

Derry City and Strabane District Council Draft Response to NI Assembly 'Domestic Abuse and Family Proceedings Bill' Consultation

Has this new domestic abuse legislation enhanced existing legislation and does it fully address the gaps in existing law to improve the ability of justice agencies to prosecute domestic abuse cases?

Derry City and Strabane District Council welcomes the opportunity to respond to the NI Assembly consultation on the Domestic Abuse and Family Proceedings Bill. Council believes that the Bill will enhance existing legislation by addressing harmful behaviours not currently captured under existing legislation by allowing police to take forward charges upon presentation of a pattern of non-violent abusive behaviour. This will potentially support earlier interventions in such cases and provide additional protections to victims. It is hoped that the Bill will encourage victims to come forward through the expanded recognition of abusive behaviours and ultimately reduce the number of victims of domestic violence and abuse.

Council recognises the work carried out by the task and finish group and community organisations in bringing the Bill to this stage.

Whether the Bill addresses all the gaps in existing legislation dealing with domestic abuse and violence remains to be seen from its implementation. It does, however, have the potential to enhance the protection of victims, address the issues of emotional, financial and psychological abuse and deal with coercive control by a partner, former partner or close family member. Control is at the heart of domestic abuse and this Bill represents a forward step by recognising that abuse can be emotional, psychological and coercive as well as physical.

Council looks forward to the implementation of the Bill and will ensure that the Derry and Strabane PCSP will engage with police and our partners (Foyle Women's Aid, Nexus, La Dolce Vita, Men's Action Network etc.) to monitor the impact that the new legislation is having for victims.

The definition of the offence and the definition of abusive behaviour

It is clear from the 'Domestic Abuse and Family Briefings Bill' update to the Justice Committee on 12th March 2020 what will be covered by the offence and definition of abusive behaviour. In very general terms, the offence will capture patterns of psychological and emotionally abusive (non-physical) behaviour that is controlling and coercive in nature and/or patterns of physical/violent/sexual behaviour against a partner, former partner or close family member. Council assumes that verbal abuse is included under abusive (non-physical) behaviour.

In summary, the key elements of the new domestic abuse offence would be that:

- abusive behaviour would include behaviour directed towards the victim that is physically or psychologically violent, threatening or intimidating;
- the offence would also cover behaviour directed towards the victim, their pet or property that is abusive because it is coercive or controlling or amounts to psychological, emotional, financial or sexual abuse of the other person;
- the provisions would apply where the behaviour is intentional, or reckless as to its effect;
- harm would not have to be caused as a result of the abusive behaviour, rather an offence would be committed where a reasonable person would consider that the behaviour would be likely to cause harm. This could mean that there would be further opportunities to explore police led prosecutions with limited victim involvement;
- it would make reference to types of behaviour that would be considered to be abusive, though not be limited to those listed;
- abusive behaviour would relate to saying, doing or communicating something as well as a failure to do this (where it is intentional or the person was reckless);
- a defence would be that the behaviour in the particular circumstances of the case is deemed to be reasonable. It would be for the defence to provide evidence of this;

The Department has also intimated that further guidance will be issued around the operation of the domestic abuse offence.

Clause 1 of the Bill defines the domestic abuse offence while Clause 2 defines what amounts to abusive behaviour.

Any identified issues regarding the investigation and prosecution of the new offence

Council acknowledges that domestic abuse and domestic violence is a major issue in our district and welcomes the significant work to address this by both our statutory and community partners. Council welcomes this Bill which intends to widen the current legislative framework for tackling this crime type and recognises that the Department has consulted extensively with relevant agencies before bringing the Bill to the Assembly. While the investigation and prosecution of the new offence will be the responsibility of PSNI and the judicial system Council intends to monitor the implementation of the Bill through ongoing engagement with our voluntary partners that deliver services to victims of this crime. Council also recommends that the new Bill to take into consideration if the perpetrator is a repeat offender (be that against the same person or a different person) and that sentencing should be reflective of this.

The Derry and Strabane PCSP will also receive quarterly updates from the PSNI District Commander on the measures included in the Local Policing Plan for 2020/21 which includes:

Measure 1.1.1: Repeat victimisation rate and report on initiatives to support repeat victims with a focus on (i) domestic abuse, (ii) Child Sexual Abuse and Exploitation (iii) hate crime and (iv) burglary

Whether the 'reasonable' defence included in the legislation is framed appropriately and the intent of when it would apply is clear
--

The 'reasonable' defence as outlined in clause 12 of the Bill allows the accused to defend his/her actions on the grounds that the behaviour was in the particular circumstances reasonable. This may apply where the accused has taken specific action for the benefit or protection of their partner/connected person. Examples of situations when this defence may apply are outlined in clause 12 but in all cases the onus is on the accused to bring forward sufficient evidence for the 'reasonable' defence. Each case will be informed and determined by the evidence presented to the court.

Council is satisfied that the 'reasonable' defence is framed appropriately and that the intent of when it would apply is clear while acknowledging that each case will be determined on the specific evidence presented to the court.

Whether the penalties provided for in the Bill are appropriate and adequate
<p>Clause 14 of the Bill provides that the penalty for the offence is 12 months or a fine (or both) on summary conviction (that is at magistrate's court level) and 14 years or a fine (or both) on conviction on indictment (that is at Crown Court level). The higher sentence is intended to reflect the fact that the offence could incorporate physical and sexual violence as well as non-physically abusive behaviour.</p> <p>Council feels that a maximum sentence of 12 months is not a strong enough deterrent for an act that can potentially result in severe mental/physical damage or death and does not agree that 14 years is a long enough sentence for an act of domestic violence murder. Council recognises the extensive input into the framing of the Bill by statutory and community partners in the 'task and finish group who agreed that sentencing should reflect the seriousness of the offence. Council also recognises the ongoing discussions the Department is having with Men's Advisory Project, NSPCC, Nexus, Victim Support and Women's Aid.</p>
Any other legislative or non-legislative approaches to tackle domestic abuse not currently in place that should be taken forward either in this Bill or in another piece of legislation or by other means
<p>Ensure continued support for local advocacy and support services for victims of domestic abuse locally i.e. Foyle Women's Aid, La Dolce Vita, Nexus, Men's Action Network, the Rainbow Project etc.</p> <p>Council believes that police should pay close attention to monitoring of and breaches of Non-Molestation Orders issued due to DV and Domestic Abuse (DA) and report all notifications of Domestic Violence and Domestic Abuse to Social Services, Women's Aid or other appropriate service provider no matter what the DASH Model Risk Assessment illustrates.</p> <p>Council also recommends that there should be an All-Ireland and UK database maintained with details all of DV and DA perpetrators. This should be for use when there are reports of DV & DA and for sentencing purposes.</p> <p>Council welcomes the inclusion of the contents Clause 10 to include DV & DA actions that may happen in the Republic of Ireland are other parts of the world.</p>

Email completed response to:

Domesticabusebill@niassembly.gov.uk