

## **Views and Comments on the Domestic Abuse and Family Proceedings Bill (Northern Ireland) 2020**

### **Background**

The Evangelical Alliance NI has been asked for views and comments on the Domestic Violence and Family Proceedings Bill (Northern Ireland) 2020<sup>1</sup>. What follows are some short points and questions around the introduction to the Bill.

The Evangelical Alliance represents and joins together hundreds of organisations, thousands of churches and tens of thousands of individuals across the UK to make Jesus known.

Representing our members since 1846, the Evangelical Alliance is the oldest and largest evangelical unity movement in the UK. United in mission and voice, we exist to serve and strengthen the work of the church in our communities and throughout society. We have been working in Northern Ireland for over 30 years and engage across a wide range of policy issues from poverty to reconciliation and issues of human dignity.

### **Key points**

#### **1. We welcome the intention of this bill to:**

- address harmful behaviour not captured under existing offences;
- recognise in law the patterns of behaviour involved;
- provide the police with the opportunity to take forward charges upon presentation of a pattern of non-violent abusive behaviour, potentially supporting earlier intervention in such cases;
- provide additional protections to victims through an enhanced legislative framework;
- encourage victims to come forward and engage with the criminal justice system through an expanded recognition of abusive behaviour; and
- ultimately reduce the harm caused by abusive behaviour.

**In summary to deal with** “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.”

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<sup>1</sup> <http://www.niassembly.gov.uk/globalassets/documents/legislation/bills/executive-bills/session-2017-2022/domestic-abuse/domestic-abuse-and-family-proceedings-bill---as-introduced.pdf>

We support legislation which attempts to protect vulnerable people from domestic abuse and its effect on family and personal relationships. We believe that every person, old or young, male or female regardless of whatever identity markers they make, use, or identify with, carries infinite value and worth by virtue of being a human being. Acts and words and patterns of behaviour which degrade or diminish a person's human dignity should be discouraged and where appropriate dealt with through the criminal justice system. The desire to close a loophole which has allowed forms of non-physical abuse to continue without legal restitution is important and admirable and it is important that coercive control of others is tackled strongly.

## 2. Definitions

While recognising the genuine and welcome desire to help victims who cannot see the harm being caused to them because of years of abusive behaviour etc, we have concerns more widely about who gets to decide how 'harm' is defined.

Appendix C clause 1 - **the offence can be committed regardless of whether or not harm is actually caused to an individual.**

Clause 3 - **intended to cover situations where a victim may not consider that they have been harmed, effectively due to either their resilience or abusive behaviour having become normalised within the context of the relationship.**

The concern being that in this age of rapidly changing social values, many words are considered 'harmful' by some people while to others they are perfectly 'reasonable' and not in any way intended or perceived to be a cause for harm. While intended to cover very serious situations where the victim may not see the harm caused to them because of conditioning, a third party could be deeply offended by a behaviour or words where the victim genuinely sees and experiences no harm.

The same issue applies to 'reckless' which would normally be associated with driving offences in a criminally legal sense. Someone may well be reckless – we all know reckless people – who use words and act in ways that are not welcome or wise, kind or good. However this behaviour could still fall a long way short of a criminal offence.

Part of our concern is mirrored in the development and review of hate-crime legislation. We want to do all we can to reduce hate in society and to foster loving relationships. However legislation can only take us so far and just as kindness, grace and love cannot be compelled through 'love-legislation', neither is criminalisation necessarily the best way to prevent unkind or hateful acts or words. What is often missing is a work of grace in the heart and mind and a depth and quality of human relationship.

We are not concerned not about the use of this legislation in genuine cases, we want to see vulnerable women and men, young and old people protected from dangerous and abuse behaviours. However if key terms are left undefined and there are a lack of safeguards to prevent malicious or vindictive use of it by either partner in a difficult or toxic relationship, we would be concerned that the legislation itself could be abused and victims and trust lost in the process.

### 3. Pattern of behaviour

Again, notwithstanding genuine instances, could this inadvertently apply to unintended situations? Could it be applied retrospectively when a friendship ends between two teenagers? How could it be prevented from being conflated or confused with behaviour in an unstable romantic relationship which is immature, jealous, undesirable but again not necessarily criminal? Could this be applied to instances of bullying, which while not acceptable, may not be a criminal offence?

Pt. 8

the **offence should be engaged where the accused demonstrates abusive behaviour of any kind – i.e. things said /communicated as well as things done.....**include behaviour that may not be directed towards the intended victim, but would be intended to harm them (or be reckless to the intent)

Pt. 11 ***as well as a failure to say/do/communicate*** (where it is intentional or the person was reckless)

Taking these points together, someone could potentially quite easily be 'reckless as to their intent' in their 'failure to do or say or communicate something' while at the same time seeking to cause no harm to the connected person or oblivious to any perceived harm caused. We have no wish to defend actions which are abusive or demeaning of another's human dignity - our question is whether there is a clear enough boundary between these described patterns of behaviours and those which are undesirable and unkind but not unlawful.

Could this stop someone seeking help or change counselling around issues of jealousy or anger or difficult aspects of their relationship if they suspected that they were likely to be reported to police by a third party counsellor?

Could this be applied to a mentor/mentee relationship, a youth leader and young person in a faith context where the mentor or youth leader is accused of a pattern of behaviour that was deemed reckless because of a failure to communicate particular things or in communicating certain teachings of that faith that are deemed to be 'harmful'?

### 4. **No right to claim trial by jury** Clause 21, - makes an amendment to Article 29 (1) of the Magistrates' Courts (Northern Ireland) Order 1981. The amendment adds the domestic abuse offence to the exemptions listed.

We would be curious to understand the rationale behind this recommendation a little more. Is it because prosecutions for domestic violence are difficult to achieve with a jury?

While wanting to advocate strongly for measures that would help to increase conviction rates for crimes involving domestic violence, it does seem unusual not to have the option of a jury trial in what remains a serious criminal charge with a huge social stigma. The only other example we can think of is the use of Diplock courts in Northern Ireland in relation to terrorism and these have been controversial in terms of human rights since their introduction. Again none of this is to 'take the side' of the accused – we want to the victim protected from the ordeal of trial as much as possible and conviction rates for these crimes increased. We make the point because maintaining both actual and perceived access to justice and fairness is important for everyone in wider society.

## **5. Non-physical abuse, coercion and abortion.**

We are aware of a gap in the Northern Ireland legislation around coercive abortions since the law has changed in October 2019. Could a provision be added specifically to include protection of vulnerable women (and their unborn children) in situations where there is coercion, physical or non-physical, to end the pregnancy through abortion?

## **Conclusion**

We very much appreciate the opportunity to respond to this proposed legislation. We are not experts in this field and nor do we claim to be. We share the very real and urgent desire in this bill to protect vulnerable human beings and their human dignity. The concerns we have raised, primarily around definitions and justice are not intended in any way to undermine the protection of the most vulnerable from non-physical coercive behaviour but to ensure that the resulting legislation is robust and effective to serve those who need it most.

## **Further Discussion**

We are very happy to clarify or discuss any of the points we have raised. TO do so please contact David Smyth:

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