

# **Domestic Abuse and Family Proceedings Bill**

## **Written submission to the Justice Committee**

**4 June 2020**

### **Introduction**

The Commissioner for Children and Young People (NICCY) was created in accordance with 'The Commissioner for Children and Young People (Northern Ireland) Order' (2003) to safeguard and promote the rights and best interests of children and young people in Northern Ireland. Under Articles 7(2) and (3) of this legislation, NICCY has a mandate to keep under review the adequacy and effectiveness of law, practice and services relating to the rights and best interests of children and young people by relevant authorities. Under Article 7(4), NICCY has a statutory duty to advise any relevant authority on matters concerning the rights or best interests of children and young persons.

The Commissioner's remit includes children and young people from birth up to 18 years, or 21 years if the young person is disabled or is care experienced. In carrying out her functions, the Commissioner's paramount consideration is the rights of the child or young person, having particular regard to their wishes and feelings. In exercising her functions, the Commissioner has regard to all relevant provisions of the United Nations Convention on the Rights of the Child (UNCRC).

NICCY welcomes the opportunity to provide written evidence to the Committee on the Domestic Abuse and Family Proceedings Bill. Please note that this submission is not intended to be comprehensive but instead addresses the key aspects of the Bill which most directly engage children and young people's rights and best interests. We note that the significant increase in calls received by PSNI concerning domestic abuse in the Covid-19 lockdown period brings into sharp focus the importance of strengthened measures to provide robust protection in law for all adults and children affected by domestic violence and abuse.<sup>1</sup>

### **Children's Rights**

The United Nations Convention on the Rights of the Child (UNCRC) sets out minimum

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<sup>1</sup> 27 May 2020 (PSNI) Domestic abuse calls received by police in Northern Ireland:  
<https://www.psnipolice.uk/globalassets/inside-the-psni/our-statistics/domestic-abuse-statistics/covid-19/domestic-abuse-calls-to-26.05.20.pdf>

standards for children's rights across all areas of their lives such as, civil and personal protection, health, education, welfare. The four guiding principles which flow through the Convention are: children's right to non-discrimination; right to survival and development to the highest level; to their best interests being a primary consideration; and to their voice being heard in all matters affecting them.

The Convention also highlights that as rights-holders children have special rights to protection from all forms of harm, violence and abuse and to be supported in their recovery from abuse. The State party has an obligation to ensure that appropriate measures and procedures, including investigatory, court and judicial processes, are in place to realise these rights. The Convention also affords particular rights to any child in contact with the criminal justice system, including child defendants. The rights of the Convention are interdependent and indivisible – like children's lives they cannot be compartmentalised.

In providing advice to State parties on the obligation to take a child rights approach to protection from violence, the Committee on the Rights of the Child highlights that this means “representing and promoting the human dignity and physical and psychological integrity of each child and recognising they are rights bearing individuals rather than perceiving them primarily as ‘victims’”.<sup>2</sup> In 2016, following examination of the UK and devolved Governments, the Committee recommended that they should strengthen data collection, information sharing and referral regarding violence against children, including in relation to domestic violence, and that the UK should consider ratifying the Convention on preventing and combating violence against women and children (the Istanbul Convention).<sup>3</sup> The Istanbul Convention sets out a wide range obligations, including in some areas which are within scope of the Bill, such as, criminalising psychological violence like coercive control and taking measures to address domestic violence offences committed in other jurisdictions.<sup>4</sup>

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<sup>2</sup> United Nations Committee on the Rights of the Child (2011) General Comment No13: The right of the child to freedom from all forms of violence; para 3. Geneva: CRC.

<sup>3</sup> United Nations Committee on the Rights of the Child (2016) Concluding observations on the fifth periodic report of the United Kingdom of Great Britain and Northern Ireland. See paras 43b and e: <https://www.ohchr.org/en/countries/enacaregion/pages/gbindex.aspx>

<sup>4</sup> Council of Europe Convention on preventing and combating violence against women and children. See articles 33 and 44: <https://rm.coe.int/168046031c>

## Bill

### Clauses 1-4

NICCY welcomes the intent of the Bill to improve the understanding in law and procedures of the dynamics of domestic abuse, the range of behaviours that this can encompass and the effect and impact of such violence and coercion on victims and witness, including children and young people. We welcome the recognition given to forms of abuse, such as coercive control, which are not clearly reflected in existing offences and abusive behaviour which is either intentional in seeking to cause harm or reckless in whether such harm is caused.

### Clause 5

In relation to the meaning of personal connection established by the Bill we welcome the principle that this reflects the wide range of personal and intimate relationships in which domestic abuse may occur, including same sex relationships, relationships which have ended and teenage relationships. This acknowledges, for example, the impact of domestic abuse on dependent children of adult victims and the violence that parents and children can be subject to after separating from an abuser.

We note that the definition of personal connection is broader than that set out in other jurisdictions of the UK or in the Republic of Ireland and includes a wide range of family as well as intimate relationships. Subsequently, children under 18 years who display harmful or abusive behaviour both towards under 18s with whom they are in a relationship and also towards adult family members are within scope of the Bill. Following on from this, **the application of the Bill's provisions to children under 18 years both as victims and as those engaging in harmful and abusive behaviour should be carefully considered. Where necessary, additional safeguards must be put in place to ensure that children at risk of harm are properly protected and also that children who display harmful behaviour receive appropriate and effective interventions.** This is discussed in more detail in relation to a number of clauses.

### Clause 8

NICCY notes that the Bill recognises that children and young people in relationships can be directly affected by domestic violence and abuse through the inclusion of an aggravator to the offence where a victim, as person B, is under 18 years. We acknowledge the intention of the provision to reflect the particularly serious nature of such offences when committed

against children by enabling sentencing to be increased to the maximum available in such cases.

The Explanatory and Financial Memorandum in discussing the Clause 5 meaning of personal connection sets out that the Bill is intended to cover teenage and young relationships<sup>5</sup> and we draw attention to the potential application of the child aggravator clause to children and young people in young relationships who may be engaged in harmful and abusive behaviour. NICCY is clear that any such abusive and harmful behaviour is unacceptable and necessitates a swift response with the aim of safeguarding and protecting child victims and ensuring they have access to specialist therapeutic support and help. However, such interventions should also aim to deliver effective therapeutic and rehabilitative interventions for children engaged in such abusive behaviour and seek to divert them away from the criminal justice system.

We highlight that the Bill in these provisions is broader than that already in place or proposed in other jurisdictions. The outworking of the Bill's provisions should not result in the aggravation clause leading to children in young relationships entering the criminal justice system or receiving disproportionately harsher sentences than adult perpetrators who may engage in repeat patterns of intentionally targeting and exploiting children for domestic abuse or be long standing perpetrators of such abuse in their intimate relationships with adults. **NICCY asks that the Committee seek to ensure that while the provisions of the Bill should protect child victims they do not inappropriately criminalise or disproportionately impact on children engaged in harmful or abusive behaviour.**

## Clause 9

NICCY welcomes the intent of this aggravator clause to recognise that children are deeply affected by domestic violence and abuse including where they are present, see or hear such abuse and violence taking place between persons A and B, including in a single incident. We note that the clause is intended to include children whose parent or carer is subject to abuse as well as other children who may, for example, be staying in the household where abuse occurs or be the children of neighbours who are used by the perpetrator to facilitate abuse through, for instance, the passing on or reporting of information.<sup>6</sup>

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<sup>5</sup> Domestic Abuse and Family Proceedings Bill, Explanatory and Financial Memorandum; p9.

<sup>6</sup> Domestic Abuse and Family Proceedings Bill, Explanatory and Financial Memorandum; p10.

We do however wish to highlight that children are adversely affected by domestic violence beyond occasions where they only see, hear or are present during abuse and **the Committee may wish to consider how this could be better reflected in the legislation.** We note that the equivalent Scottish legislation provides that children do not have to be aware of or understand the nature of the abusive behaviour for the provision to be engaged and that this can more effectively capture the impact on children who may, for instance, reside in a different household from that in which the violence occurs.<sup>7</sup>

In relation to our growing understanding of the effects of harmful childhood experiences, the Safeguarding Board for Northern Ireland and other statutory agencies are working to address Adverse Childhood Experiences and include domestic violence as an adversity in this work<sup>8</sup> while the 2019-2029 Children and Young People's Strategy acknowledges the long lasting impact that exposure to domestic violence can have on children's lives.<sup>9</sup> Work undertaken by Barnardo's has documented the myriad ways in which domestic abuse can negatively impact upon children's lives, affecting for example, their development, mental wellbeing, future patterns of abuse and harm and an association with youth offending.<sup>10</sup> The Bill represents an important opportunity to ensure that children are no longer simply the 'hidden victims' of domestic abuse and **the Committee should seek assurances that, where a child is affected by domestic violence, formal safeguarding procedures as well as the protections of criminal law are engaged.**

### **Clauses 11 and 17**

NICCY wishes to highlight concern regarding the exceptions set out in clauses 11 and 17 relating to where a person has parental responsibility for a child affected by the offences within the Bill. While the Explanatory and Financial Memorandum notes "it is considered that there are other provisions that deal with, and should more appropriately be used for, direct abuse of a child or young person by their parent or carer"<sup>11</sup> we note that as the Bill introduces a new offence to address gaps in existing provisions, thorough consideration should be

<sup>7</sup> Domestic Abuse (Scotland) Act 2018; Section 5(5).

<sup>8</sup> See for example: <https://www.safeguardingni.org/aces/what-are-aces>

<sup>9</sup> DE (2019) Children and Young People's Strategy 2019-2029:

<https://www.education-ni.gov.uk/sites/default/files/publications/education/2019-2029%20CYP%20Strategy.pdf>

<sup>10</sup> Barnardos (2020) Policy Briefing: The Domestic Abuse and Family Proceedings Bill – Children and Young People:

[https://www.barnardos.org.uk/sites/default/files/uploads/Barnardo%27s%20NI%20Briefing%20-%20Domestic%20Abuse%20Bill%202020\\_0.pdf](https://www.barnardos.org.uk/sites/default/files/uploads/Barnardo%27s%20NI%20Briefing%20-%20Domestic%20Abuse%20Bill%202020_0.pdf)

<sup>11</sup> Domestic Abuse and Family Proceedings Bill, Explanatory and Financial Memorandum; pp10-11.

given to ensuring that all associated behaviours and harms in relation to children are reflected in existing law and procedure. We also note that officials and the Minister have stated orally that the exceptions will ensure that the Bill will not criminalise reasonable discipline or parenting techniques to manage children's behaviour, using the example of the withdrawing of privileges, but NICCY does not consider that the offence of domestic abuse could be reasonably engaged in such cases. We further note that the clause 12 defence on the grounds of reasonableness would also be engaged by any such possible situations and are disappointed that the exceptions should be presented in a way which may inadvertently trivialise the dynamics of violence and abuse within families and its impact on children.

While we recognise that the exception clauses are intended to relate to a child as person B, we note that they again highlight the complex ways in which the Bill engages with children and young people. Following on from this, it may be helpful for the Committee to seek assurances that the exceptions will not lead to patterns of domestic violence and of control and coercion which can be deployed against children as part of domestic abuse being diminished or dismissed or resulting in lower levels of protection for children based on parental responsibility. For example, in considering coercive control it is important to acknowledge that this is often experienced as control of the home, including control of children, rather than simply of one adult within a household. This may, for instance, include one parent denying a child access to family and friends or to electronic devices (which present a means to stay in contact with supportive peers and trusted adults and to seek help and information) if they do not monitor and report on the behaviour and movements of another parent or may involve one parent during post-separation contact seeking to use a child to glean information about the residence or routine of the adult victim or to convey intimidating messages to them. **We ask that the Committee give due consideration to these clauses and the necessity for such exclusions.**

### Clause 12

NICCY highlights the importance of robust safeguards being in place in relation to the defence on grounds of reasonableness in order to ensure the defence is not used inappropriately and to further harm victims.

### Clause 22

In relation to special measures directions, NICCY has called for the Barnahus approach, which was established in Iceland to support child victims of sexual offences and operates in a wide number of countries, to be implemented in Northern Ireland for children who are

subject to sexual abuse. We note that once established this could be extended to support child victims and witnesses of domestic abuse as occurs in a number of other jurisdictions. Barnahus seeks to ensure a child centred response to victims of abuse by providing child protection, medical, therapeutic and justice processes within a single child friendly location which supports children to give their best quality evidence while minimising the need for multiple interviews and mitigating against delays in procedures.<sup>12</sup>

### **Clauses 23 and 26**

NICCY welcomes the principle of prohibiting the cross-examination in person of a connected person by a perpetrator in both criminal and family proceedings and the subsequent safeguards that will be put in place to ensure legal representation for the defendant and due process and fair trial for all parties. As noted above, regarding special measures all interviews or examinations involving children should be undertaken in line with the Barnahus model which, in enabling the evidence of child victims to be given in a timely manner, supports their participation in criminal proceedings ending at an early stage.

### **Other matters arising from the Bill**

- **A unified approach to protecting child victims and witnesses:** aspects of the Bill highlight the importance of ensuring effective and full arrangements are in place to protect children from domestic abuse across civil and criminal law and child protection procedures. It is important that legislative measures to protect children are not fragmented. NICCY understands that the Department of Health is considering steps to ensure that definitions of harm to children are amended to better recognise the impact of domestic violence and abuse but we note that this has not been completed or taken account of in the Bill's provisions or Explanatory and Financial Memorandum. As stated above, we also note concern regarding the exception provisions within the Bill and ask that the **Committee seeks further assurance on these matters and considers whether additional measures are necessary to provide effective protection for children.**
- **A child centred approach to under 18s who display abusive behaviour:** in the context of both teenage or young intimate relationships and relationships with family members, NICCY highlights the importance of ensuring that appropriate procedures and

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<sup>12</sup> NICCY (2020) Time for Change: advice on arrangements to deliver justice in cases of sexual offences against children:

<https://www.niccy.org/publications/2020/february/13/time-for-change/>



arrangements are followed where a child is displaying harmful or abusive behaviour and that these must reflect international obligations and the best interests principle. We also note that in line with the regional guidance, Co-operating to Safeguard Children and Young People, responses to such cases, while ensuring that children are accountable for their actions including through the justice system where this necessary, must also recognise that children who harm others are likely to have witnessed or been subject to violence or abuse themselves and may be a child in need or, where they are at risk of harm, a child in need of protection and should be treated accordingly.<sup>13</sup> Arrangements must effectively address abusive behaviour while also seeking to divert children from the criminal justice system and ensure that they have access to therapeutic support. We ask that the **Committee give urgent consideration to ensuring additional safeguards are contained within the Bill** to provide this and note that this is of particular concern in the context of the low minimum age of criminal responsibility in Northern Ireland. We highlight that the United Nations Committee on the Rights of the Child has repeatedly expressed concern about the age of criminal responsibility and recommended that this is raised, in line with acceptable international standards, in all jurisdictions of the UK.<sup>14</sup>

- **Access to support and services:** we note that the Bill does not include provisions regarding resourcing, commissioning of or access to support and other services and are mindful that this should be **effectively addressed, including through Guidance and related policies and through cross-Departmental working**. This should address with urgency awareness raising and early intervention, including by ensuring that children have access to healthy relationships education and to specialist therapeutic services. We also note that access to such supports and services, including to safe housing, should be available to all those affected by domestic abuse, including those with No Recourse to Public Funds.

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<sup>13</sup> DoH (2017) Co-operating to Safeguard Children and Young People in Northern Ireland; section 7.4.1-7.4.2:  
<https://www.health-ni.gov.uk/publications/co-operating-safeguard-children-and-young-people-northern-ireland>

<sup>14</sup> United Nations Committee on the Rights of the Child (2016) Concluding observations on the fifth periodic report of the United Kingdom of Great Britain and Northern Ireland. See para 79a:  
<https://www.ohchr.org/en/countries/enacaregion/pages/gbindex.aspx>