

Response from the Northern Ireland Social Care Council re:

DOMESTIC ABUSE AND FAMILY PROCEEDINGS BILL

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RESPONDING TO THE CONSULTATION

DOMESTIC ABUSE AND FAMILY PROCEEDINGS BILL

The Domestic Abuse and Family Proceedings Bill was introduced into the Assembly on 31 March 2020. The Bill passed Second Stage on 28 April and the Committee Stage commenced on 29 April 2020.

The Committee for Justice would welcome your views/comments on the content of the Bill.

Your written submission should be structured to address specific clauses of the Bill. If appropriate, it should include any amendments you wish to propose to the text of the Bill. Information regarding the Bill can be obtained from the Assembly's website <http://www.niassembly.gov.uk/assembly-business/committees/2017-2022/justice/primary-legislation/domestic-abuse-and-family-proceedings-bill/call-for-evidence/> or can be provided on request by emailing the Committee at Domesticabusebill@niassembly.gov.uk

In particular the Committee would welcome views on the following:

Q1. *How this new domestic abuse legislation enhances existing legislation & whether it fully addresses the gaps in existing law & will improve the ability of the justice agencies to prosecute domestic abuse cases?*

Response:

The Northern Ireland Social Care Council, as the regulator for the Social Work and Social Care workforces, welcomes this new legislation that aims to enhance existing legislation & address current gaps by creating a course of conduct offence that criminalises patterns of non-physical behaviour such as psychological, emotional or financial abuse.

By denoting a pattern of behaviour (two or more occasions) that a reasonable person, in all the circumstances, would consider likely to cause the victim physical or psychological harm an offence (Clause 1 and Clause 2), current gaps in legislation, of which we are cognisant, are addressed and enhanced protection is afforded to victims. We further acknowledge the fact that the legislation caters for a broad definition of who may be subject to domestic abuse (Clause 1 and Clause 5).

In addition, Clause 8 and Clause 9 allow for an aggravating factor of an offence under the legislation to be recognised where the alleged behaviour is against a child under the age of 18 years and/or a where an offence involves a child, for example, where a child witnesses, hears or is present during the abuse or is involved, either wittingly or otherwise. This recognises, rightly, the impact of domestic abuse on children and young people.

If a person who is a habitual resident of NI or a UK national commits an offence in a country outside the UK, under this legislation the offence will be considered as if it occurred in NI. The Council would note that this measure may be of particular benefit to foreign national residents who may be subjected to abusive behaviour whilst outside the jurisdiction.

Furthermore, we welcome the amendment of the Criminal Evidence Order (1999) to ensure that the partner/connected person is eligible for special measures (Clause 22) and the amendment of the Criminal Evidence (NI) Order to prohibit the perpetrator from cross examining the partner/connected person

Q2. *The definition of the offence and the definition of abusive behaviour*

Response:

The legislation defines a domestic abuse offence as taking place if a person engages in a course of behaviour that is abusive towards a person to whom there is a personal connection, where a reasonable person would consider the course of behaviour to be likely to cause harm. This applies if the perpetrator either intends

the behaviour to be abusive or is reckless as to whether the course of behaviour causes the partner/connected person to suffer physical or psychological harm. Psychological harm includes fear, alarm and distress.

Abusive behaviour includes behaviour that is violent; threatening; that is meant to cause a person to be dependent or subordinate to the perpetrator, isolate a person from friends, family or other social support; controlling regulating or monitoring a person's day to day activities; depriving or restricting a person's freedom of action; making a person feel frightened, humiliated, degraded, punished or intimidated. It is, also, made clear that these behaviours include saying, communicating, doing and failing to say, communicate or do. Examples given are clear and the caveat that the list of behaviours is not exhaustive is welcome.

The Council recognises that the proposed legislation is aimed at addressing current gaps which allow certain nuanced and insidious behaviour that may be perpetrated against a victim without constituting an offence.

The legislation provides a mechanism that allows action to be taken against a wide range of abusive behaviours which will provide an enhanced protection for victims.

It is recognised by the Council that social workers and social care workers will have an important role in identifying and assisting victims.

Q3. *Any identified issues regarding the investigation and prosecution of the new offence*

Response:

The Council considers it appropriate and helpful to prohibit the cross examination of a victim by a defendant (Clause 23 and Clause 26), to enable complainants to be automatically eligible for consideration of special measures (Clause 22) and to address abusive behaviour occurring outside the jurisdiction (Clause 10).

The Council, also, deems it appropriate that there is no requirement to prove that the behaviour did cause physical or psychological harm (Clause 3) should enable the offence to be addressed without having to infringe emotionally or otherwise, upon the person impacted.

Q4. *Whether the 'reasonable' defence included in the legislation is framed appropriately and the intent of when it would apply is clear*

Response:

The Council considers that Clause 12 which outlines the 'reasonable' defence is appropriate and adequately recognises the complexities that are inherent in non-violent patterns of behaviour that may be abusive.

Q5. *Whether the penalties provided for in the bill are appropriate & adequate*

Response:

The Council considers that agencies with a legal and justice –oriented remit would be better placed to comment on whether the penalties (Clause 14) are appropriate and adequate.

Q6. *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*

Response:

The Council considers that an important non-legislative operational response will include comprehensively updating registrants of the Social Care Council as to the content of the legislation, and to provide training, and learning around best practice. This can enhance the protection of victims and assist justice agencies in proactively addressing the offending behaviour as outlined in the legislation.

The Council would note that, particularly in the area of 'elder abuse' occurring when an adult child is acting in a controlling or coercive manner towards a parent, it would be appropriate to provide additional training to social workers and social care workers in order to further enhance the ability of justice agencies to prosecute such offences.

It will be of the utmost importance for social work courses at degree and post-qualifying level to have a comprehensive overview of the changes that this legislation will bring to all social work and social care settings, and the Council understands their role in enabling this.

An education strategy may, also, need to be considered within other areas of health and social care such as nursing, GP surgeries and within other allied health professions who can play a pivotal role in identifying domestic abuse and supporting victims.

A wider communication strategy will be vital to inform the general public of the legislation in order to enable people to come forward to report, particularly where previously they have not known that they could report the offence either by virtue of their relationship to the person or the nature of the offence.

The Council believes that further educational strategies to enable the public to understand the nature of the offence, and the impact on partners/connected people and children and young people are essential.

These strategies should include all aspects of education to ensure the general public, of all ages, understand their rights e.g. Schools and FHEIS

Ongoing support for community regional and national organisations which provide information, advice, support and a place of safety for those impacted by domestic abuse should be prioritised.