

Your Ref:

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By Email

The Committee Clerk
Room 242
Parliament Buildings
Ballymiscaw
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BELFAST
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4 June 2020

Dear Christine

DOMESTIC ABUSE AND FAMILY PROCEEDINGS BILL – CALL FOR EVIDENCE

Thank you for your letter of 7 May 2020 inviting NIPSA to submit evidence to the Committee for Justice in relation to its consideration of the above.

Please find attached NIPSA's written submission.

Yours sincerely

A black rectangular box redacting the signature of Geraldine Alexander.

GERALDINE ALEXANDER
Assistant Secretary

Enc

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COMMITTEE FOR JUSTICE –
DOMESTIC ABUSE AND FAMILY PROCEEDINGS BILL -
CALL FOR EVIDENCE

Introduction

1. NIPSA is the largest trade union in Northern Ireland representing over 41,500 members employed across the whole of the public services in organisations such as the Northern Ireland Civil Service and its Agencies, Local Government, Education Authority, the Health Trusts, the NI Housing Executive as well as a host of Non-Departmental Public Bodies (NDPBs). NIPSA also represents a significant number of members in the Voluntary Sector.
2. NIPSA welcomes the opportunity to submit evidence in relation to the proposed Domestic Abuse and Family Proceedings Bill. We have been campaigning for a long time calling for adequate domestic abuse legislation in Northern Ireland. In 2016 we responded to the Department of Justice consultation on Domestic Abuse Offence and Domestic Violence Disclosure Scheme¹. The ongoing COVID-19 pandemic has seen an alarming increase in the number of domestic abuse incidents and killings² and has put in sharp focus the importance of ensuring robust domestic abuse legislation is implemented in Northern Ireland.
3. Whilst we welcome the introduction of Northern Ireland specific domestic abuse legislation and concede that it will go some way to providing much needed protection to those experiencing domestic abuse, it is important that such legislation is compliant with the Istanbul Convention³ and provides for the same legal remedies and protections as in other jurisdictions. There are clear disparities between the proposed Northern Ireland Bill and the GB Draft Domestic Abuse Bill⁴ that must be addressed.

¹ <https://nipsa.org.uk/publications/DoJ-dv-1.pdf>

² Domestic Abuse Calls Received by Police in Northern Ireland since lockdown measures were introduced on 23 March 2020

<https://www.psni.police.uk/inside-psni/Statistics/domestic-abuse-statistics/>

Police Recorded Crime in Northern Ireland, Levels recorded since lockdown measures were introduced: 23 March to 24 May 2020

<https://www.psni.police.uk/inside-psni/Statistics/police-recorded-crime-statistics/>

Women's Aid Sector Statement on COVID-19, Northern Ireland, England, Scotland and Wales:

<https://www.womensaid.org.uk/vawg-sector-statement-on-covid-19/>

³ <https://rm.coe.int/168008482e>

⁴ Draft Domestic Abuse Bill 2019-21: <https://www.gov.uk/government/collections/domestic-abuse-bill>

The definition of the offence and the definition of abusive behaviour

4. NIPSA welcomes the definition of the offence and the definition of abusive behaviour. However, it is important that the legislation is accompanied by **strategies** that address:
 - (a) The gendered nature of domestic abuse and the fact that it is only one aspect of violence against women and girls;
 - (b) Additional barriers faced by BME women at every stage, BME women are more likely to experience abuse for longer. This has been linked to specific barriers to reporting, such as structural discrimination or a lack of access to interpreters (where relevant) or support services;
 - (c) The specific experiences of migrant women, for example, ways in which their immigration status can be used by perpetrators to continue abuse, feeling unsafe to report due to their immigration status, being unable to access support as a result of having 'no recourse to public funds';
 - (d) The specific experiences and support services, including the provision of specific refuge for LGB&T+ people.
5. It is important that **guidance** documents across public services are updated/developed to reflect the new definitions, from schools, local government and health safeguarding documents to criminal justice.
6. Regarding **training**, many key public sector workers, including teachers and GPs for example, are still not receiving much, if any, initial vocational training on domestic violence or other forms of violence. The new definition is an opportunity to make it a priority to ensure key professionals, including the police and criminal justice agencies are provided with appropriate training to understand and recognise coercive control, its impact and how dangerous it is.

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

7. We welcome the prohibiting of cross examination by the alleged perpetrator. We recognise that many perpetrators try to use family and criminal proceedings to further abuse their victim – often dragging out divorce proceedings, child contact, etc. and are pleased to see this addressed within the bill. **However, we would like to see the prohibition extended to direct cross-examination in any family proceeding in which allegations of domestic abuse are being determined, or where domestic abuse has been admitted and/or found.**
8. In terms of securing convictions, more rigorous and innovative evidence collection approaches to support successful prosecutions must be considered. These include:
 - (a) Use of the Domestic Violence register showing the number of times police have been called to the house, to build a picture of the frequency and nature of abuse;

- (b) Use of PSNI intelligence and evidence gathered from incidents to build a picture of coercive control as a course of conduct;
 - (c) Use of body worn camera evidence from the scene on each occasion to effectively demonstrate the impact and seriousness of abuse. In parts of England where body worn cameras have been rolled out, there is a marked increase in the severity of sentences for domestic violence related crimes.
9. To improve the current arrangements, there must be an investment in ensuring that the victims have the confidence in the police and criminal justice system to report domestic abuse. People need to know that if they become a victim of domestic abuse, they can seek support from the police and criminal justice system and will be assisted by these agencies.
10. In the light of this pressing evidence, **NIPSA believes that funding and resources should be prioritised to ensure we get the basics right.** We believe that the priorities should be:
- (a) Increasing and improving the quality of domestic violence training for police officers. Reports would suggest that too few officers truly understand the complex dynamics of coercive control. Negative attitudes which blame victims and excuse perpetrators still exist. Training should be delivered by specialist domestic violence service providers such as Women's Aid. It will also be necessary for additional specialist training and guidance for criminal justice, social work, adult and child protection professionals and courts on the nature of coercive control and the impact of this behaviour on women, children, men, LGB&T and young people will be required;
 - (b) Strengthening risk assessment processes;
 - (c) Developing the skills needed to respond to children at the scene of domestic violence incidents;
 - (d) Improving the police's ability to offer safety planning. This includes further training on how/when to refer women on to specialist services such as Women's Aid and Independent Domestic Violence Advocacy (IDVA) services.
11. We believe that there is a particular **need to expand IDVA services across the country**, since securing prosecutions will depend heavily on expert IDVA involvement. IDVAs have been shown to be a cost-effective way of supporting high-risk women and children, and improving local police responses to domestic violence. NIPSA **recommends** that IDVA posts should be made mandatory in police stations across the country, and that Children's IDVAs should also be seriously considered.
12. NIPSA would also **recommend** the introduction of **Dedicated Specialist Domestic Abuse Courts** in Northern Ireland similar to the Scottish model.

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

13. NIPSA is concerned about the 'reasonable' defence clause and the potential for abuse by perpetrators. Perpetrators could justify their abusive behaviour through portraying victims of abuse as mentally unstable, unable to make decisions for themselves, having a history of addiction that can be used against them. We believe this loophole could serve to break down a case, will be abused by the defence and is harmful for those victims who experience disability, mental health disorders, addiction issues caused by abuse.

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

14. NIPSA welcomes the maximum penalties set out in the Bill and feel they reflect the serious nature of domestic abuse. **Sentencing guidelines for domestic abuse cases should be developed** to support and encourage consistency across courts. This is important both at the symbolic and practical level of the legislation, to reassure victims that cases are treated on an equitable basis across Northern Ireland and to provide clarity for the judiciary on how provisions in this clause are intended to operate. None of this takes away from the autonomy of an individual judge; rather, sentencing guidelines provide a framework within which autonomous and professional judgement can be most effectively employed.

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

15. NIPSA considers that domestic abuse is a trade union and **workplace issue** as much as any other forms of discrimination affecting workers. Home and work issues cannot always be separated. Domestic abuse affects job performance, and therefore job prospects and financial security. The issue is most acute when the perpetrator and victim work in the same workplace. This was borne out in a survey conducted by the Irish Congress of Trade Unions in 2014 which explored the impact of domestic and sexual violence against women on the workplace⁵.
16. The results were striking and proved that although this type of violence most often takes place behind closed doors, that the impact is felt throughout society, including in work. Of the nearly 1800 respondents, almost a third had experienced domestic violence with over 40% of those reporting that it affected their ability to get into work for reasons including financial control, threats, physical injury and restraint. Respondents also reported that the abuse continued at their workplace including being harassed through phone calls and emails, many people said that their partner physically turned up to their workplace. Disturbingly, fewer than one in three of those experiencing domestic violence discussed the violence with anyone at work. The main reasons for not disclosing were "shame" and "privacy".

⁵ https://www.ictuni.org/download/pdf/final_ictu_domestic_violencesurveyresults.pdf

17. Building on this work and as part of the action plan under the Stopping Domestic and Sexual Violence and Abuse strategy, a task and finish group involving trade unions, employers and NGOs was established to draw up revised Guidelines for Employers⁶ on developing workplace policies on domestic and sexual violence. This was published in 2018.
18. Whilst this work is encouraging and some employers are proactive at working with unions to ensure that victims of violence and abuse are supported in work, NIPSA believes that additional measures are now necessary. Other areas of the UK have introduced legislation which places a duty on Government and Local Government to develop and implement strategies and action plans.
19. In 2015, the Welsh Government introduced the Violence against Women, Domestic Abuse and Sexual Violence (Wales) Act 2015⁷. This was a ground breaking piece of legislation, which built on the progress made since the publication in 2010 of The Right to be Safe strategy and places a strategic public sector duty and statutory focus on the key issues as well as proactive powers.
20. Internationally, there is also much to learn. Unions in Australia have successfully campaigned on domestic violence as a workplace issue and have negotiated 20 days of paid leave in cases of domestic violence across the whole of the public sector. The ability to take time off work without facing disciplinary action or losing out on pay is crucial for survivors of domestic violence who are trying to flee an abusive relationship. Finding a new home, getting a place at a refuge, securing school places for kids, seeking legal advice, opening a new bank account and seeking medical help and counselling all take time. Good workplace policies on domestic violence often offer advances on pay to help survivors of domestic violence get through a period when they may have no access to cash or their own money is being withheld by an abusive partner.
21. NIPSA wants to see an **amendment to the Bill which places a duty on the Northern Ireland Executive to prepare, publish and review a strategy and which:**
 - (a) Places a duty on public sector bodies, including local government and health trusts, to prepare and implement local strategies;
 - (b) Requires the development of a National Training Framework;
 - (c) Places a duty to publish National indicators that may be applied for the purpose of measuring progress towards the achievement of the Bill;
 - (d) Gives the power to issue statutory guidance including in relation to workplace policies to promote the well-being of employees of relevant authorities who may be affected by gender-based violence, domestic abuse and sexual violence; training for the members and staff of a

⁶ <https://www.health-ni.gov.uk/news/guidance-developed-employers-domestic-and-sexual-violence-and-abuse>

⁷ <http://www.legislation.gov.uk/anaw/2015/3/introduction/enacted>

relevant authority; the sharing of information between relevant authorities or by a relevant authority with another person; co-operation between relevant authorities or between a relevant authority and other persons.

22. We also believe that **paid leave for those experiencing domestic abuse should be put on a statutory footing**; the Government have a responsibility to ensure that victims of domestic abuse are given the time and space to address impacts of domestic abuse without having to worry about being able to pay their bills. Workers may need time off to access legal or financial advice, to arrange childcare or alternative accommodation and to seek medical advice.
23. A **Domestic Abuse Commissioner** is essential to act as a mechanism of accountability for this legislation. A Commissioner's role is to scrutinise policy and practice, funding allocation and the provision of key services. To effectively implement the Domestic Abuse and Family Proceedings Bill will require huge amounts of training across the criminal justice system, a Commissioner can oversee this process and bridge any potential information gaps and inform on learning and best practice from other countries that have introduced similar legislation. The Commissioner would be able to oversee a number of key ongoing developments in domestic abuse service provision in Northern Ireland including the introductions of Domestic Homicide Reviews and the specialist domestic violence courts pilot proposed for Belfast. More so, the Commissioner could direct research and data collection on the application of the offence of coercive control to ensure that it is being applied to cases and is justiciable.
24. Through Covid-19 we have seen the impact of lockdown on victims of domestic abuse. Three women have been murdered by a male partner or relative since lockdown began at the end of March. In times such as this, having a designated champion to speak up on behalf of victims and survivors is essential. We have seen the positive impact that the Domestic Abuse Commissioner in England and Wales has made through this crisis. The Commissioner was able to oversee the implementation of appropriate support services for victims, challenge the government over the status of domestic abuse support workers as key workers and access emergency funding during lockdown - £76 million was allocated for specialised domestic abuse services to tackle increased demand on services during and after lockdown. At the time of writing this, no such funding has been allocated to specialised domestic abuse services in Northern Ireland.
25. **We consider the introduction of the role of an independent Domestic Abuse Commissioner the most effective model of raising awareness for domestic abuse, making recommendations for improvements where necessary and holding the government to account.**
26. Another significant gap in the Bill is the failure to include **Domestic Abuse Protection Notices (DAPN)** and **Domestic Abuse Protection Orders (DBPO)**. The purpose of introducing DAPNs and DAPOs is to provide the police with a mechanism to protect victims of domestic abuse for a short period in order to provide the victim with 'breathing space' and to allow referrals to support services without interference from the perpetrator. They are designed to address the problem of persistent offenders where the victim is sometimes

unwilling to support a prosecution making it unlikely that they would largely be used in cases where a charge was not possible.

27. NIPSA would support the introduction of the use of DAPNs and DAPOs for this stated purpose. In doing so it must be made clear in all guidance and training that they are not an alternative to prosecution. If the charging standard is met, then perpetrators should be charged with a criminal offence.
28. Wrap around support for the survivor is crucial in the immediate aftermath of a DAPN being issued. This should come from specialist domestic violence support services.
29. The court fees the police pay to apply for a DAPO should be abolished. We are aware by both survivors and evidence from a pilot scheme conducted in England that the cost of making an application to the magistrates' court is a factor prohibiting their use. Superintendents should not have their budgets at the back of their minds when considering whether a case is suitable for a DAPO to be issued.
30. It should be a criminal offence to breach a DAPO.
31. NIPSA wants to see addressed within the Bill **non-fatal and fatal strangulation**. Strangulation is a high risk indicator and extremely common within domestic abuse relationships. Studies have shown if a victim is strangled by their partner they are seven times more likely to be killed at a later stage. Yet our current laws make prosecution for strangulation offences very difficult. Countries such as New Zealand have specific offences relating to non-fatal strangulation, highlighting the seriousness of it. **NIPSA would want to see similar legislation adopted in Northern Ireland. It is also important that appropriate training for the criminal justice agencies, health professionals, etc around how to spot signs of strangulation and respond appropriately is conducted.**
32. **Prevention** must be at the heart of any new offence. True prevention strategies must challenge and dismantle those deeply entrenched social attitudes. This would necessitate a shift in attitudes towards women and an increase in gender equality, as violence against women is both a cause and a consequence of broader social gender inequalities.
33. Schools and other educational settings are a vital site for primary prevention, including mandatory education within the curriculum on healthy relationships – delivered from a perspective of gender equality and human rights, from an early age and in an age-appropriate manner. It would also be beneficial to educate our young people about how to assess those that they meet with a view to beginning a relationship. Databases do not improve relationships, but consistent and high-quality healthy relationships education would. **We believe that teaching on domestic violence, healthy relationships, respect and consent must be embraced as part of a 'whole school' approach.**
34. High-profile, Government-funded **public awareness campaigns** aimed at preventing domestic and sexual violence and abuse and to provide an

understanding of what is coercive control are also necessary if the Government wants to achieve its ambition of ending such violence and abuse by placing prevention at the heart of its strategy. Such campaigns should take a preventative, attitude-changing approach and should be designed by organisations and agencies with expertise in engaging with men and young boys, LGB&T community and women and girls. These should take the same approach (and receive similar priority and funding commitment) as high-profile campaigns that have been initiated to generate behavioural change, such as Government campaigns to reduce drink driving.

35. There are significant gaps in services which address the needs of children and young people living with domestic violence. There is no appropriate refuge and other support facilities available for LGB&T people. People from Black and Minority Ethnic (BME) communities face particular difficulties in accessing services that are responsive to their needs. Year on year funding for support services such as Women's Aid, Mens Advisory Project and others are being cut.
36. NIPSA **recommends** that the government urgently address these gaps and ensure that a full continuation of sustainable, specialist services exists to support the diverse needs of victims.
37. We call for equality, justice and fairness for everyone who has a lived experience of domestic violence and abuse in Northern Ireland. We believe the above amendments and additions to the Bill could adequately address concerns about the human rights of victims in Northern Ireland through the right legislation. It could also improve outcomes within the criminal justice system by giving victims and survivors a robust legal process and ensure all survivors' voices are heard.

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