

POLICING DOMESTIC ABUSE IN SCOTLAND: A SOCIAL CONSTRUCTIONIST APPROACH

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Summary: This research summary highlights findings from a Master's research project that examined the origins and consequences of a specific crime control strategy in Scotland, namely the use of pro-arrest policies with relation to domestic abuse incidents. The researcher conducted interviews with 10 police officers in 2015-2016 and the narrative evidence supports findings of other studies on mandatory and presumptive arrest policies that suggest that those policies may be more harmful than beneficial. Of particular concern is the use of detention and arrest in cases where there is not enough evidence that a crime has been committed or in cases that may involve false allegations, as well as the potential for those policies to disempower victims and have the unintended effect of reducing reporting. The interviews also appear to substantiate the criticism that the application of a broad definition of domestic abuse leads to an intrusive policing of the private lives of an increasing number of individuals, even minors. Importantly, the net-widening effect of a broad definition of domestic abuse as well as an indiscriminate arrest policy result in system overload and, consequently, in the limited resources being directed away from those victims of domestic abuse that need them most.

INTRODUCTION

The issue of domestic abuse has been put high on the public agenda with an increased political and media coverage being devoted to it. Tackling this problem has been a priority for the police since Sir Stephen House, the first Chief Constable of Police Scotland, made it one of the five 'golden threads' of Scottish policing. It appears, however, that there is a contradictory approach towards domestic abuse in areas of politics and policing in the UK. Dempsey argues that in Scotland politicians appear to misunderstand the COPFS and ACPOS position on this issue (2013:86). Rather than taking a gendered neutral approach, politicians appear to have adopted an approach based on the understanding of there being a patriarchal society as exemplified by the promotion of the gendered definition of domestic abuse by the Scottish Government. This illustrates the dominant influence of the feminist perspective advocated for by women's groups. It is in part due to their pressure and campaigning that we are witnessing what is called in the social problem's literature a 'domain expansion', i.e. the inclusion of more and more behaviours that they would classify as abusive which has resulted in the recent criminalisation of psychological and emotional abuse with the passing of Domestic Abuse (Scotland) Act 2018.

The criticism of the way the police dealt with domestic abuse in the past and its current high political profile together with what Whitfield (Whitfield in Williams & Nash, 2010:188) sees as an increasing curtailment of professional discretion by the 'risk-averse culture' and 'defensive decision-making' characteristic of the Criminal Justice System in general nowadays, have all impacted on the amount of discretion available to police officers when attending residences where domestic abuse has been reported. The police officers interviewed confirmed the existence of a zero-tolerance policy with regards to domestic incidents and an institutional pressure to always make an arrest.

The research argues that it is the retributive and symbolic element of this type of policies that makes them appealing to policy makers who see the punitive approach to crime control as necessary in order to reassure the public that they increasingly see as vulnerable. This diminished view of the public is reflected in the ever-expanding Vulnerable Persons Register – a database set up by Police Scotland to store information about people they consider to be at risk of future harm.

The origin of mandatory and presumptive arrest policies for domestic abuse offences, as Hirschel et al. (2007:257) explain, can be traced back to the 1970s US, when a combination of a growing political pressure

exercised by the women's groups, a series of lawsuits brought against police departments for mishandling cases of domestic abuse and the promising findings of the first large scale experiment on the effects of arrest on domestic violence that was carried out in Minneapolis, have all resulted in a 'nationwide movement toward arrest as the preferred response to domestic violence' from the 80s onwards. As Hirschel et al. (2007:257) argue, the main aim of this movement was the modification of police behaviour through legislative action.

While these policies have been extensively analysed in the US, this type of research has not however been carried out in Scotland despite the fact that concerns have been raised about the limited discretion available to police officers when attending residences where domestic abuse has been reported. Importantly, the debate in the States have identified a number of problems and unintended consequences of the mandatory arrest policies, and subsequent field experiments funded by the National Institute of Justice (NIJ) failed to replicate the results of the Minneapolis study and found no consistent support for the long-term benefits of arrest on reoffending (Novisky and Peralta, 2015: 67). Some studies have even found that in certain circumstances the arrest can actually increase the likelihood of domestic violence reoccurring - as was the case for those offenders who were unemployed or unmarried (Pate et al., 1992).

In Scotland, the presumption of arrest with regards to domestic abuse suspects can be found in the Police Scotland and the Crown Office and Procurator Fiscal Service Joint Protocol entitled 'In partnership challenging domestic abuse'. which, while not having a legal force, determines police behaviour in those cases. It also emphasises that police officers should make arrests regardless of the wishes of the victim, a position that represents a shift from earlier police practice with regards to domestic abuse incidents or, for that matter, from cases involving disputes between non-intimates (see for instance Hoyle, 1996).

The research set out to examine the thesis that the pro-arrest approach to domestic abuse has led to a situation when police officers are under a lot of pressure to detain or arrest someone every time they attend a domestic abuse call even though there is no such legal requirement and, more worryingly, despite that fact that they may not have sufficient evidence that a crime has been committed which results in many people being unnecessarily kept in custody for hours on end before being liberated on the procurator fiscal's instructions due to lack of corroboration (Lynch in Hughes, 2011: 92).

Methodology

One to one, semi-structured, interviews were conducted with ten police officers (3 of whom were retired police officers and two were from the special domestic abuse unit) who had been recruited using informal channels and the so called 'snowball sampling' technique. One limitation (a consequence of snowball sampling) in terms of the nature of the sample was that 7 out of 10 officers were from the same city and therefore, if there are any slight regional differences in terms of the approach to policing domestic abuse, they have not been reflected in the sample. Also, the majority of the interviewees were men (7), and only 3 were women, this, however, seems to be representative of the general Police population in Scotland. All but one requested to remain anonymous.

The main aim of the interviews was to assess the approach to domestic abuse in Scotland with regard to arrest and detention, and to find out what is the level of discretion afforded to police officers in those cases. Most importantly, the interviews provided an opportunity for the police officers to voice their opinion on current law, procedures and the wider approach to domestic abuse, and, as a result, a number of challenges have been identified.

MAJOR FINDINGS TO DATE

Main Concerns / Challenges

- All of those interviewed confirmed the thesis that there is indeed pressure on the front-line police officers to detain or arrest someone every time they attend a domestic intervention, and that this pressure is coming from above, from the senior management. As one of the officers explained:

"The first question in a domestic incident is 'why wasn't he detained?' It's all sort of everybody is so scared of getting into trouble or getting criticised from the higher ranks. (...) There is so much fear about being criticised. Firstly, by the front-line officers, then by the sergeants and then by the inspectors as it moves up (...) our superiors are so scared of criticism. We'll get hung out to dry or I won't get promoted. It's this sort of approach of fear dare I say it." (Male, over 10 years of service)

It appears that one consequence of this fear and what has been referred to in the interviews as 'ass covering' by the Police may be unnecessary detention in cases that would not have previously warranted this measure. In fact, as he admitted, it may be quite common:

"It happens a lot. Like I said from many minor incidents there's time when we have people who should not be in our cells. Decent people or vulnerable people but by the letter of the law they must be detained, charged and what have you. It just shouldn't be happening." (Male, over 10 years of service)

- The interviews have also validated the concerns that have been raised suggesting that the focus on psychological and emotional abuse will lead to the 'over-criminalisation' of relationships and will increase state intervention into the private sphere (see Reece, 2006; Cramer 2005). As one of the interviewees put it:

"It doesn't matter you could just be having an argument and it can result in the end being in the jail. So it's massively intrusive on people's lives definitely." (Female, 6 years of service)

- Related to the points raised above is what many see as an unintended consequence of the mandatory and pro-arrest policies, namely the increase in the number of women being arrested for domestic abuse. This increase is attributed to a large extent to the rise in what is called a 'dual arrest' where both parties are arrested due to the responding officer's inability to determine who is at fault (Hirschel et al., 2007). This trend has been confirmed by a recent pilot study in Scotland which found a 'substantial' number of dual-report incidents recorded over a 1-year period (see Brooks and Kyle, 2015). The concern is that those arrests may criminalise the innocent party and increase the perceived risk of contacting the police, reducing, as a result, the rates of reporting (Novisky and Peralta, 2015: 67).
- Mandatory arrest policies 'have the potential to create uncooperative or hostile relationships between law enforcement officers and IPV victims' (Novisky and Peralta, 2015: 67) because they disempower victims by denying them the ability to choose what they think is the right solution to their specific situation (see Cramer, 2005). This undesired effect has unfortunately been confirmed by the interviewees:

"It's put a lot of people off contacting us. I can give you an example; a couple has an argument. The wife then wants the gentleman to leave we turn up. And normally we could say 'right sir is there somewhere you can go for the evening, and you can calm down until tomorrow?' Yes. Okay fine. Split them up simple resolution. Now it's 'oh so he's made you scared?' Yes. Right we'll have to detain him. Take him down to HQ. He's detained for 12 hours. He's interviewed. He'll probably be charged and arrested and put to court for a very minimal event. The other party then feels guilty. I didn't want that to happen. But it's happened. So in the future they might be resistant to call the police. They don't want him arrested again they just want a bit of space. And I've found that out from quite a few people." (Male, over 10 years of service)

What is more, studies in the US found that women of colour may be particularly reluctant to contact the police in districts where there are mandatory arrest policies due to the perceived racism of the criminal justice system and potential discriminatory treatment to which their partner may be subjected (see Bent-Goodley, 2001).

- another challenge identified by the interviewed police officers was the amount of bureaucracy now involved when dealing with every domestic disturbance and, consequently, the problem of wasting limited resources; in terms of the very serious cases, those involving serious bodily harm or threat to one's life, most of the interviewees estimated them to constitute about 5% of all incidents which suggests that the majority of police time is spent on dealing with those less serious or even minor incidents.

"From a sergeant's point of view or an inspector, if you've only got finite resources and you heard a car call going out to a domestic incident we're going to have 2 cops tied up for hours and hours doing paperwork. Dealing with the actual incident could be dealt with very quickly. But it's the follow-on enquiries, updating crime reports, updates to cases case as it could be custody case. Then updating the vulnerable person's database and cross referencing. If you went to a call at midnight you would not finish until about 8 o'clock in the morning."

Those 2 cops would be off the street for the rest of the shift. So domestic incidents became quite a bit off, not the actual domestic, the reasoning behind it, but the obvious distractions to it became a bit of a nightmare. People became really 'oh no, not again'. (Male, 30 years of service, now retired)

- A related criticism is that of the way the Vulnerable Persons Register is being used, as one of the police officers believes, the requirement to add everyone to that register, regardless of the seriousness of the incidence, defeats its purpose. As she explained, in instances when there are counter allegations, both parties end up on that register as both, a perpetrator and as a victim which is not very useful. As she put it:

"Your genuine domestic victims are totally lost in this database. Everyone is considered a vulnerable person. Every tiny little incident is considered a domestic incident if it's involving people that are in a relationship or who have been in a relationship. When that's not necessarily the case." (Female, 6 years of service)

- Another problem with the current approach to domestic abuse is the problem of malicious allegations and the fact that those policies may be open to abuse by some people as confirmed in the interviews:

"Some people do know that because it has a domestic tag, we have to be dealing with it to the most extreme. They know exactly what to say and what to do for us to go in and take someone away." (Female, 6 years of service)

Main Positives

- Despite the fact that the police officers interviewed have been mostly critical of the new approach to policing domestic abuse, there was a general agreement among them that the thinking behind it is good and that in many respects it is a step in the right direction as the approach is more robust now, more victim oriented and more uniform. As one officer summarised it:

"It's been a good change when we're dealing with serious incidents yes but in terms of the non-serious incidents which make up most of our domestic type things, it's been a disaster, an absolute disaster". (Male, over 10 years of service)

- Many interviewees also praised the work of the special domestic abuse units and the Domestic

"Police officers don't have discretion anymore (...) certainly domestic is taken right out of our hands."

(Female, 6 years of service)

"One domestic incident, even a minor one, can take up a full working day. It can't continue like that as I've other things to do. There's very few of us on the front line now. You have 6 cops on the team, 3 pairs and you have 3 domestic incidents in the first hour and there's nobody left to deal with anything else that comes. That happened to my team last week. You have nobody to respond to anything for the rest of the day."

(Male, over 10 years of service)

"Even if we do get evidence to prove it [false allegations], there's no penalty for that generally. They won't be charged with wasting police time or anything like that. That's generally the way because we don't want to discourage people from reporting domestic crime."

(Female, over 8 years of service)

"If we could go back to having our judgement trusted it would help a lot. We wouldn't go into a lot of the time as a domestic somebody needs to go to that. We're like, we don't really want to go to that. It would take a lot of that away, a lot of the dread with dealing with it."

(Male, over 10 years of service)

"Do we wish to live under a dictatorial legal system or one where there is the ability for those attending to base their decisions on experience, circumstances, evidence available?"

(Male, 31 years of service, now retired)

Abuse Task Force which can identify serious offenders and those victims most at risk. Indeed, as Hoyle (1996:198) argues, 'shift-based reactive policing is not conducive to officers taking ownership of problems' and having a dedicated domestic abuse unit certainly helps to address the need of the police to follow up on cases and provide extra support and information to the victims as what they deal with is rarely a one-off incident but rather an ongoing and complex problem.

Conclusion / Main Recommendations

- The current response, rather than being proportionate, is intrusive and often even counterproductive, and is arguably a reflection of the changing role of politics and the police and their preoccupation with risk management and risk reduction at the expense of professional discretion and the rights of the suspects. Crucially, by giving voice to those who are at the forefront of tackling domestic abuse and who are under pressure to implement the pro-arrest policy, this research poses a question about the effectiveness and desirability of an approach that is criticised by the police officers themselves.
- The commonly voiced criticism by the interviewees was that the current approach is too inflexible, that this is a 'one-size-fits-all' policy, especially given the fact that, as many of them admitted, the majority of cases they deal with on a daily basis are not what they would consider serious cases, most of them would fall in the 'breach of the peace' category as borne out by police statistics. Sherman and Strang (1996:5) argue against the approach of lumping most cases of domestic abuse together and treating them as the same and emphasize the importance of a better classification that would enable a more targeted and a more effective police response.
- The narrative evidence makes it clear that affording police officers more discretion when dealing with domestic incidents would improve morale significantly and would allow a more nuanced and targeted approach based on experience and local knowledge:

A bit more discretion it would be better all round for us and for the people that we deal with. It just annoys us that we're not trusted to do our job. We don't always get it right but most of the time we do.
(Male, over 10 years of service)

What is more, Loftus (2009:19) maintains that a top-down police reform designed to tighten the rules may produce conformity and influence behaviour but the risk is that the 'existing dispositions' will be left intact and what is needed is a 'more holistic approach', an approach, I would argue, that involves a dialogue and consultation with those on the front line of policing domestic abuse as well as an improved training provision as that was one of the things those interviewed thought they would benefit from.

- An important aspect of domestic abuse discussed in the interviews was the role alcohol usually plays in the incidents they attend, and the influence of alcohol is significant for two reasons. Firstly, it would confirm the findings of those who suggest that in this respect domestic abuse is no different to other types of crimes and types of violence and therefore have similar aetiology (Felson, 2010), a finding that does not support the patriarchal analysis. Secondly, if the main goal of the current approach is prevention, then mandatory or pro-arrest policies should be reconsidered as research shows that those who are under the influence of alcohol or drugs when they assault their partners are more likely to use violence again regardless of whether they were previously arrested or not (see Felson, 2005).
- The research argues that over-reliance on the Criminal Justice System with regards to domestic abuse is problematic as it should be considered the last resort that can be avoided, or at least facilitated by, for instance, therapy or effective civil action. Given that, as those interviewed admitted, the majority of cases they deal with are minor incidents, the zero tolerance approach results not only in wasted police resources but also in what can be seen as criminalising bad relationships and in unprecedented policing of the private sphere:

People should be allowed to argue. Couples should be allowed to shout at each other if that's the way they argue. That's not a crime. (...) there is a very real danger that we could criminalise it and people go to jail for breach of the peace, one of the parties, when it isn't maybe much more than that, an argument. If neither party has been in any sort of fear, genuine fear, it seems inappropriate in some cases. (Male, 14 years of service)

- Importantly, when the Criminal Justice System has to be resorted to, it should be remembered that Police is one of those institutions that are characterised by a high level of 'value pluralism' (Thacher, 2001) and all those values by which this institution is guided like crime prevention, retribution but also

justice and due process should be taken into account and carefully balanced. In the case of domestic abuse policing, however, this balance of justice seems to be swayed too much towards one side as exemplified by police approach to false allegations. As admitted by one of the police officers, there are generally no legal consequences for falsely accusing someone as they do not want to deter others from reporting. This is problematic for two reasons, firstly, because the zero-tolerance approach to policing domestic abuse seems to put more emphasis on results and increasing reporting rates than on due process and secondly, not holding people accountable if there is evidence may only encourage them to 'play the system'.

FUTURE WORK

Undoubtedly, more research is needed in this area to carefully assess the effects of this approach in the Scottish context. Studies with bigger and more representative samples of police officers as well as those involving victims and the wider public should be conducted and, to strengthen the validity of the results, interviews could be complemented by participant observation as the ethnomethodological approach has a long tradition within police studies and would enable data comparison. Furthermore, the recent introduction of Domestic Abuse (Scotland) Act 2018 – a ground-breaking new law that criminalises emotional and psychological abuse – calls for a separate investigation to assess its implementation, effectiveness and consequences given the concerns raised in this research.

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