



Written evidence to Health Committee – Domestic Abuse & Family Proceedings Bill

May 2020

Introduction

The Men's Advisory Project (MAP) is the lead regional Charity specialising in support for men and their children who have endured or are enduring abuse.

Over 21 years we have been at the forefront of shaping and coordinating response to domestic abuse for men through trauma focussed practice shaped by survivor experience but led by clinical excellence.

At heart we are a specialist service for male survivors of domestic abuse and their children. We are also the longest running organisation specialising in supporting men who have endured or who are enduring abuse in the United Kingdom and Ireland.

We welcome the introduction of the Domestic Abuse and Family Proceeding Bill. We are grateful to all involved in moving this Bill forward, from, Minister Ford and Minister Sugden to eventual fruition under the dedication of Minister Long and her team. The Department of Justice has been central to the quality of the proposed Bill having undertaken extensive work whilst drafting this legislation in consultation with voluntary and statutory organisations to ensure that they had a strong sense of the victim's voice and practitioners experience. We thank the Chair and deputy Chair of the Justice committee for their immediate focus on a Domestic Abuse Bill once the Assembly was restored and for their exhortation that the Bill be brought via the Assembly

MAP would like to commend the hard work of everyone involved and welcome the opportunity to comment on the proposed bill.

We were glad to hear Minister Long say "it is important that we recognise that anyone can be a victim and that the abuse itself can take many forms, including psychological, which may be a precursor to violence or an end in itself. Domestic abuse can be inflicted on anyone and by anyone, regardless of gender, gender identity, sexual orientation, class, education, race, colour, age, nationality, or disability.

We need equal protection for all victims and survivors under the law, and we applaud the assembly and Minister for ensuring that the Bill remain gender neutral in its language.

Statistics on domestic abuse in Northern Ireland

It is important to look at statistics from the PSNI and the Northern Ireland Crime Survey (NICS) in tandem to try to provide an accurate overview of the amount of domestic abuse going on in our society.

- There were 5 male victims of domestic abuse crimes aged 18+ per 1,000 of the male population
- 34% of domestic abuse crimes endured by men was classified as violence with injury (v 29% in female victims)
- 32 men have lost their lives to domestic homicide in N.I. (from 2008)
- 35% of domestic abuse faced by men is inter familial and not from a partner or ex-partner
- The police in Northern Ireland were only made aware of just over a third of all 'worst' cases of domestic partner abuse (36.6% in NICS 2015/16), meaning that they were unaware of the experiences of six-in-ten victims (63.4%)

Safelives research revealed that 85% of victims of abuse sought help five times on average from professionals in the year before they got effective help to stop the abuse.

It is statistically clear many men face extensive domestic abuse. We believe if we widened the lens we use to look at and assess domestic abuse, to include all men, and offered adequately funded services - these statistics would increase.

We of course acknowledge that suffering of many women are also victims of domestic violence and any proposed legislation should protect and support all victims. As this is the response of the only specialist agency supporting male victims we will focus on responses on men in our replies.

Section 1: Clause by clause analysis

Clause 1: The Domestic Abuse Offence

We agree with an objective, 'reasonable person' test being applied in this clause. Recklessness and reasonableness should be sufficient standard tests to meet for this law to apply.

It will be necessary for extensive awareness raising and training on the nature and different manifestations of coercive and controlling behaviours for the 'reasonable person' standard to work. It is vital that we recognise that domestic abuse is a crime which is viewed as one perpetrated by a man and experienced by a woman. For reasonableness standard to be effective we will have to ensure that we challenge this misconception at all levels of society and response.

Behaviours that may amount to domestic abuse in a specific context can seem innocent in and of themselves. For instance, men have told us that their partners have let them know that they have triggered their displeasure by eye contact or a form of words. To others viewing this nothing would be apparent, but the intended anxiety is induced and fear is felt for the abuse that is to come in private. Over time these rules change and the fear of breaking them reduces the life of the man being coercively controlled. For a reasonableness test to be properly applied in a trial setting, legal professionals and jurors must possess an understanding of the effects of coercive controlling behaviour, what behaviours would meet this threshold and be reminded to challenge their perceptions of domestic abuse.

Clause 2: What amounts to abusive behaviour

MAP view it as positive that behaviour directed at someone other than the victim of abuse can constitute abusive behaviour. It is a common tactic of abusers to use family members or the threat of them to inflict abuse on a partner/ex-partner. It is important the law recognises the reality of how psychological harm is inflicted upon victims.

We welcome that this includes the abuse of the victim via the use of a child. We often see men coercively controlled through threats of restriction to, or loss of, access to their children.

We do not believe that anyone should be able to avoid the consequences of committing acts of abuse simply by asserting that they didn't think their behaviour would have the effect they did. The reasonableness test is logical and makes for a better functioning law.

Clause 3: Impact of behaviour

We are supportive of the framing of clause 3, that the offence can be deemed to have been committed regardless of whether the behaviour has been proven to have had an effect. This sounds counter intuitive at first reading. We are of the view that the act of carrying out the abusive behaviour should be enough without proving the abuse had an impact. An example of this may be a pattern of coercive conduct enacted upon an older person by a carer or relative. One example is the seen in financial abuse where the victim is asked to provide financial assistance to prevent the person committing a criminal act. This course of behaviour can be repeated and is often not recognised by the victim as abuse but could be readily observed by others for what it is.

Clause 4: Meaning of Behaviour

MAP support the definitions of behaviour outlined in this clause. It is vital that intentional omissions or failure to do something, as well as positive actions, are included. We are happy to see non-verbal communication included in the Bill. We observe that much abuse takes place online or via digital correspondence and this can cause great distress and enable abuse to be continued with ease post separation.

Adequate training will have to be carried out to ensure that both the public and the police are able to adequately understand the meaning of coercive control and evidence its existence and how we will be able to demonstrate it to others.

The training and education of the public is vital to the success of this Bill

Clause 5: Personal Connection

MAP requires clarity to ensure that 'affinity' covers all relationships where a person can have a position of influence over a person. This will include situations where there is kinship or foster carers for example or where a family is not set up in a 'typical' way.

Clause 8: Aggravation where victim is under 18

MAP are supportive of this clause where the perpetrator is an adult and the victim aged under 18. There is an additional vulnerability which must be recognised and supported for those aged under 18 who are in relationship with someone over the age of 18.

We would like further clarity over situations where there are only a few months of age difference to ensure that there isn't a discrepancy in how perpetrators are prosecuted.

Clause 9: Aggravation where relevant child is involved

We support the provisions in clause 9 for an aggravation to exist where a child becomes involved but is not the primary intended recipient of the abuse. Children do not passively witness domestic abuse they are victims of it and this should be recognised. It is well-evidenced that children are often used as pawns or leverage to further control victims. Many men speak of the abuse they face via control or manipulation of their children or the relationship and contact that they can have with their children.

Many men are aware that whilst they do not always face abuse in front of their children that the children hear this and are horribly affected by it. They speak of facing no option other than to comply to the wishes of their abuser or witness this abuse have greater affects on their children.

Recognition must be made of the use of a child to abuse by means of the erosion of their respect and love of their parent. Many men remain in coercively controlling and domestically abusive relationships due to threats of never seeing their children again or the fear of how abuse will be enacted on those children if they are forced to leave the home.

With regret we must highlight that most men are unaware that the law protects them equally. They are unaware that they can remain with their children and have the abuser removed from the home. 97% of residence is granted to women and there is a presumption in male victims that residence will be granted to the mother even when there has been a long-standing pattern of abuse against them.

Clause 10: Behaviour occurring outside the UK

MAP was pleased to welcome the contents of Clause 10 as it give the offence extra-territorial jurisdiction. This protection will ensure that domestic abuse committed outside of this jurisdiction will no longer be ignored. This is especially important for those living in Border communities and for those who have faced acts of domestic abuse abroad.

Clause 12 – Reasonableness defence

MAP appreciates the rationale for the inclusion of a reasonableness defence within the legislation. We must guard against any potential misuse and ensure that it is used in only limited circumstances to ensure that the most vulnerable victims of abuse are protected.

The reasonableness defence is necessary to safeguard those in need of care for example to support a relative with dementia or to protect family income from those with a gambling addiction and for the law to be seen to protect and not criminalise their carers or those taking reasonable steps to safeguard a vulnerable other.

We must however also guard against discrimination of those who can be perceived as less worthy of protection. Some victims of domestic abuse have additional maladaptive coping behaviours such as alcohol or substance misuse or significant mental health concerns suffered as a result of the abuse they face. In addition in many cases, the abuser of someone with a disability is also their carer. It could be easy for the abuser in these situations to silence the survivor through other's existing prejudices. People want to see or protect perfect those which fit into their preconceived ideas of victim and perpetrator or the perfect victim. We must ensure that the reasonableness defence can only be used in limited circumstances and not as a further tool to abuse.

The burden should be on the Defence to prove that their reliance on this defence is not being raised knowingly to further abuse the victim via the mechanisms of the court and law. This defence must also not be accepted where it was used to cause fear.

Clause 13: Alternative available for conviction

We support the provision for alternative offences of harassment and putting people in fear of violence to be available where the facts do not amount to the domestic abuse offence having been committed but do amount to offences under the Protection From Harassment (Northern Ireland) Order 1997 having been committed. We warn that this alternative may be misused and more significant forms of abuse will be reduced to this by prosecutors or the PSNI thus misrepresenting a course of abuse to a single incident of abuse.

Clause 14 – Penalty for the offence

We welcome strong sentencing tariffs to reflect the seriousness of the offence and to act as a deterrent. The range of sentences available and the aggravating factor where there is a child present are all welcomed and we would hope to see them being used to protect society. MAP would highlight there are no perpetrator programmes for females who perpetrate domestic abuse in Northern Ireland nor are there any court mandated

perpetrator programmes. There must be effort to improve access to programmes for perpetrators of domestic abuse, in order to provide safety and protection to society.

Clause 15 Aggravation as to domestic abuse

MAP support the inclusion of a generic aggravator across all aspects of the law. It is important that this aggravator is recorded throughout the entire process from initial police report to resolution in court. This will allow us to enable the use of special measures for those giving evidence and offer mechanisms of support and protection to those facing abuse.

In cases where a generic aggravator is sought, and either accepted or rejected at sentencing stage, there should be an obligation on the trial judge to specify whether the aggravator is being applied, and for them to provide reasons for their decision making. This information should be collated to ensure we have a better understanding of the wider pattern of abuse suffered in domestic abuse, to ensure that the courts use the aggravator when it is available and to address any inequality men face as victims of domestic abuse.

Clause 17: Exception regarding the aggravation

MAP would like to highlight the necessity for the Domestic Abuse and Family Proceedings Bill to ensure that children are recognised and protected as victims of domestic abuse where there is abuse within their family.

We also recognise that often in happy and healthy family life there is the requirement of reasonable parental control and reasonable curtailment. This is necessary for safety, growth and to allow children to understand the necessity of boundaries and of the concepts of action/consequence.

Clause 22: Special measures directions

MAP feel complainants under this law should be eligible for special measures as a matter of course. This should also apply in cases where domestic abuse is an aggravator for a generic offence.

Clause 23: Prohibition of cross-examination in person

Domestic abusers often hold mechanisms of being able to induce fear and anxiety into those they have abused which we may have no way of fully understanding.

We feel that no one accused of domestic abuse should directly question a complainant or witness who may also have experienced abuse.

We have seen this increasingly occur as access to Legal Aid has been reduced and many of those accused of domestic abuse are unable to afford legal representation. We would insist that appropriate legal representation is provided to ensure that a complainant can be effectively cross examined on evidence on which they wish to rely.

Clause 25 Guidance about domestic abuse

States that the Department of Justice will issue guidance in relation to the domestic abuse offence. MAP would ask that voluntary or statutory organisations be involved in the drafting of this guidance.

Clause 26 Prohibition of cross-examination in person

Identifies that in family proceedings a person convicted, cautioned or charged with an offence may not cross-examine victims in person. This must be considered against a backdrop of men describing concerted abuse of the system via false accusations and the misuse of Legal Aid. We have heard from many men who have accepted a caution being unsure of what it meant and simply wanting the latest accusation and the anxiety it has caused them to reduce.

Part 2 - Family Proceedings: Cross-Examination

MAP supports the proposed changes contained within Part 2 of the Domestic Abuse & Family Proceedings Bill. In last year's consultation, we supported all the proposed changes, and felt that domestic violence perpetrators being able to cross-examine their victims posed a direct threat to their safety, access to justice and public confidence in the justice system.

MAP understands that Regulations will be brought forward to further specify what that evidence might look like. We guard against this evidence being based on situations where men are currently discriminated against or inappropriately represented and supported. For instance evidence of abuse via the presence of a MARAC case will not offer men an equal ability to demonstrate abuse. As MAP are not funded to represent men at MARAC often men who face significant abuse do not have an opportunity to avail of this service. We must also guard against assumptions being formed from men's underreporting of abuse. In the current system men state they under report domestic abuse and feel or fear that they are treated differently than women when they speak about the domestic abuse they have endured.

Therefore the inclusion of a discretionary power to prohibit cross-examination as laid out at 11E is welcomed. This will allow sufficient flexibility in cases where none of the criteria in clauses 11A-D are met, but there is a clear need to protect one of the parties in the proceedings from direct cross-examination by the other party. This is vitally important for victims who are wrongly accused of domestic abuse.

Some victims of domestic abuse are knowingly wrongly accused of abuse by the complainant this can cause them to feel overwhelmed due to the unfairness of a system which is further abusing them. In this case we recommend that legal representation is provided to ensure that there is parity of arms and in the interests of justice.

Section 2: response to questions posed by the Committee

How this new domestic abuse legislation enhances existing legislation and whether it fully addresses the gaps in existing law and will improve the ability of the justice agencies to prosecute domestic abuse cases

- We feel this is answered in the clause by clause analysis above

How this new domestic abuse legislation enhances existing legislation and whether it fully addresses the gaps in existing law and will improve the ability of the justice agencies to prosecute domestic abuse cases.

The definition of the offence and the definition of abusive behaviour

As stated in the response to question 1, MAP welcomes the definition as it mirrors legislation in Great Britain and isn't gender specific.

We see the Bill as a move forward in recognising the 'golden thread' of coercive control that is woven throughout all domestic abuse. This will allow us to view domestic abuse as a crime that is rarely a 'one off' but most often experienced as a persistent and diminishing crime. We also welcome the understanding that abuse does not need to cause obvious physical harm to leave lasting psychological harm. Indeed coercive control has been likened to the experience of torture in bodies of research and those who endure it should be treated with similar respect.

This legislation is vitally needed to cover all aspects of domestic abuse now acknowledging coercive and controlling behaviours experienced in intimate or familial relationships. We are pleased to see in the inclusion of the aggravator clauses to ensure that those carrying out criminal damage or harassment in order to create a pattern of domestic abuse and coercive control can now be suitably punished.

Finally in making specific mention of the way in which a child is abused or used to abuse another during a pattern of domestic abuse we see that those who have faced some of the cruellest domestic abuse will now be offered protection by the law. Many men MAP support have faced additional years of abuse simply to remain in contact with their children or to support their children from abuse they might face or the affects of what they have already faced. The abuse of the relationship between a parent and child is harmful not only to the adult who faces it but to the child who experiences it and who is sometimes made to enact it.

Raising Awareness of Domestic Abuse:

We urge that there is a comprehensive training campaign for all first and statutory responders to ensure that they can identify domestic abuse in any victim. Many men we support have been provided with care for physical injuries and have never been asked how they happened. Many men receive medication for anxiety and depression due to the abuse they suffer and yet no mention of domestic abuse was made or alluded to to them during the diagnostic process or in the years post the original diagnosis.

This wider understanding of men as victims must be developed alongside an understanding of how dangerous coercive control can be and how it is often used to control every aspect of a person or family's life

This is an excellent time to educate the public regarding domestic abuse and how it affects our entire society. It will allow us to dispel myths about male victims and create a fairer societal response for all.

We know that early intervention, where the public understand and recognise the full extent of domestic abuse, can also prevent longer-term escalation into severe violence or even death. We would hope that thoughtful implementation of this Bill could see positive benefits occur.

GBT+ Men facing domestic abuse:

Round 11% of the men MAP support each year identify as GBT+

Public awareness campaigns, legislation, and awareness training for statutory, community and voluntary sector organisations must recognise that there are multiple circumstances domestic abuse occurs in beyond a heteronormative relationship. GBT+ men we support feel that their experience of abuse is misread or poorly supported in a more obviously discriminatory way than experienced by heterosexual or cis-gendered people in relationships.

We again welcome the gender-neutral language in the legislation as it is comfortable for some of our users who identify with pronouns other than he or him and thus this legislative can feel inclusive to all victims

While some domestic abuse experienced in same sex relationships is like abuse endured by heterosexuals, GBT+ victims also experience unique forms of coercive control. We see their sexual orientation, HIV status, religious practice or gender identity being used specifically to abuse them.

We must ensure that any education and advertisement of the new Bill makes specific reference to GBT+ men to ensure that they see themselves in the legislation.

Funding

The Domestic Abuse and Family Proceedings Bill makes no mention of funding and it is vital that this is attached to the Bill to ensure that it can be introduced and enacted effectively

Whilst this issue may fall outside the specific purview of the Department of Justice, we make the point that our draft Programme for Government's OBA focus places an onus on Government departments to cooperate and collaborate in the interest of achieving best outcomes for our society.

Whilst Government Departments do not act together to end domestic abuse it can continue unabated. This Bill must be supported by Department of Health, Communities and Education or it will not be able to enact the change it wishes to see.

In addition to this there is no mention of housing provision in the Bill and this ignores a fundamental issue confronting victims and survivors of domestic abuse

Male victims in Northern Ireland do not have access to any refuge accommodation or the floating support which allows victims to become survivors and sometimes remain in their own home. Further there is a misunderstanding around the definition of homelessness when applied to men who must leave their homes due to domestic abuse.

Finally men must be supported adequately to ensure that they are made aware of their legal rights and they must be viewed as equal to women in the eyes of the law and in-service provision.

We must not make a concerted effort to change these inequalities.

The definition of the offence and the definition of abusive behaviour

In terms of securing convictions, more rigorous and innovative evidence collection approaches to support successful prosecutions must be considered.

These include:

Use of PSNI intelligence and evidence gathered from incidents to build a case in conjunction with body worn evidence cameras

Time spent with the victim trying to understand the fear anxiety and pain they are in and the root causes of it.

A vital change in how we view abuse. Often coercive control has at some time included a physically abusive element. Each opportunity to reach a victim can allow us to build a picture and support them to safety

The need of an advocacy service across the country to support victims of domestic abuse to encourage them to access support services and maintain their willingness to be part of a prosecution.

We would also highlight threats to destroy or withhold personal possessions can have formed a pattern of domestic abuse during the relationship which is further administered post separation. To those observing the complaints requests for the return of property they may

seem insignificant or can even be wrongly categorised as nuisance or vexatious. The destruction of inherited family keepsakes or photographs can cause long lasting anxiety and pain.

Sexual Abuse - Men also face sexual abuse as a form of coercive control and may also be forced to acquiesce to sexual acts. This abuse is rarely examined but holds lasting damage for the victim. There was so little evidence of research and reporting of sexual abuse and rape of men in Northern Ireland that in Sir John Gillen's review he reluctantly had to place half the population into a section named marginalised voices. This is our societal disgrace. These voices cannot continue to be marginalised and we must explore sexual abuse of men in any relationship as part of coercive control and domestic abuse.

We would also highlight that we observe spiritual abuse and note that this has not been mentioned in the Bill. We accept that this may be because we wish to make the Bill as broad as possible to encapsulate all forms of abuse but we would like to make mention of this in our reply. We often witness men facing their children being removed from their previously attended religion or school, post separation or alternatively being moved into a religion when there was agreement between the parents that this would not be the case.

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

Justice agencies' ability to investigate & prosecute this offence will depend upon their being provided with adequate police resourcing to allow for this kind of investigative policing to meet the evidential requirements of a course of conduct offence. It will also be contingent upon training of police first responders to recognise, identify and take appropriate action when coercive control is happening.

We must address our currently held views that domestic abuse is committed by men and faced by women before we can begin to move forward. Men who face abuse are not a small percentage and they come from every socio-economic background, age and ability. This is where we must begin.

We must insist that the training of police officers is provided in a way in which we ensure that all genders are supported and understood equally. Domestic abuse must have an understanding that is tailored to be gender specific to ensure that the differences experienced can be understood and handled properly.

Most domestic abuse is handled by District Policing Officers and we must ensure that they have every tool necessary to ensure that they feel confident in how to detect, evidence and prepare case files. We must also ensure that 101 and 999 call handlers are trained. Sometimes the first contact with a first responder will decide if a victim makes a move to safety. We must ensure that they are adequately trained. It is also vital that adequate resourcing is allocated to aid police in enforcing the new law and investigating potential breaches of the law.

It is crucial that legal professionals and anyone else potentially involved in gathering evidence / prosecuting the new Bill is trained extensively prior to it being rolled out. This might also include joint police & prosecutor initiatives to establish how to investigate and prosecute best. It is our view that training of all agencies involved in the prosecution (and defence) of this offence will be as important as passing the law itself.

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

- Please see our above comments under Clause 12.

Whether the penalties provided for in the Bill are appropriate and adequate

- Please see our comments above under Clause 14.
- We also highlight the necessity to the PSNI to implement Child Contact orders. Currently child contact orders when ignored or breached, even if this is repeatedly, are not acted upon by the police service and are regarded as a civil matter. We can understand the difficulty the police service face in implementing such an order. However the abuse of the bond between child and parent cannot continue to be ignored.

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

We recognise and appreciate that the Minister wishes to bring forward the Bill to Royal Assent as soon as possible and are heartened by this and her explanation for some of the provisions not written into the current Bill.

- We must have additional legislation to cover Stalking and to understand the danger and significant impact stalking can have on a person. It is a strong indicator of domestic homicide but as it can happen outside a relationship where there is close affinity its implementation would substantially hamper the speed of the current Bill
- There is no provision to create specific means to tackle non-fatal strangulation in the Bill. This was an issue first brought to our attention by The Foyle Family Justice Centre and has been flagged as a legislative gap both by Criminal Justice Inspection NI and Judge McElholm. We have had examples of men who have experienced strangulation to the point of unconsciousness during sex play that they neither consented to or

welcomed. Unfortunately, this behaviour is not widely understood, and we rarely speak of men who have endured sexual abuse in domestic and coercive abuse.

- MAP welcome the introduction of Domestic Abuse Protection Notices (DAPN) and Domestic Abuse Protection Orders (DAPO) to support the Bill. These notices will protect victims for a short period to provide the victim with ‘breathing space’ and to allow referrals to support services without interference from the perpetrator. We would hope that they are launched with extensive training to ensure that all victims are protected equally by the Orders. We support her implementing these orders post the implementation of the Bill in order to ensure that victims gain protection as quickly as possible.
- Domestic violence and abuse-related issues are prosecuted in criminal courts, civil and family courts. The experience of male victims would ask that we request that each court is aware of the other court’s actions. We have particularly seen this where there has been a course of harassing behaviour, including assaults on other family members successfully prosecuted alongside multiple PIN notices served, none of which are considered during family court proceedings and this gives way to abuse of the system. MAP are in favour of a well-trained and specialist domestic abuse court.
- We recommend that special measures are introduced in all family and civil cases where someone has been alleged to be a victim of domestic abuse. It is important that we protect and support those who have been victims of domestic abuse in any manner we can. Our only caveat is that this may convey that the allegations of the complainant should be viewed as fact rather than something to be examined. Our wish to protect victims should not prevent an accused from being able to mount a robust defence and we must try to view all victims of domestic abuse equally and without hierarchy. Therefore, there must be equality of arms within the court with regard to legal representation and anything a complainant relies upon in court may be used in cross examination to ascertain clarity or facts. Previous research has shown that Legal and administrative aggression can be experienced by male victims and can have dire consequences, such as losing custody of their children, jeopardizing their financial stability, and ruining their reputation at work or in their community. We must guard against the abuse of victims but also against the abuse of the system and false allegations made by an abuser

