



Submission to the Committee for Justice's Call for Evidence on the Domestic Abuse and Family Proceedings Bill

**Children's Law Centre
June 2020**

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Introduction

The Children's Law Centre is an independent charitable organisation established in September 1997 which works towards a society where all children can participate, are valued, have their rights respected and guaranteed without discrimination and every child can achieve their full potential.

We offer training and research on children's rights, we make submissions on law, policy and practice affecting children and young people and we run a legal advice/ information/ representation service. We have a dedicated free phone advice line for children and young people and their parents called CHALKY and a youth advisory group called Youth@CLC.

Our organisation is founded on the principles enshrined in the United Nations Convention on the Rights of the Child, in particular:

- Children shall not be discriminated against and shall have equal access to protection.
- All decisions taken which affect children's lives should be taken in the child's best interests.
- Children have the right to have their voices heard in all matters concerning them.

From its perspective as an organisation which works with and on behalf of children, both directly and indirectly, the Children's Law Centre is very grateful for the opportunity to make this submission to the Justice Committee on the Domestic Abuse and Family Proceedings Bill.

International Human Rights Standards

The UN Convention on the Rights of the Child specifies the rights of children in relation to freedom from violence in Article 19:

1. States Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child.

2. Such protective measures should, as appropriate, include effective procedures for the establishment of social programmes to provide necessary support for the child and for those who have the care of the child, as well as for other forms of prevention and for identification, reporting, referral, investigation, treatment and follow-up of instances of child maltreatment described heretofore, and, as appropriate, for judicial involvement.

The UN Committee on the Rights of the Child have consistently raised concerns in relation to violence against children in the home in the UK. In 2002 the Committee

expressed deep concern *"that one or two children die every week as a result of violence and neglect in the home"*¹ and recommended that the State Party:

"Carry out large-scale public education campaigns and programmes, including through the schools, aimed at reducing child deaths and child abuse with information on the role of statutory and other services in protecting children;

*Establish effective procedures and mechanisms to receive, monitor, investigate and prosecute instances of abuses, ill-treatment and neglect, ensuring that the abused child is not victimized in legal proceedings and that her/his privacy is protected."*²

In 2008, the UN Committee on the Rights of the Child when examining the UK government's compliance with the UNCRC stated that *"the Committee remains alarmed at the still high prevalence of violence, abuse and neglect against children, including in the home, and at the lack of a comprehensive nationwide strategy in this regard. The Committee regrets that there is still no comprehensive system of recording and analysing abuses committed against children and that mechanisms of physical and psychological recovery and social reintegration for victims are not sufficiently available across the state party."*³

The Committee therefore recommended that the State party:

"Establish mechanisms for monitoring the number of cases and the extent of violence, sexual abuse, neglect, maltreatment or exploitation, including within the family, in schools and in institutional or other care;

Ensure that professionals working with children (including teachers, social workers, medical professionals, members of the police and the judiciary) receive training on their obligation to report and take appropriate action in suspected cases of domestic violence affecting children;

Strengthen support for victims of violence, abuse, neglect and maltreatment in order to ensure that they are not victimized once again during legal proceedings;

*Provide access to adequate services for recovery, counselling and other forms of reintegration in all parts of the country."*⁴

Most recently, in 2016, the Committee expressed concern in relation to:

¹ CRC/C/15/Add.188 para39

² CRC/C/15/Add.188 para 40

³ CRC/C/GBR/CO/4 para 50

⁴ CRC/C/GBR/CO/4 para 51

"The high prevalence of domestic violence and gender-based violence against women and girls, and the negative impact that those forms of violence have on children, whether as victims or witnesses;"⁵

The lack of due respect for the views of children in responses to violence against children and in family law proceedings."⁶

The UN Committee on the Rights of the Child therefore recommended that the State Party:

"Strengthen the systematic collection of data and recording of information on violence against children, including domestic violence, gender-based violence, abuse and neglect, in all settings, and the sharing of information and referral of cases among relevant sectors;

Increase the number of social workers and strengthen their capacity to address violence against children;

Give due weight to the views of children concerned in the responses to violence, including in criminal and family law proceedings;

Consider ratifying the Convention on preventing and combating violence against women and domestic violence."⁷

While it is recognised the UK government have regrettably failed to give effect to the UN Committee's Recommendation and ratify the Council of Europe's' Convention on Prevention and Combating Violence against Women and Children, CLC would suggest that the Committee should consider it as an important international human rights standard against which any legislation to protect against domestic violence should be benchmarked. Further given the UK Government have signed the Convention it is highly likely they will ratify in due course and the Committee should therefore consider it in anticipation of ratification. The Convention on prevention and combating violence against women and domestic violence⁸ sets out a wide range of measures to combat violence against women and domestic violence. In relation to the protection of children, the Convention is clear that *"children are victims of domestic violence, including as witnesses of violence in the family"*.

The Convention also states that parties:

⁵ CRC/C/GBR/CO/5 Para 42 (a)

⁶ CRC/C/GBR/CO/5 Para 42 (c)

⁷ CRC/C/GBR/CO/5 Para 43

⁸ Council of Europe: Convention on preventing and combating violence against women and domestic violence <https://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/210>

- Shall promote or conduct, on a regular basis and at all levels, awareness-raising campaigns or programmes, including in co-operation with national human rights institutions and equality bodies, civil society and non-governmental organisations, especially women's organisations, where appropriate, to increase awareness and understanding among the general public of the different manifestations of all forms of violence covered by the scope of this Convention, their consequences on children and the need to prevent such violence.
- Address the specific needs of vulnerable persons, including child victims, and be made available to them.
- Provide or arrange for specialist women's support services to all women victims of violence and their children.
- Take the necessary legislative or other measures to provide for the setting-up of appropriate, easily accessible shelters in sufficient numbers to provide safe accommodation for and to reach out pro-actively to victims, especially women and their children.
- Take the necessary legislative or other measures to ensure that in the provision of protection and support services to victims, due account is taken of the rights and needs of child witnesses of all forms of violence covered by the scope of this Convention.
- Age-appropriate psychosocial counselling for child witnesses of all forms of violence covered by the scope of this Convention and shall give due regard to the best interests of the child.
- Take the necessary legislative or other measures to ensure that, in the determination of custody and visitation rights of children, incidents of violence covered by the scope of this Convention are taken into account.
- Take the necessary legislative or other measures to ensure that the exercise of any visitation or custody rights does not jeopardise the rights and safety of the victim or children.
- Parties may adopt other measures in relation to perpetrators, such as:
 - monitoring or supervision of convicted persons;
 - withdrawal of parental rights, if the best interests of the child, which may include the safety of the victim, cannot be guaranteed in any other way.

- A child victim and child witness of violence against women and domestic violence shall be afforded, where appropriate, special protection measures taking into account the best interests of the child.

The UN Committee on the Rights of the Child's General Comment No 13: The right of the child to freedom from all forms of violence⁹ states that there should be no exceptions to the right of the child to freedom from all forms of violence:

*"The Committee has consistently maintained the position that all forms of violence against children, however light, are unacceptable. "All forms of physical or mental violence" does not leave room for any level of legalized violence against children. Frequency, severity of harm and intent to harm are not prerequisites for the definitions of violence. States parties may refer to such factors in intervention strategies in order to allow proportional responses in the best interests of the child, but definitions must in no way erode the child's absolute right to human dignity and physical and psychological integrity by describing some forms of violence as legally and/or socially acceptable."*¹⁰

General Comment No 13 also states that State parties that have not already done so must:

*"Review and amend domestic legislation in line with article 19 and its implementation within the holistic framework of the Convention, establishing a comprehensive policy on child rights and ensuring absolute prohibition of all forms of violence against children in all settings and effective and appropriate sanctions against perpetrators."*¹¹

CLC would therefore highlight the necessity for the entirety of the Bill to be children's rights compliant in line with the international Human Rights standards outlined above, including in relation to aggravation where victim is under 18, aggravation where relevant child is involved and the overriding principle that there should be no exceptions to the right of the child to freedom from all forms of violence.

Section 75 of the Northern Ireland Act 1998

Equality duties continue during the COVID-19 crisis. The Equality Commission have emphasised the importance of discharging section 75 duties in the context of the need to legislate and develop policy quickly. They also recognised that decision made in the current circumstances may actually exacerbate the disadvantage already suffered by some for the protected categories. The Committee will be aware of the advice note prepared by the Equality Commission, for public authorities on the Section 75 duties during this time:

⁹ CRC/C/GC/13 <https://www.refworld.org/docid/4e6da4922.html>

¹⁰ CRC/C/GC/13 Para 17

¹¹ CRC/C/GC/13 Para 41

https://www.equalityni.org/Footer-Links/News/Employers-Service-Providers/Section-75-duties-when-developing-Covid-19-related?utm_source=NewZapp&utm_medium=email&utm_campaign=May20ezine

We welcome the equality screening undertaken as part of the consultation on the policy proposals in 2015/16, however, it appears that no further equality screening was undertaken on the draft Bill. Equality screening applies at every stage of policy and legislative development and therefore, in order for the Department to be compliant with their statutory duties under section 75, a further equality screening process must be undertaken on the draft Domestic Abuse and Family Proceedings Bill.

Furthermore, CLC note that in the previous Equality Screening Form completed by the Department of Justice in 2016¹² that *"both adults and children may benefit from these policies with regards to a reduction in incidents and re-victimisation"*. Given that clauses 11 and 17 now exclude many under 18s from the protections afforded in this Bill, CLC would assert that this assessment of the equality impact no longer stands. CLC believe that there will be differential adverse impact and consequently the Department is required to carry out an equality screening exercise, a full Equality Impact Assessment, consultation and propose mitigation. In failing to do so the Department will have breached their section 75 duty.

As the Equality Commission have highlighted the potential for already disadvantaged groups to be further disadvantaged by measures adopted during this period, the importance of carrying out a full Equality Impact Assessment in relation to this legislation including considering alternative measures cannot be over emphasised.

General Comments

CLC welcomes the introduction of the Domestic Abuse and Family Proceedings Bill into the Assembly. We welcome in particular, the recognition within the Bill of the impact that domestic abuse has on children through the introduction of child aggravators where the victim is under 18 or where a child sees, hears or is present during an incident of abuse or they are used to abuse the connected person.

CLC are deeply concerned however that the Domestic Abuse and Family Proceedings Bill, as introduced, does not fully reflect the impact of domestic abuse on children. Children must also be viewed as a victim of domestic abuse. We are challenged as to the rationale for and the justification of the exemption clauses 11 and 17 included in the draft Bill. CLC would strongly advocate for the removal of exemption clauses 11 and 17 within the Bill. As ECHR Art 2 Right to Life, Art 3 Right to Freedom from Torture, Inhuman and Degrading Treatment and Art 8 Right to Private and Family Life read alongside Art 14 Non-discrimination are engaged the exclusion of children from the protection of the Bill, **the Bill is not human rights compliant**. We would also note

¹² <https://www.justice-ni.gov.uk/sites/default/files/consultations/doj/equality-screening-domestic-violence.PDF>

that the exclusion of children from the protections also constitutes a breach of the UNCRC as referenced above and a failure to give effect to successive recommendations of the UN Committee on the Rights of the Child. Children are one of the most vulnerable sections of our society and should be afforded more, not less protection than adults from violence in the home. Failure to recognise children and young people as victims of abuse, for example through coercive and controlling behaviour of a parent, leaves children and young people less visible to services and at a much greater risk of continued abuse.

General Comment No 13, as referenced above, is extremely clear on this matter, i.e. that there should be no exceptions to the right of the child to freedom from all forms of violence (*our emphasis*).

In addition, CLC would recommend that the aggravator where a child sees, hears or is present during an incident of abuse is extended to include the ability for the courts to impose an aggravated sentence even if a child does not directly witness the single incident of abuse of which the perpetrator is being charged with. Children are aware of, and affected by domestic abuse in the home even if they are not present at the time of the single incident of abuse that has been reported (or is being charged). Children will feel and absorb the tension and stress within the home.

Research has shown that:

*"In situations where a child's stress levels are high, such as in situations of domestic abuse, persistent elevations of stress hormones and altered levels of key brain chemicals produce an internal physiological state that disrupts the structure of the developing brain and can lead to difficulties in learning, memory and self-regulation. As a result, children who experience toxic stress in early childhood may develop a lifetime of greater susceptibility to stress-related physical illnesses (such as cardiovascular disease, hypertension and diabetes) as well as mental health problems (such as depression, anxiety disorders and substance abuse) (National Scientific Council on the Developing Child, 2007). They also are more likely to exhibit health damaging behaviours, such as smoking and adult lifestyles, such as drug taking, that undermine well-being and subsequently lead to earlier death (Brown et al 2009)."*¹³

It is therefore vitally important that children living in homes where domestic abuse is occurring are afforded the highest level of protection and perpetrators are dealt with more severely by the courts where children are involved.

In relation to children who are witness to, or are used to abuse (and therefore being cited as an aggravating factor within the domestic abuse charge), CLC would also recommend the need for an automatic consideration regarding contact between the child and the perpetrator, particularly where the perpetrator is the parent.

¹³ Cafcass Cymru 'Impact on Children of Experiencing Domestic Abuse'
<https://gov.wales/sites/default/files/publications/2019-08/cafcass-cymru-impact-on%20children-experiencing-domestic-abuse.pdf>

Consideration should be based on the best interests of the child (as per Article 3 of the UN Convention on the Rights of the Child) and could include:

- Prohibiting unsupervised contact for a parent on bail for domestic abuse related offences, or where there are ongoing criminal proceedings for domestic abuse;
- Whether there is the need for a Non-Molestation Order and/ or an Occupation Order to be put in place in order to restrict access to the family home and therefore to the child;
- Withdrawal of parental rights, if the best interests of the child, which may include the safety of the victim, cannot be guaranteed in any other way as per the Council of Europe Convention on preventing and combating violence against women and domestic violence (referenced above);
- Acknowledging the nature of coercive and controlling behaviour, allowing the child's wishes to be taken into account.

In bringing forward the Domestic Abuse and Family Proceedings Bill, CLC also recommend implementing the recommendation to the UK government from by the UN Committee on the Rights of the Child in relation to strengthening the systematic collection of data on violence against children, including domestic violence and the sharing of information and referral of cases among relevant sectors in a GDPR and children's rights compliant way. CLC would therefore support the introduction of a GDPR and children's rights compliant legislative provision to allow the PSNI to inform the child's school of a domestic abuse incident in the home (often referred to as 'Operation Encompass').¹⁴ Information sharing should not, however, be limited to between the PSNI and schools, but should also be fed through the appropriate mechanisms within Health and Social Care and the judiciary. Again, it is critical that this is done in a GDPR and children's rights compliant way.

Furthermore, professionals working with children (including teachers, social workers, medical professionals, members of the police and the judiciary) should receive training on their obligation to report and take appropriate action in suspected cases of domestic violence affecting children (as per the 2008 UNCRC Concluding Observations referenced above) as well as training for professionals to adapt a children's rights based approach to their work, as outlined in General Comment No 13: The right of the child to freedom from all forms of violence¹⁵:

"Educational measures should address attitudes, traditions, customs and behavioural practices which condone and promote violence against children. They should encourage open discussion about violence, including the engagement of media and civil society. They should support children's life skills, knowledge and participation and enhance the capacities of caregivers and professionals in contact with children. They can be initiated and implemented by both State and civil society actors under the responsibility of the State. Specific examples include, but are not limited to:

¹⁴ <https://www.operationencompass.org/>

¹⁵ CRC/C/GC/13 para 44

[...]

(d) *For professionals and institutions (government and civil society):*

- (i) *Providing initial and in-service general and role-specific training (including inter-sectoral where necessary) on a child rights approach to article 19 and its application in practice, for all professionals and non-professionals working with, and for, children (including teachers at all levels of the educational system, social workers, medical doctors, nurses and other health professionals, psychologists, lawyers, judges, police, probation and prison officers, journalists, community workers, residential caregivers, civil servants and public officials, asylum officers and traditional and religious leaders);*
- (ii) *Developing officially recognized certification schemes in association with educational and training institutions and professional societies in order to regulate and acknowledge such training."*

CLC would also support a suite of awareness raising campaigns and educational programmes to support the legislative reform being proposed including with and for children and young people *"to increase awareness and understanding among the general public of the different manifestations of all forms of violence... their consequences on children and the need to prevent such violence"*¹⁶ and should provide support and information on what constitutes a healthy relationship.

In addition, CLC would strongly advocate for a legislative provision that provides bespoke support for children and young people. This could be for example, through funding for specialist services that children need to recover from witnessing or experiencing domestic violence and abuse, including, but not limited to counselling services. This is recommended by the UN Committee on the Rights of the Child and the Council of Europe Convention on preventing and combating violence against women and domestic violence:

*"Provide access to adequate services for recovery, counselling and other forms of reintegration in all parts of the country."*¹⁷

*"Age-appropriate psychosocial counselling for child witnesses of all forms of violence ... and shall give due regard to the best interests of the child."*¹⁸

Finally, in relation to the family proceedings aspect of the Bill, CLC welcome the proposal to prohibit perpetrators of abuse from cross-examining their victims in person in certain circumstances in family proceedings, and vice versa, and give courts discretion to prohibit cross examination in person in other circumstances where it would affect the quality of the witness's evidence or cause them significant distress.

¹⁶ Council of Europe: Convention on preventing and combating violence against women and domestic violence <https://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/210>

¹⁷ CRC/C/GBR/CO/4 para 51

¹⁸ Council of Europe: Convention on preventing and combating violence against women and domestic violence <https://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/210>

CLC would recommend that in line with the UN Committee on the Rights of the Child recommendations in 2016 that this there is also a clause inserted into the Domestic Abuse and Family Proceedings Bill to ensure that the views of children concerned in the responses to violence are given due weight, including in criminal and family law proceedings.¹⁹

Summary of Key Recommendations

1. CLC strongly advocate for the removal of exemption clauses 11 and 17 within the Bill.
2. CLC recommend that the aggravator where a child sees, hears or is present during an incident of abuse is extended to include the ability for the courts to impose an aggravated sentence even if a child does not directly witness the abuse.
3. CLC recommend the need for an automatic consideration regarding contact between the child and the perpetrator, particularly where the perpetrator is the parent. Consideration should be based on the best interests of the child.
4. CLC recommend implementing strengthening the systematic collection of data on violence against children, including domestic violence and the sharing of information and referral of cases among relevant sectors.
5. CLC support the introduction of a legislative provision to allow the PSNI to inform the child's school of a domestic abuse incident in the home (often referred to as 'Operation Encompass') in a GDPR and children's rights compliant way.
6. CLC recommend training for professionals working with children on their obligation to report and take appropriate action in suspected cases of domestic violence affecting children as well as training for professionals to adapt a children's rights approach to their work.
7. CLC support a suite of awareness raising campaigns and educational programmes to support the legislative reform being proposed including with and for children and young people.
8. CLC strongly advocate for a legislative provision that provides bespoke support for children and young people through funding for specialist services that children need to recover from experiencing or witnessing domestic abuse.
9. CLC recommend the inclusion of a clause to ensure that the views of children concerned in the responses to violence are given due weight, including in criminal and family law proceedings.

¹⁹ CRC/C/GBR/CO/5 Para 43

Conclusion

CLC hopes that our comments in relation to the Domestic Abuse and Family Proceedings Bill are of interest to and beneficial to the Committee. If the Committee is agreeable, CLC may wish to submit additional evidence during the Committee stage of this Bill.

If the Committee requires any further detail or clarification, we would be happy to assist the Committee in any way that is helpful. CLC again thanks the Committee for this opportunity to engage with it on this important issue.