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Chairperson  
Committee for Justice  
Northern Ireland Assembly  
Stormont

**Date:** 4 June 2020

Email to [Domesticabusebill@niassembly.gov.uk](mailto:Domesticabusebill@niassembly.gov.uk)

Dear Mr Givan

### **Domestic Abuse and Family Proceedings Bill - Call for Evidence Response**

Thank you for your letter of 7 May inviting the Northern Ireland Policing Board to provide comments and views on the Domestic Abuse and Family Proceedings Bill. As the independent oversight body for the Police Service of Northern Ireland (PSNI), we welcome the opportunity to respond.

The Board understands that domestic abuse is an ongoing, long-term issue which accounts for a significant and increasing proportion of overall crime across Northern Ireland. To highlight the importance the Board has placed on this issue, Domestic Abuse is a key part of three of the 11 measures in the recently published Policing Annual Performance Plan 2020/21 in terms of fewer repeat victims and offenders of crime and the delivery of effective crime outcomes. The Board also recognise the ongoing focus on the need to develop more robust legislation to protect those most vulnerable, not least due to the recent and significant rise in domestic abuse as a result of Covid-19.

As an oversight body, the Board values the work of its criminal justice partners and uses the information generated by others to assist in discharging its statutory functions. We welcome the introduction of this Bill which creates a new domestic abuse offence for Northern Ireland. We believe the PSNI will benefit from this comprehensive and consistent legislation in terms of protecting and safeguarding those most vulnerable or at risk of domestic violence and abuse. The Board's response to the specific questions outlined in your correspondence is attached for your consideration.

Yours sincerely,

**Doug Garrett**



## Domestic Abuse and Family Proceedings Bill - Call for Evidence

### Northern Ireland Policing Board Response

**1. 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 Board supports the introduction of this new enhanced legislation. It is understood that the Bill has been closely modelled on the Scottish legislation and is very much focused on non-physical abuse, particularly on what is known as "controlling and coercive behaviour". It contains three aggravators, two of which concern children. The other, more general offences introduction, such as criminal damage are supported by the Board also as enhanced sentences could be utilised in this regard. The Board support the inclusion of measures to reduce the potential for the perpetrator to use the criminal justice system, which can have a negative impact on the victim.

Through PSNI reporting to the Board, it has been accepted that coercive and controlling behaviour is a key identifier of domestic abuse and evidence of a pattern of behaviour which may, in itself, occasion significant anxiety and fear, or escalate over time into physical violence.

Guidance issued by the Attorney General for Northern Ireland in April 2018 emphasised the need for PSNI to be alert to patterns of coercive and controlling behaviour as a key risk factor for identifying abuse<sup>1</sup>. The guidance highlighted responsibilities of PSNI in the areas of risk assessment and the need for a proactive approach, immediate response, prevention and protection, recording and analysis, policies, training, secondary victimisation and delay. Therefore, the Board was concerned over the findings of Criminal Justice Inspection of NI (CJINI) Thematic inspection of Domestic Abuse in NI, published in June 2019, which identified the training and development of student officers and first responders<sup>2</sup> in the area of

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<sup>1</sup> It states that, 'Officers are required to take, within the scope of PSNI's powers, preventative and protective measures even where no criminal offence is immediately apparent, particularly where there are signs of controlling or coercive behaviour and stalking'.

<sup>2</sup> Call handlers and frontline officers.

harassment, stalking and coercive and controlling behaviour; and their approach to risk assessment as areas all requiring improvement. This report made significant recommendations in relation to domestic abuse training for officers, most notably: *“The PSNI should develop an action plan .... in relation to: the training and development of new recruits and first responders in the areas of harassment, stalking and coercive and controlling behaviour.”* CJINI Inspectors found that while harassment is covered in specific lessons in the Foundation Training, it is only mentioned in relation to Domestic abuse, Stalking and Harassment and Honour-based violence risk identification, assessment and management model (DASH) form during the session on domestic abuse rather than as a form of domestic abuse itself<sup>3</sup>.

In fulfilling the Board’s accountability and oversight functions<sup>4</sup> the Board asked the Chief Constable to seek clarification over measures taken to prepare officers in dealing with the planned introduction of the new domestic abuse offence. The Chief Constable advised that *‘research shows that learning is likely to be most effective when it occurs nearest to the time and place of use. Therefore, PSNI will use this time prior to the legislation being introduced in Northern Ireland to work with partners and learn from the experience in England, Wales and Scotland to develop our training plan - the delivery date of which will need to be considered alongside a known date for the introduction of the legislation’*.

The Board has maintained that even in the absence of specific statutory provisions to date, there does not appear to be any reason why bespoke training could not be provided to Student Officers, as well as enhancing the skills and knowledge of existing PSNI response and specialist officers.

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<sup>3</sup> A Thematic inspection of the handling of domestic violence and abuse cases by the CJINI, June 2019, Available online at: <http://www.cjini.org/TheInspections/Inspection-Reports/2019/April-June/Domestic-Violence>

<sup>4</sup> Training will continue to be a focus of the new framework for monitoring PSNI’s compliance with the Human Rights Act 1998. The Board is considering the most appropriate approach to this by conducting random and unannounced checks of human rights training for (i) student officers, (ii) other officers and (iii) policy makers both within the Police College and within districts. The Advisor will also evaluate the PSNI’s own arrangements for monitoring the delivery of human rights training and keep itself informed of the work of the PSNI Human Rights Training Advisor and District Policing Command Training Committee.

The introduction of this new legislation is beneficial in order to form a more structured and consistent approach to training and the Board welcomes this. This Bill will provide the police with the opportunity to intervene early and, potentially, stop the escalation of domestic abuse. Police currently attend incidents where coercive and controlling behaviour is present, but their options are limited because, as things stand, that behaviour on its own is not an offence. We know that psychological or emotional abuse is repetitive and that the aggregate effect causes the build-up of constant anxiety and fear. The behaviour is often tailored to cause the victim maximum harm. The Board support the broad offence to capture such nuanced behaviours.

Therefore, the Board agree that the new offence will also close a gap in the law around patterns of abusive behaviour, allowing the criminal justice system to better protect victims who are subject to this and will allow earlier identification of abusive behaviour, intervention and prevention as well as access to information and advice. It will cover behaviour that is abusive<sup>5</sup> because it is controlling or coercive or amounts to psychological, emotional, or financial abuse of the other person. In light of the developments surrounding the Domestic Abuse legislation, the draft Board Human Rights Annual Report 2019/20 recommends that “...PSNI should provide to the Committee its draft written policy and guidance on the use of the new powers and the proposed training plan for officers in light of the recent announcements from the Minister for Justice regarding the introduction of legislation in respect of domestic abuse, harassment, stalking and coercive control. Notwithstanding of the exacting nature of such prospective legislative provisions, it would be appropriate that PSNI would aim to increase knowledge and capacity building of coercive control in the present, rather than an uncertain date on the future.”

Furthermore, prior to the collapse of the NI Assembly in January 2017 there had been a focus on domestic violence and abuse and there were a number of developments in respect of legislation and practice. The Board recognises that the Bill does not include domestic abuse protection notices (DAPNs) or domestic abuse

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<sup>5</sup> Abusive behaviour will also include behaviour that is physically violent, threatening or intimidating.

protection orders (DAPOs)<sup>6</sup>. In benchmarking with England and Wales through police performance monitoring in regards to domestic violence and abuse, the Board understand considerable merit in introducing domestic abuse protection notices and orders. It is understood that these notices provide victims with immediate protection for up to 28 days following an incident of domestic violence and give them time to consider what they want to do next. This proposal for protection notices and orders was included in an action plan for the 2016 'Stopping Domestic and Sexual Violence and Abuse in Northern Ireland seven-year strategy' between the Department of Justice (DOJ) and Department of Health. Given the considerable merit this, the Board would support the introduction of these notices and orders within legislation, and in turn would inform a programme and delivery of the training to PSNI officers as outlined through the Human Rights Annual Report 2015 recommendation stating that *"In the likely event that the PSNI will obtain the power to issue Domestic Violence Protection Notices and apply for Domestic Violence Protection Orders within the next 12 months, the PSNI should provide to the Committee its draft written policy and guidance on the use of the powers and the proposed training plan for officers."*

The Board welcomes the Bill's recognition of the specific impact of domestic abuse on children, which can lead to Adverse Childhood Experiences (ACE) and, consequently, have a lasting impact on a child, leading to greater problems in later life. The two aggravators in the Bill where the victim is a child in the context of an intimate relationship or family member or where a child sees, hears or is present in the context of the abusive behaviour are absolutely essential.

This being said however, the Board is aware that there is a possible gap in legislative provision through this proposed Bill in order to enable the PSNI to notify schools of domestic abuse incidents, so that teachers are aware of the potential harm caused by children witnessing domestic abuse incidents. An example of this being a positive tool is again, the introduction of 'Operation Encompass' in England and Wales whereby the police must inform a 'key adult' at the relevant local school if they have been called to an incident of domestic abuse at a child's home before 9am

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<sup>6</sup> College of Policing: Officers have a duty to take or initiate steps to make a victim as safe as possible. Officers should consider domestic violence protection notices (DVPN) and domestic violence protection orders (DVPO) at an early stage following a domestic abuse incident as part of this duty.

the next morning, or before 9am on the Monday morning if an incident occurs over a weekend. This enables schools to provide support to the child(ren) involved and offer practical help and information to the child's mother in a safe space.

Moreover, the Board is aware that this Bill does not feature a Commissioner in the Northern Ireland Bill<sup>7</sup>. In England and Wales a Commissioner was included to advocate for the sector, insure adequate levels of funding and training were in place to ensure implementation. Therefore, the Board is of the view that a Commissioner could play a key role in supporting the sector, the PSNI and the judiciary.

## **2. The definition of the offence and the definition of abusive behaviour.**

The PSNI has adopted the definition of domestic abuse as outlined in the 'Stopping Domestic and Sexual Violence and Abuse in Northern Ireland strategy' as:

*'threatening, controlling, coercive behaviour, violence or abuse (psychological, virtual, physical, verbal, sexual, financial or emotional) inflicted on anyone (irrespective of age, ethnicity, religion, gender, gender identity, sexual orientation or any form of disability) by a current or former partner or family member'*.

The Board has considered, through the Performance Committee, the legislative provisions in both England & Wales (since 2015) and Scotland (since April 2019) which make emotional coercion and control a criminal offence, given the potential of fatal escalation of other types of abuse, particularly physical violence. The Board is of the shared view that this legislation is critical for enabling officers to deal with coercive control and emotional and psychological abuse.

The Bill however does not provide for a definition of domestic abuse. The Board however is satisfied that the Bill sets out in quite some detail abusive behaviour as: *'Abusive behaviour by an offender includes behaviour that is physically or sexually violent, threatening or has a range of impacts on an individual. This includes making the victim feel subordinate, isolated, controlled or where their freedom of movement*

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<sup>7</sup> The Commissioner's role is to provide a public leadership of domestic abuse issues and play a key role in overseeing and monitoring the provision of domestic abuse services in England and Wales.



*or action is restricted. Importantly, the description of abusive behaviour is not exhaustive and includes both direct behaviour towards the victim as well as their child or another person.'*

Thus, the Board understands to reasoning for the exclusion of a separate definition in this instance, however, would welcome a standalone definition in this regard.

3. ***Any identified issues regarding the investigation and prosecution of the new offence.***

With regard to possible issues regarding the investigation and prosecution of the new offence for policing, a possible issue the Board have identified is the Bill's provisions becoming more complex than those of existing legislation and as a result statutory bodies may incur additional costs. It is expected that additional investigative and prosecutorial work with the introduction and operation of the offence could be balanced by a reduction in other areas, as these offences will replace some equally complicated offences to prosecute at this time. Several cases that could be taken forward, such as criminal damage, grievous bodily harm or assault charges, could form part of a new domestic abuse offence and therefore will not necessarily lead to a huge increase in workload. However, it will require an increase in training as outlined above. Training is therefore critical to the success of the offence. As such, statutory and voluntary sector organisations will need to train their front-line staff and to raise awareness of the offence in their organisations. Again, as reiterated in previous sections, the PSNI is reviewing how they will enhance training in this regard and will create a training implementation team in the police to ensure the effective and timely operationalisation of the legislation. This will include representatives from the police learning and development team, domestic abuse specialists and victim-orientated services.

As the Board realise that this legislation will require adequate resources and training given to the PSNI officers who will implement this legislation, and ensuring the Board's accountability role is exercised, the draft Board Human Rights Annual Report 2019/20 recommends that as details of the domestic abuse legislation are available police officers should be trained as soon as possible on how it is to be implemented by the PSNI, as stated above:

*'It is now recommended that PSNI should provide to the Committee its draft written policy and guidance on the use of the new powers and the proposed training plan for officers in light of the recent announcements from the Minister for Justice regarding the introduction of legislation in respect of domestic abuse, harassment, stalking and coercive control.'*

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

An issue the Board has identified within the Bill is the grounds of reasonableness as per clause 12, with regard to the absence of a definition of what it is to be 'reasonable' for a defence to be provided. This concern is around those who are in care or in caring relationships, and those who have disabilities with their physical health and mental health.

**5. Whether the penalties provided for in the Bill are appropriate and adequate.**

The Board understands and supports that the Bill includes maximum penalty in the Magistrates' Courts of 12 months imprisonment, and 14 years in the Crown Court. It may also include a fine.

The Board understand that the maximum sentences would 'most likely' be applied in cases where there is this type of coercive control in conjunction with physical violence *'the maximum sentence will be reserved for the most serious cases. It could relate to an offence that is entirely one of psychological abuse, which may have occurred over a significant time-period. However, it is more likely to relate to coercive behaviour that includes both psychological and physical abuse'*.

While this is the case, the Board have expressed concern surrounding the very nature of this sentencing, and would like to draw attention to the possibility of cases where there is no evidence of physical abuse and where coercive control was prominent and how this could lead to homicide.

The Board also welcomes clause 10, which relates to extraterritorial jurisdiction, where domestic abuse and abusive behaviour outside this jurisdiction but the



accused in normally a resident here and the provision that certain behaviour will be encapsulated as part of the domestic abuse offence.

**6. *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.***

As stated in section one, the Board recognised that the Bill does not include domestic abuse protection notices (DAPNs) or domestic abuse protection orders (DAPOs)<sup>8</sup>. Through benchmarking with England and Wales through police performance monitoring in regards to domestic violence and abuse, the Board understand considerable merit in introducing domestic abuse protection notices and orders.

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<sup>8</sup> College of Policing: Officers have a duty to take or initiate steps to make a victim as safe as possible. Officers should consider domestic violence protection notices (DVPN) and domestic violence protection orders (DVPO) at an early stage following a domestic abuse incident as part of this duty. These notices and orders may be used following a domestic incident to provide short-term protection to the victim when arrest has not been made but positive action is required, or where an arrest has taken place but the investigation is in progress. This could be where a decision is made to caution the perpetrator or take no further action (NFA), or when the suspect is bailed without conditions. Available online: <https://www.app.college.police.uk/app-content/major-investigation-and-public-protection/domestic-abuse/arrest-and-other-positive-approaches/domestic-violence-protection-notices-and-domestic-violence-protection-orders/>