



**NIACRO Call to Evidence: Northern Ireland Assembly Justice Committee – Domestic Abuse and Family Proceedings Bill**

**4th June 2020**



## NIACRO Call to Evidence: Domestic Abuse and Family Proceedings Bill

### Introduction

NIACRO is a voluntary organisation that has been working for almost 50 years to reduce crime and its impact on people and communities. Our vision is of a society in which the needs and rights of all citizens, including victims of crime, adults and children who offend and those who are at risk of offending, are equally respected.

The Charity's Articles of Associations, approved in October 2015 by the Charity Commission for NI, identify NIACRO's objects which meet public benefit test, as being:

- to alleviate need and disadvantage through the provision of services, assistance, advocacy and representation to care for, resettle and rehabilitate offenders and ex-offenders, alleged offenders, persons at risk of becoming offenders and to care for the victims of crime and the families.
- to work for the prevention and reduction of crime for the benefit of the public in Northern Ireland.

Specifically, NIACRO's contributions are to:

- support the resettlement of adults leaving prison and those on community supervision.
- build skills, confidence and employability of people both in prison and in the community.
- support children, young people, families and adults who are displaying behaviour that would put them at risk of engaging with the criminal justice system, to make positive lifestyle choices.
- influence service providers in the statutory, voluntary and community sector and build their capacity to provide appropriate support to those affected by the criminal justice system.
- impact policy and practice by communicating our policy asks and engaging relevant publics at every level.

At the heart of NIACRO's work is the aim to reduce (re)offending in the belief that integrated and flexible approaches towards desistance are most effective.



### Preliminary Comments

NIACRO welcomes the opportunity to provide evidence to the Justice Committee for the Domestic Abuse and Family Proceedings Bill. This response, based on our experience of service delivery to both those who offend and victims, builds upon our response to the 2016 consultation on Domestic Abuse Offence and Domestic Violence Disclosure Scheme<sup>1</sup>.

NIACRO has the unique experience of working with a wide range of people affected by domestic abuse, and we witness its various impacts. Through our early intervention work with children and young people, and their families, we see the intergenerational consequence of witnessing violence in childhood, particularly the impact on mental health, social, and educational outcomes during childhood. From our work with adults (male and female) we see the far-reaching and long-term impact of witnessing and experiencing domestic abuse. For many, this includes the misuse of alcohol and drugs as a means of dealing with the associated trauma. In particular, our work supporting women who have been through the criminal justice system repeatedly illustrates to us the link between being a survivor of domestic abuse (whether violent or non-violent) and offending behaviour. This prompted us to conduct research supported by The Griffins Society in 2018-19 to study this link. We have been encouraged by the response of NIPS and PBNI to our research and several of its recommendations have already been put in place.<sup>2</sup>

These wide-ranging and over-lapping experiences provide NIACRO with a unique insight into this issue. Our mission is to work to reduce crime and its impact on people and communities, and so we welcome the emphasis on addressing the particular trauma and impact of domestic abuse. In particular, we welcome the Bill's inclusion of controlling and coercive behaviour as domestic abuse. We recognise that controlling and coercive behaviour can have both direct and indirect consequences, including lasting impact on the mental health of the survivor, and it can often be an indication of violent behaviour to come. We know that such behaviour, particularly when a partner controls finances, can lead to the victim becoming involved in offending. NIACRO appreciates the recognition that abuse can be/is carried out through a third-party.

NIACRO is piloting, in our Portadown office, becoming a Safe Space Partner. Our staff is being trained to develop awareness and understanding of domestic abuse, to be a safe place for those experiencing abuse, and to signpost individuals to support agencies available to them.

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<sup>1</sup> <https://www.niacro.co.uk/sites/default/files/consultations/DOJ%20-%20Domestic%20Abuse%20Offence%20and%20Domestic%20Violence%20Disclosure%20Scheme.pdf>

<sup>2</sup> <https://www.thegriffinsociety.org/survivedbut-what-cost-study-women-criminal-justice-system-who-experienced-domestic-abuse-and>



### **NIACRO Responses**

The Justice Committee seeks views from those providing evidence on from a set of questions. NIACRO has formatted the response within the structure of the views that are requested:

#### **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 abuse cases:**

This Bill widens domestic abuse offences to include what we have known to be harmful, abusive behaviour and addresses the way non-violent acts of abuse can have a lasting impact on survivors. NIACRO welcomes the Bill's inclusion of a reasonable person test, as not every survivor experiences the same processing of trauma or will be able to identify harmful behaviour committed against them. After many years of advocacy, this Bill addresses and provides penalty for the additional behaviours that are at play in domestic abuse situations.

Physical abuse is more prevalent towards women. However, we may see an increase in women who commit and/or are accused of offences of coercive or emotional abuse. How is the criminal justice system prepared to address an increase in women who are accused/convicted of this crime? And could inclusion leave women more vulnerable to being falsely accused of this crime, with the knowledge that counter-allegations are common in domestic abuse cases? If the offence is found to be false, how will they be dealt with? Whilst men can be victims of domestic abuse, it is important that coercive control is not framed within the legislation in such a way that enables the person who has been carrying out abusive behaviour to make counter-claims of abuse against their victims. This has, unfortunately, been a problem in other jurisdictions.

We urge the committee to keep these questions in mind during consideration phase of this Bill and potentially to include these concerns in the upcoming DOJ Women's Strategy Consultation expected later this year.

In our current COVID-19 crisis, where there is likely to be an increase in domestic abuse instances/cases due to self-isolating/lockdown restrictions, we may see more women and men responding in self-defence or retaliating against the person who has been abusing them and this needs to be recognised.

To address gaps and strengthen response to domestic abuse cases, NIACRO would recommend building upon the Multi-Agency Risk Assessment Conference (MARAC) response; the multi-agency meeting that happens regularly to address the safety needs of the highest risk victims of domestic violence, i.e. those at risk of serious harm or homicide. In Northern Ireland the meetings are Police led and core agencies who attend include: Police, Housing, Health, Social Services, Education, Prison Service, Fire Service, Women's Aid and other relevant voluntary agencies. Everywhere in the United Kingdom apart from Northern Ireland has Independent Advocates (IDVA or IDAA) who attend these meetings on behalf of the victims/survivors to ensure their wants and needs are considered when a safety plan is being agreed. This role is fulfilled by



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Women's Aid in Northern Ireland. Cross-departmental co-ordination will be needed, and we believe that MARAC is in a good example to be included in all aspects of the Domestic Abuse and Family Proceeding Bill.

### **The definition of the offence and the definition of abusive behaviour:**

NIACRO welcomes the extended definition of the offence and the abusive behaviour, however there is a need to establish strategies for addressing harm caused to those who are LGBTQ and to develop gender specific strategies to serve as guidelines to establish support and best practice.

### **Any identified issues regarding the investigation and prosecution of the new offence:**

NIACRO believes that this Bill represents a positive step. However, the legislation will only be effective if it is accompanied by comprehensive training for professionals such as: PSNI, PPS, healthcare professionals, etc. This training will help to support successful investigation and prosecution for the enhanced definition of domestic abuse and to safeguard survivors. Historically it has been a struggle to provide the same protections to survivors of coercive behaviour and emotional abuse because there was a lack of physical harm, even though emotional abuse and coercive abuse have the potential to escalate to physical acts of violence. We would recommend that the Committee identify funds to resource widespread training/re-training, or to provide the Department of Justice with this responsibility. The Bill should also be accompanied by mandatory training for the judiciary on domestic abuse.

In Great Britain, the Crown Prosecution Service established legal guidance<sup>3</sup> to respond to coercion and emotional abuse cases, based upon their Violence Against Women and Girls Strategy. This provides an overarching framework for crimes identified as being primarily committed, but not exclusively, by men against women within a context of power and control. Northern Ireland's expected Women's Strategy should help to serve as guidance to the PPS. In addition, there also needs to be a strategy developed on abuse in LGBTQ relationships. One in four LGBTQ people may experience domestic abuse<sup>4</sup>. A timely development of Anti-Poverty, Disability, and Childcare strategies would be welcomed as these are often linked to the issue of domestic abuse.

Upon passage of the Bill, Statutory Guidance that sets forth types of evidence that investigators and prosecutors can use to prove domestic abuse has occurred will be needed as coercion and emotional abuse are historically difficult to prosecute when

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<sup>3</sup> <https://www.cps.gov.uk/legal-guidance/controlling-or-coercive-behaviour-intimate-or-family-relationship>

<sup>4</sup> <https://www.nice.org.uk/guidance/ph50/evidence/report-4-broken-rainbow-uk-national-lgbt-domestic-violence-service-pdf-430408045>



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reduced to “he said/she said” stalemate arguments. In 2019, in England, coercive control offences doubled, and the prosecution rate was at about 77%.<sup>5</sup>

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

NIACRO strongly disagrees with the inclusion of the “reasonable defence” clause. We believe this clause has the potential to act as a ‘loophole’, causing cases to break down. Could proper investigation and burden of evidence alone determine “reasonable defence” before a case is brought to court? We anticipate that this potential loophole will be used by the defence and is potentially harmful in particular for those who experience disability, mental health disorders, addiction issues etc. NIACRO therefore strongly resists this clause in the Bill.

### **Whether the penalties provided in the Bill are appropriate and adequate:**

NIACRO recommended in our response to the DoJ Sentencing Review in Northern Ireland consultation<sup>6</sup> establishing Sentencing Guidelines to determine the appropriate penalty. We recognise that a sentencing guideline framework has the potential to contribute to increased fairness; improving consistency and reducing discrepancies. Strict adherence to a framework may, however, mean that judges could lose the exceptionality of a case. Sentencing therefore requires a balance of fairness based on consistency and room for discretion that accounts for mitigating circumstances, for example particular vulnerabilities of the defendant. In addition to Sentencing Guidelines, NIACRO also advocated in the same consultation response the establishment of a ‘Sentencing Guidelines Council’ that would be responsible for commissioning/undertaking research into effective sentencing, what works for particular groups, and to make this information available to sentencers.

In regards to sentencing, there needs to be discussion about the most appropriate sentencing responses in domestic abuse cases. There will need to be sensitivities around sentencing decisions in regards to proximity of person who have suffered from abusive behaviour to the person who was abusing them, and whether continued contact between the two maintains risk, when determining if there is to be a custodial penalty, or if a reparative/restorative approach is better suited to aid in the rehabilitation of the domestic abusive behaviour. We further reiterate the need for developed strategies, guidance, and training to navigate the complexities of domestic abuse situations. This would assist in cases where a woman or man has lashed out after enduring on-going, persistent abuse. We asked a woman we have been supporting, and who has endured many years of domestic abuse, to comment on the proposed Bill. Her response was:

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<sup>5</sup> <https://www.womensaid.org.uk/coercive-control-offences-have-almost-doubled-in-the-past-year/>

<sup>6</sup> [https://www.niacro.co.uk/sites/default/files/consultations/Final\\_Sentencing%20Review%20Consult.pdf](https://www.niacro.co.uk/sites/default/files/consultations/Final_Sentencing%20Review%20Consult.pdf)



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*“There needs to be better education from early years so that children and young people know what is unacceptable. Abusers can be confident manipulators, so therefore we should be cautious of having the punishment for the crime being fines or warnings, as the abused may be the person who has to cover fines and may be forced into further crimes e.g. shop lifting.”*

The need for earlier interventions were also highlighted in NIACRO’s Griffins Society research recommendations<sup>7</sup> which included:

- (i) The introduction of an inter-agency forum that would place the onus on professionals to identify and discuss cases early (i.e. before women are ready to disclose abuse) and make referrals (similar to Family Support Hubs or Police Concern Hubs)
- (ii) That Police and PBNI should ask all women who come to their attention about domestic abuse during initial interviews, creating an opportunity for disclosures in recognition that the majority of women who offend have also been victims of domestic abuse.

There appears to be no programmes available to those who engage in domestic abusive behaviour in Northern Ireland outside of statutory provision for people who recognise their need of support to change. We cannot address the harm caused and change behaviours without robust programmes of this nature that are domestic abuse specific. NIACRO would urge the committee to consider in addition to our recommendations a Domestic Abuse Commissioner to co-ordinate programmes and projects, provide accountability to the system, and audit evidenced-based outcomes.

### **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:**

There is opportunity to provide a vehicle in this Bill to strengthen Protection Orders and Non-molestation orders, and streamline the ability to provide those orders to survivors of abuse quicker. When a survivor of abuse is seeking intervention and shielding from their partner, they are often at greatest risk of danger when attempting to part ways with their partner. If that power were not to be provided in this Bill, NIACRO would request that the ability to issue orders is provided for in follow-up legislation. To utilise experts in the field, any follow-up bill should be co-designed in collaboration with third sector partners.

### **Conclusion**

NIACRO welcomes the opportunity to contribute to the Justice Committee Call to Evidence on the Domestic Abuse and Family Proceedings Bill and looks forward to the legislation’s developments.

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<sup>7</sup> <https://www.thegriffinsociety.org/survivedbut-what-cost-study-women-criminal-justice-system-who-experienced-domestic-abuse-and>



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