

Focus on Women

Issue 5 Autumn 2006

Welcome to the fifth edition of the Rights of Women Policy Newsletter *Focus on Women*.

The months since the last edition of *Focus on Women* have been a time of significant consultation on criminal law remedies and procedures affecting women who have experienced violence. For example, the Home Office has looked at justice for the victims of rape and compensation for the victims of crime, whilst the Sentencing Guidelines Council consulted on sentences for sexual offences and domestic violence. As we highlighted in the last edition, the Law Commission also consulted on reforming the law on homicide, including defences such as provocation and diminished responsibility

In this edition we have looked at some of these issues, in particular the role of the Sentencing Guidelines Council and developments in sexual violence policy. We also highlight recent cases, including the use of the Protection from Harassment Act 1997 to sue a mother-in-law for damages for abuse and new legislation such as the Age Discrimination Regulations.

We hope this is as interesting and informative as previous editions of the Newsletter. We always welcome your feedback and comments on *Focus on Women*. These should be sent to Sanchita Hosali, our Policy Officer, at sanchita@row.org.uk. Further information and resources are available on our website at www.rightsofwomen.org.uk

Ranjit Kaur
Director, Rights of Women

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“Sorry may save wife-beaters from jail”

The Times, 12th April 2006

This is one of the many recent headlines announcing the beginning of a consultation process by the Sentencing Guidelines Council looking at sentencing for domestic violence.

The media coverage of this story made it easy to believe that a decision had already been made to exchange prison sentences with community punishments and domestic violence programmes for perpetrators. This was only added to by a recent story about a civil servant in the Department of Constitutional Affairs who was found guilty of offences against his wife but escaped prison with a community punishment requiring him to attend a domestic violence programme.

However, it is important to understand that these were only draft guidelines; they do not have any immediate effect in the criminal courts. This was just the beginning of a consultation process undertaken by the Sentencing Guidelines Council to seek views on various proposals for tackling domestic violence in the criminal courts.

The Sentencing Guidelines Council (SGC) is an independent body that works to improve the consistency of sentencing decisions made in criminal courts throughout England and Wales. Working closely with the Sentencing

Guidelines Panel, they draw up guidelines for the courts to advise and support them in making decisions about the sentences offenders should receive.

The SGC consultation paper sought the views of any interested parties on how domestic violence perpetrators should be dealt with in the criminal courts. Amongst their suggestions was that instead of imposing short custodial sentences the criminal courts could impose suspended sentences or community punishments including a requirement that the perpetrator attend a domestic violence programme. The consultation invited responses on whether this would be an appropriate way of resolving these cases. It was not the final guidelines to be given to magistrates and judges.

Rights of Women responded to the consultation with our concerns that non-custodial sentences and mitigating factors such as good character and remorse did not demonstrate an understanding of the nature and extent of domestic violence and would not lead to appropriate punishments for perpetrators and protection for survivors.

Following its domestic violence consultation, the SGC released another document on draft guidelines for sexual offences including rape and sexual assault. Rights of Women responded to this consultation, and further information can be found in “Sexual Violence Policy Update” in this issue.

If your organisation works with victims of crime and wants to see an

improvement in the way perpetrators are sentenced we would suggest that you visit the Sentencing Guidelines Council's website at www.sentencing-guidelines.gov.uk for any forthcoming opportunities to be involved in their consultation process. Copies of all Rights of Women's consultation responses can be found on our website, www.rightsofwomen.org.uk

Damages for Harassment

In July 2006, Gina Satvir Singh, was awarded £35,000 in damages after suing her mother-in-law for harassment under the Protection from Harassment Act 1997 (PHA). It is believed to be the first such use of the PHA.

Following her marriage Ms Singh moved into the home of her mother-in-law Dalbir Kaur Bhakar. She left after four months of abuse from Mrs Bhakar and later divorced her husband.

During the case, Ms Singh told Nottingham county court how Mrs Bhakar made her perform "excessive and unnecessary" house-related chores for long hours, including cleaning the toilet without a brush. Other reported abuses include only being allowed to make one telephone call a week which was monitored, not leaving the house unaccompanied and being forced to cut her hair, which Ms Singh considered to be against her Sikh religion. Ms Singh also told the court how she was not

permitted to register with a local GP, which meant that a hand infection she developed as a result of the excessive cleaning went untreated.

The PHA prohibits people from pursuing a course of conduct which amounts to the harassment of another. Judge Scott, said that 'the course of conduct which I have found on the part of Mrs Bhakar is very serious, far more than enough to amount to harassment for the purposes of the Act.' Mrs Bhakar denied the claims and her solicitors have said she plans to appeal the ruling.

Ms Singh's solicitor, John Rosley, was 'surprised' that there have not been more cases using the PHA in such situations. He said that the 'case has exposed a problem that is common, but not often talked about' and there are many others 'who could seek the same remedy.'

This case is an interesting development, demonstrating the broad scope of various civil remedies to address abuse. Particularly important is the use of remedies under the PHA to extended family members and others, without being limited to a particular category of person such as partners or ex-partners.

Rights of Women welcomes the use of the PHA to provide women who have experienced abuse with a remedy. If your organisation supports women who experience abuse, they may want to consider looking at the PHA when seeking legal advice.

A Short Guide to the Protection from Harassment Act 1997

What is harassment?

The PHA does not define harassment, as each case is looked at individually. It does state that harassing a person includes alarming them or causing them distress.

What is prohibited?

The PHA prohibits a person from pursuing a course of conduct which amounts to the harassment of another. This means there must be at least two incidents of the harassment before a complaint can be brought.

What are the penalties and remedies?

The PHA is unusual because it contains both criminal penalties and civil remedies. If a person is found guilty of a criminal offence under the Act, they can be imprisoned or fined or both. The court can also make a restraining order to protect the victim or any other person from further harassment.

Like Gina Satvir Singh, a claimant (victim) can bring a civil case against their harasser and if successful can be awarded damages. Claimants can also apply for an injunction to prevent further the harassment. If the injunction is broken, the claimant can apply to the courts for a warrant to be issued for the arrest of the harasser.

Cohabitation: the financial consequences of relationship breakdown

The publication of the Law Commission's proposals for changes to the law to improve the legal position of

couples who live together and do not marry or enter a civil partnership has attracted a great deal of media attention. Headlines announced that couples who live together were to get the same rights as married people, leading to the concerns expressed about the undermining of the institution of marriage.

Whilst the Law Commission has made suggestions about how couples who live together may be able to make

Consultations

A significant amount of our policy work relates to responding to consultation papers from the Government and other bodies. Through our engagement in the consultation process, we aim to ensure that women's voices are heard at every stage of policy formation.

Our recent consultation responses are available online (www.rightsofwomen.org.uk) and include:

- Sentencing Guidelines Council Consultation *Sexual Offences Act 2003 Guidelines*
- *Convicting Rapists and Protecting Victims – Justice for Victims of Rape*
- Sentencing Guidelines Council Consultation *Overarching Principles: Domestic Violence*
- *Getting Equal: Proposals to outlaw Sexual Orientation Discrimination in the Provision of Goods and Services*
- Law Commission Consultation Paper No. 177 *A New Homicide Act for England and Wales?*
- *Rebuilding Lives: Supporting Victims of Crime*

Ongoing consultations include:

- *Cohabitation: the financial consequences of relationship breakdown*
Deadline to respond to the Law Commission: **30th September 2006**
- *Confidence and confidentiality: Improving transparency and privacy in family courts*
Deadline to respond to the Department for Constitutional Affairs:
30th October 2006

financial claims against each other on separation or death, this is far from becoming law. The Law Commission is inviting responses from interested parties, further information can be found at www.lawcom.gov.uk.

For a long time at Rights of Women, we have been concerned about the situation in which many unmarried women find themselves following separation from their partner. Whilst lesbian couples can now obtain almost exactly the same

rights as married women by entering into a civil partnership, as the law currently stands unmarried women or women who do not enter into a civil partnership may only be able to make very limited claims against their partner's property. Many women believe the "common law wife" myth and only when they separate or their partner dies do they find that they have limited, if any, financial claims in relation to their partner's property and assets.

An important part of our work is ensuring that women have the necessary information about the law to enable them to make informed decisions about their relationships. We publish a series of free information sheets which can be downloaded from our website (www.rightsofwomen.org.uk), including 'Living Together and the Law' which sets out the legal position for women who do not marry or enter into a civil partnership. We also deliver a number of training courses throughout the country to enable women's and other organisations to better support women in this position (please see the Noticeboard in this issue).

Rights of Women welcomes the Law Commission's consultation and will be responding to it in due course. We hope that any resulting legislation will improve the situation for the millions of women in England and Wales who do not, for whatever reason, marry or enter into a civil partnership.

The Coming of Age of Discrimination Law

From 1 October 2006, the Employment Equality (Age) Regulations 2006 will introduce protection from discrimination, harassment and victimisation on the grounds of age in employment and vocational training.

Scope of the Regulations

The Regulations will apply to areas including access to training, recruitment, promotion, termination, pay and other conditions of employment. People of all ages will be afforded protection against age discrimination. The Regulations apply to the private and public sectors and includes trade unions, professional associations and vocational training providers.

Unlike other anti discrimination legislation such as the Sex Discrimination Act 1975 the Regulations do not specifically cover discriminatory advertisements despite the fact that age requirements in job adverts are one of the main problems encountered. In addition, goods, facilities and services are not covered so age discrimination in these areas will not be unlawful.

Retirement and age limits

The legislation will introduce a national "default" retirement age of 65, making compulsory retirement under 65 unlawful unless it can be justified. Employees will have the right to request working beyond 65 and there is an obligation on employers to consider any such request. The Regulations will also remove the upper age limit for a number of rights including redundancy, unfair dismissal and statutory sick pay.

State pensions will not be affected by the Regulations although exemptions to numerous age related rules in occupational pension schemes apply.

Age discrimination cases

Claims alleging age discrimination will be heard by an employment tribunal and must be lodged within three months minus one day of the alleged act. If a complaint is upheld, the tribunal may make a declaration or recommendation or may order compensation to be paid. There is no limit on the amount of compensation and the tribunal can also award interest on the amount. Employment tribunal claims can be complicated and it is advisable to seek legal advice before pursuing a case.

The new Regulations are fairly complex and this article only provides a short overview of its contents. The Advisory Conciliation and Arbitration Service (ACAS) has published a Guide for Employers 'Age and Workplace: Putting the Employment Equality (Age) Regulations 2006 into practice'. It also produces a guide for individuals called 'Age and the Workplace'. Further details are available at the ACAS website www.acas.org.uk or helpline 08457 47 47 47.

Sexual Violence Policy Update

In recent months there have been many media stories about sexual violence and possible reforms. Recent policy initiatives include a consultation on the law and procedure for rape trials, a consultation on sentencing for crimes

set out in the Sexual Offences Act 2003 (SOA), and the Government's public awareness "Consent Campaign".

Convicting rapists and protecting victims

'Convicting Rapists and Protecting Victims – Justice for Victims of Rape' from the Government's Office for Criminal Justice Reform focused on four key reforms to the law and procedure in rape cases. These were capacity, which forms part of the definition of consent under the SOA; allowing expert evidence; the rules for the admissibility of the victim's complaints about the rape; and whether video recorded statements by the victim should be automatically admissible without having to obtain the judge's permission to use such evidence. These issues are all important in any future changes to the law and procedure in rape cases. However, Rights of Women argued that any changes should be applicable to all sexual violence offences rather than being limited to cases of rape.

Capacity

Two particularly important issues for us were capacity and the use of expert evidence. We argued since the passing of the SOA the issues of consent and capacity have become blurred. This is particularly so where a victim has voluntarily consumed alcohol. Last year the case of *R v Dougal* (2005) at Swansea Crown Court highlighted this problem, where the judge is reported to have said that "drunken consent is still

consent". However, the victim's level of voluntary intoxication resulted in unconsciousness and the inability to remember whether consent was given. We argued that where a victim is unconscious any consent she may have given prior to becoming unconscious ceases to exist. We have called on the Government to clarify that where a victim is unconscious, for whatever reason, she cannot consent.

Expert evidence

Rights of Women believe that expert evidence in sexual violence trials can have a vital role in dispelling myths and countering the stereotypes that continue to exist. For example, at the same time as *Dougal* a poll by Amnesty International found that a third of people believed that if a woman is flirtatious she is partially or totally responsible for being raped and more than a quarter (30%) believed that a woman was partially or totally responsible for being raped if she was drunk. These attitudes are particularly disturbing in the context of prosecuting rapists given that potential jurors are drawn from the general public.

We called on the Government to go further than its proposals in the consultation. We believe that limiting expert evidence to a hypothetical victim and situation, without examining the actual victim or the actual circumstances, unnecessarily limits the impact and usefulness of expert evidence. We also called for expert evidence to be used in domestic violence cases.

Sentencing

When the Sentencing Guidelines Council (SGC) released its proposed guidelines for sentencing under the SOA, the media headlines ranged from "'Acquaintance' rapists to receive lighter sentences" (*The Telegraph*, 8 June 2006) to "Victim harm central to new rape sentencing guidelines" (*The Guardian*, 7 June 2006). Whilst this was a consultation process and the guidelines are not final, this was likely to be the last consultation before the finalisation of the guidelines. For more information on the SGC see "Sorry may save wife-beaters from jail" in this issue.

The consultation contains several welcome points. We welcomed the acknowledgement that all non-consensual offences involve the violation of the victim's sexual autonomy and will result in harm. We also welcome the acknowledgment that the effects of sexual offending may be physical and/or psychological and that the psychological effects may be equally or even more serious, but much less obvious (even unascertainable) at the time of sentencing. Further, the SGC guidelines state that the existence of any relationship between the offender and victim should not affect the starting points for sentencing. We strongly believe that this is the correct approach to sentencing.

However, we believe that the SGC fundamentally undermined this principle, by stating that an offenders

culpability for rape committed following consensual sexual activity is 'somewhat less' than in cases where the offender had set out with the intention of committing rape. This suggests that once consent is given for one activity that it exists for all other subsequent activities. This kind of reason was used to justify the old exemption to rape in marriage, reasoning which was rejected by the House of Lords in 1991 and which is inappropriate in the context of the reformulated offences under the SOA 2003.

Rights of Women also highlighted concern at the five year starting point for imprisonment for non-consensual sexual offences committed by adults against adults. This is particularly low where mitigating factors may reduce a sentence even further.

Training and public awareness

The case of *Dougal* and others like it highlight the clear need for training, education and awareness raising both in the general public and within the criminal justice system. The police, the CPS and judges need to receive routine training on sexual violence. Such training, if it is to be effective, must draw on the experience and insight of those in the women's sector who have a history of dealing with sexual violence.

We welcomed the focus of the Government's "Consent Campaign" on men also taking responsibility by

ensuring that a woman fully consents. However, some of the images in the campaign undermine its purpose, as for example with the image of the lower part of a woman dressed only in underwear displaying a no entry sign. We are also concerned by campaigns which place responsibility solely onto women, such as Suffolk Police's "Safe Magazine" which is aimed at offering women safety advice. However, both the format and content are inappropriate and irrelevant, trivialising an important issue and serving to reinforce blaming women for being victims of crime. We urged the Government and its agencies that to ensure that public awareness campaigns are carefully considered, drawing on the expertise on knowledge of those organisations with experience of supporting victims of sexual violence.

The future

The Government is in the process of developing a cross governmental national Action Plan on sexual violence. As a feminist organisation providing legal advice to women who have experienced sexual violence, we will continue to monitor developments and remain actively engaged in the process of reforming sexual violence policy and law.

Rights of Women's consultation responses can be downloaded from www.rightsofwomen.org.uk

Updates

Abortion

The last few months have seen several media stories over possible changes to abortion law. During a House of Commons debate on the 3 July 2006 Liberal Democrat MPs Phil Willis and Evan Harris reasserted their call for a joint House of Commons and House of Lords committee to review the law on abortion. The demand also forms the basis of Early Day Motion (2379), tabled by Labour MP Geraldine Smith. However, during the July debate, Caroline Flint a Health Minister rejected calls for a review of the abortion law. Others, such as Labour MP Emily Thornberry also noted that there have not been advances in medical technology to warrant such a review. She also highlighted that the very few late abortions which do take place are not easy decisions and often involve young frightened women, those whose first language is not English or women whose doctors oppose abortion. For more information please contact Abortion Rights www.abortionrights.org.uk

Domestic Violence Crime and Victims Act 2004

As we reported in Spring 2006, the new criminal offence of breaching a non-molestation order has still not come into force. There is still no word from the Home Office about when this will be implemented and until it is, non-molestation orders must be enforced through the civil courts.

Human Rights Act

Following months of speculation, on the 20 July 2006 the Home Secretary John Reid announced that Human Rights Act 1998 was not going to be repealed (abolished) or changed. Rather, the Home Secretary said that frontline staff will be trained to help them dispel myths about human rights laws.

Same-sex marriage is not marriage

In June 2006 Celia Kitzinger and Sue Wilkinson asked the High Court to make a declaration that their same-sex marriage, conducted in Canada, was valid under English law. Prof. Wilkinson argued that converting their marriage to a civil partnership would be discriminatory. She challenged non-recognition of their marriage as an infringement of the rights set out in the Human Rights Act 1998, in particular, the rights to a family and private life (article 8), to marry (article 12), and to non-discrimination (article 14).

On 31 July 2006 the High Court found that the marriage could only be legally recognised as a civil partnership, which enjoys similar rights as marriage. The court found that although there was discrimination as the women were not able to marry the partner of their choice, this discrimination was justified by the need to protect the traditional notion of marriage as between a man and a woman, primarily designed for raising children. For more information contact Liberty, www.liberty-human-rights.org.uk.

The Noticeboard

Rights of Women National Training Programme

Through training we enable agencies and organisations to support women and ensure their rights are protected.

■ Coventry

Tuesday 27th November 2006

Violence Against Women – Asylum and Immigration Law

■ London

Tuesday 24th October 2006

Domestic Violence and the Law – Updated

Child Contact and the Law

Wednesday 25th October 2006

Violence Against Women – Asylum and Immigration Law

BME Women and Violence

Thursday 26th October 2006

Children and the Law

Advance course: Domestic Violence and the Law – Updated

To coincide with the launch of the updated edition of our *Domestic Violence DIY Injunction Handbook* which incorporates changes introduced by the Domestic Violence, Crime and Victims Act 2004, Rights of Women is offering this half day course in London on Thursday 21st September 2006 in advance of the book's launch.

For all questions relating to training, including information on booking places, please contact Kathy Francis on 0207 215 6575/6 or training@row.org.uk.

Forthcoming publications

Rights of Women is pleased to announce the following forthcoming publications:

From A to Z: A Woman's Guide to the Law

launching 21st September 2006

This unique and accessible guide provides women with information on an extensive range of legal topics, from Abduction to Zero Tolerance. This A to Z guide covers different areas of law including asylum and immigration law; criminal law; discrimination and employment law; the English legal system; family law; housing; human rights law; and welfare and consumer rights.

From A to Z: A Woman's Guide to the Law is essential reading for all women, and those organisations that provide support, advice and advocacy for women.

Rights of Women's Domestic Violence DIY Injunction Handbook Updated

launching 28th September 2006

This new edition of *Rights of Women's Domestic Violence DIY Injunction Handbook* has been substantially updated to include all relevant changes to the law introduced by the Domestic Violence Crime and Victims Act 2004.

This extensive, detailed and accessible handbook enables women to obtain protection from violence and abuse. It is essential reading for all women considering applying for this form of protection, and for professionals who offer advice and support to women experiencing domestic violence.

For more information on our publications please visit our website, www.rightsofwomen.org.uk or contact us on 020 7251 6575/76 or info@row.org.uk



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