: Therese Wallin, August 2011



Social networking websites are increasingly being used as dating forums. Their employment for such purposes is not always without risk, and may jeopardise the safety of some of the sites' visitors. In the search for a partner, well-intentioned users may come across abusive individuals. Either party is likely to be oblivious to the other's background, which may include a criminal record of domestic violence. This poses a novel problem to law-makers in their attempts to prevent men and women from being exposed to abuse and violence.

This evolution in forms of dating, coupled with the launch of a police national database, has sparked the Home Office to consider implementing new measures to prevent domestic abuse. The home secretary, Theresa May, is currently considering suggestions which seek to assist couples who only know a fraction of each other's history. If implemented, the proposals would allow a concerned party to view their significant other's criminal record. They would also enable the police to draw the attention of potential victims to partners with a violent past.¹

¹ <http://www.guardian.co.uk/society/2011/jul/17/women-warned-partners-clares-law>

The proposed novel measures are part of a campaign for what has become known as 'Clare's law'; a campaign supported by the Association of Chief Police Officers and the Government's Victims Commissioner, Louise Casey.² It is named after Clare Wood, who was murdered by George Appleton, who she met through a social networking website. Because of their lack of previous acquaintance with one another, Wood was unaware of Appleton's documented violence towards earlier partners.³

Of course, any invitation to a stranger into someone's private life may pose a danger. In today's globalised world, such perils may arise from various interactions. As such, the issue of lack of information of a partner's past, is not limited to those meeting through online dating.

The launch of the campaign was marked by the arrival of Clare Wood's father in Westminster, with Salford MP Hazel Blears. Blears argues for the usefulness of knowing a partner's criminal past as, believing that this would enable individuals to make an informed decision about whether to continue or terminate the relationship.⁴

It may be misleading to assume that, upon learning of a partner's violent past, potential victims would remove themselves from the relationship. The awareness of such a peril may not be the sole determining factor. Many victims will struggle with further obstacles beyond the actual physical abuse. They may, for instance, have been subjected to previous abuse psychological or physical. A history of being exposed to any form of violence may result in a distorted perception of reality. The victim may even perceive such a state of affairs to be normal and acceptable.

Moreover, it may also be that the potential victim, in the midst of new-love, will be inclined to believe that the abuser has changed. The abusing partner may even explain their

² <http://news.sky.com/skynews/Home/UK-News/Clares-Law-Government-Considering-Giving-Internet-Women-Daters-Right-To-Know-About-Partners/Article/201107316031931?f=rss>

³ <http://www.telegraph.co.uk/news/uknews/law-and-order/8643014/Government-considers-Clares-Law.html>

⁴ <http://www.bbc.co.uk/news/uk-england-manchester-14181959>

previous violent criminal record as a result of the previous partner's conduct.

The tragic death of Clare Wood has a complicated background implicating failures by the police force in charge of the case. Wood had made allegations to the police that Appleton was harassing, assaulting and threatening to kill her. Following her death, an investigation carried out by the Independent Police Complaints Commission found several failures in the police's handling of the matter.⁵

As such, her murder unquestionably highlights the failure of the police, in some cases, to protect victims of domestic violence. It is, however, questionable whether it demonstrates the need for partners to be aware of each other's criminal record.

Any law that involves members of the public acquiring information about an individual's criminal record is bound to raise concerns about the protection of privacy. Recently, this could be seen in relation to the so-called 'Sarah's law'. The provision permits parents, carers or guardians to ask the local police to disclose whether a person with unsupervised access to their child has a history of child sex offences.⁶ The limited access of such information to a child's primary carer(s) is a reasonable precaution in attempting to ensure the information is not misused. In contrast, it is difficult to qualify at what stage someone who may get romantically involved with an individual with a record of domestic violence should be allowed access to such details.

If measures are to serve as a preventative effect, the appropriate state to disclose any criminal record would be at the early stages of a relationship, when the emotional ties are still weak. However, at such an early stage, it is questionable whether it is appropriate to share such sensitive information with a person who has little reason not to spread it on. Concerns of another nature relate to whether such a scheme would have a negative impact on the safety and treatment of the abuser. David Burnie, of the New South Wales Council for Civil Liberties in Australia, noted that the proposals could lead to vigilante behaviour in

⁵ <http://www.guardian.co.uk/society/2011/jul/17/women-warned-partners-clares-law>

⁶ <http://www.guardian.co.uk/uk/2010/aug/01/sarahs-law-rollout-scheme>

the community. Moreover, there is also a risk the perpetrators being stigmatised, which may be an obstacle to their successful rehabilitation.⁷

The need to strike a proper balance between protecting potential victims and ensuring people's privacy relates to the need to safeguard the interests of both parties. The Government's Victims Commissioner considers that the priority should be to safeguard women's lives, not the privacy of a documented perpetrator. However, it is important to tread cautiously in considering any legislative provision that would enforce the proposals, in order to avoid any harmful consequences. The need for vigorous scrutiny has been stressed by MP Robert Buckland, a member of the Commons Justice Committee. Buckland has highlighted that the desire to safeguard women through new legislative measures cannot be at the expense of the provision lacking effective privacy safeguards. An unbalanced provision risks allowing concerned individuals to acquire information about a potential partner despite lacking strong grounds.⁸

Moreover, another undesirable outcome may be the generation of over-reliance on a clean criminal record check. This risk has been highlighted by, for example, Janet Loughman, Principal Solicitor of Women's Legal Services NSW. Seeing that victims of domestic violence do not always report their abuser, such incidents will not always surface on a criminal record check. As such, concerned individuals may interpret a clean criminal record as a false assurance.⁹

Regrettably, many victims withdraw their allegations because of fright over repercussions or lacking an alternative safe living situation, amongst other reasons. This may be particularly prevalent in relationships between couples that are from a culture where the man is viewed as being in control of the woman and she is stigmatised for leaving him.¹⁰

⁷ <http://www.smh.com.au/national/clares-law-should-abuse-history-be-revealed-to-new-partners-20110721-1hqhc.html>

⁸ <http://www.telegraph.co.uk/news/uknews/law-and-order/8643014/Government-considers-Clares-Law.html>

⁹ <http://www.smh.com.au/national/clares-law-should-abuse-history-be-revealed-to-new-partners-20110721-1hqhc.html>

¹⁰ <http://www.smh.com.au/national/clares-law-should-abuse-history-be-revealed-to-new-partners-20110721-1hqhc.html>

Undeniably, both men and women are at risk of becoming victims of domestic violence. However, there is a general perception, and often a failure to acknowledge, the high number of male victims. Although available numbers indicate that men make up around 40 per cent of the victims of domestic violence, although the actual number is likely to be higher. Many victims do not file a police report, because of fears of being stigmatised as weak and unmanly, says John Mays of Parity. He also highlights that the police often ignore male victims and fail to take them seriously. Moreover, he has pointed to the fact that there is a wide difference in the number of refuge places for men and women. In 2010, Mays said that there were 7,500 refuge places for women in England and Wales, whilst merely 60 for men.¹¹

Certainly domestic violence affects more women than men, but all victims should benefit from an adequate response - support and recourses to justice. In combating domestic violence, it is necessary to address all aspects of the crime. The stigma surrounding the crime must be included, as victims are then more likely to come forth. A part of this is dispensing with the traditional view of the home, and the actions occurring within it, as being part of the private sphere.

In relation to disclosing the criminal record of an abuser to their partner, it must be questioned if this will have the desired effect. It is uncertain whether such measures would have any major impact and it risks invading privacy. Rather, more resources are needed to help victims of domestic abuse to safely remove them from the situation and to ensure that they have sufficient support.

Many instances of domestic abuse will involve children being physically or emotionally abused as well as the parent. Even if they are not, they will almost certainly have witnessed instances of abuse which will have been a traumatic experience. This clearly shows the wide reach of the consequences of domestic violence, and stresses the need to help all those affected.

¹¹ <http://www.guardian.co.uk/society/2010/sep/05/men-victims-domestic-violence>

Ultimately, many couples getting romantically involved do so without much knowledge of one another's past. This is undeniably a direct consequence of today's modern lifestyle. In light of this, it is difficult to envision how any measures seeking to address such a gap of knowledge would operate. Surely a more efficient system would focus its resources on potentially vulnerable individuals from an early stage.