

NSPCC in Northern Ireland briefing for Justice Committee on the Domestic Abuse and Family Proceedings Bill

The NSPCC in Northern Ireland welcomes the opportunity to give evidence on the Domestic Abuse and Family Proceedings Bill. We welcome the introduction of this Bill, and moves to make domestic abuse a specific criminal offence. The Bill is a once in a generation opportunity to deliver a step change to our response to domestic abuse.

While we welcome the Bill, we do feel amendments are necessary if it is truly to take account of the needs of children affected by domestic abuse. The COVID-19 crisis has underlined how important this is, with levels of domestic expected to rise and vital support services coming under further pressure.

The impact of domestic abuse on children

Domestic abuse has a devastating impact on children and young people. Living in a home where domestic abuse takes place can have a profound impact on a child's physical, mental and emotional wellbeing, as well as their behaviour. The effects of experiencing this form of harm can last well into adulthood.

Children's experience of domestic abuse is often connected to that of their parent or carer but is also distinct. Examples of this include being expected to defend the abused parents against physical harm or be drawn into violence or coercively controlling behaviours to further punish the adult victim.¹ Children's experiences of disclosure can also be traumatising, as disclosure can result in instability because it may result in leaving the family home and moving into accommodation, or feelings of guilt or shame due to disclosing the abuse and punishing the parent who is causing harm.²

The COVID-19 pandemic and related public health measures have shone a spotlight on the scale of domestic abuse. Since lockdown measures were introduced in late March, we have seen a noticeable rise in domestic abuse contacts to our Childline and Helpline services.

Children affected by domestic abuse are finding it harder to cope than usual, as sources of support that might previously have been available to them - friends, teachers, school counsellors, health visitors, sports clubs - have been reduced or cut off entirely. Now, more than ever, children are turning to Childline for

¹ Dr Jane Callaghan (Beyond Witnessing: Children's Experiences of Coercive Control in Domestic Violence and Abuse, 2016, *Journal of Interpersonal Violence*) and Dr Emma Katz (Coercive Control, Domestic Violence and a Five Factor Framework: Five Factors that Influence Closeness, Distance and Strain in the Mother-Child Relationship, 2019, *Violence Against Women*),

² Dr Emma Katz, Coercive Control, Domestic Violence and a Five Factor Framework: Five Factors that Influence Closeness, Distance and Strain in the Mother-Child Relationship, 2019, *Violence Against Women*). See also Alnock, D. and Miller, P. (2013) *No-one noticed, no-one heard*. Available at: <https://learning.nspcc.org.uk/research-resources/2013/no-one-noticed-no-one-heard>

emotional support and advice on how to keep themselves safe. Children and adults experiencing domestic abuse also feel worried to leave their homes for risk of getting sick.

There are also concerns that those who commit domestic abuse are using lockdown and social distancing measures to assert more coercively controlling behavior, such as taking away mobile phones or laptops, not allowing their partner or children to leave the family home and limiting contact with other loved ones, friends or safeguarding professionals.

Domestic Abuse and Family Proceedings Bill

Below we set out our comments on the specific clauses contained within the Bill.

Clause 1: definition of domestic abuse

We warmly welcome the creation of a specific offence of domestic abuse for Northern Ireland, particularly the inclusion of coercive and controlling behaviours within the definition of abusive behaviour at clause 2. However, we feel the scope of the offence must be amended to adequately reflect how children and young people are affected by domestic abuse.

At present the offence can apply to individuals of any age. This contrasts with the Domestic Abuse Bill currently before Westminster which explicitly states that the offence being created applies where both A and B are aged sixteen or over. We strongly believe the NI Bill should be amended to include a similar minimum age threshold so children cannot be convicted of the proposed offence.

Including children under the age of sixteen in the statutory definition of the domestic abuse offence – in terms of their own relationships – risks confusing the child protection response, with cases being dealt with through a more punitive, criminal justice lens, rather than with a more protective, health and social care -based focus. Both in cases where a child is experiencing abuse, and where a child is engaged in harmful behaviours, the response should be child-centred, seek to prevent further harm and promote recovery. In the majority of cases, a criminal justice response would not be the most helpful or appropriate approach and, therefore, we do not believe that the criminal offence should apply to children.

That said, while we believe the offence should not apply to those under age 16, nevertheless we do believe that the offence should capture the experiences of children living within the context of an abusive relationship between adults. The impact on children of seeing, hearing or being otherwise exposed to domestic abuse perpetrated by one adult against another is such that they must be considered to have experienced the domestic abuse as well, and not merely to have passively witnessed it. As this Bill will inform efforts to address domestic abuse, it is essential that children's direct experience of domestic abuse is recognised in the legislation itself, in order to ensure they receive protection and support to recover.

Therefore the Bill must go further and more directly recognise the impact on children of the relationship between A and B, not merely as an aggravating factor (as per clause 9) but as an offence in its own right. With this

understanding, we would welcome amendment of the statutory definition which recognises that a child (C) is directly impacted by the behaviour which A directs at B.

Clause 8-9: aggravators relating to children

We welcome the policy intention behind these provisions, in attempting to recognise the impact that domestic abuse has on children. However, we believe some amendments are required.

We would suggest that clause 8 – aggravation where victim is under 18 – should be amended in light of our comments above, that the offence should only apply where A and B are over 16. This clause goes some way to reflect that children are impacted by domestic abuse but we suggest the incorporation of child C into the statutory definition of domestic abuse would be a much clearer and effective solution.

We welcome clause 9 – aggravation where relevant child is involved – and consider it a welcome step forward in considering the impact of domestic abuse on children. However, as set out above, beyond the aggravator, we would welcome further consideration of how children’s experiences can be directly included within the statutory definition of the offence itself.

In addition, we note the Scottish legislation on which clause 9 is based, includes a ‘reasonable person’ test – that the aggravation is proven a reasonable person would consider the course of behaviour likely to adversely affect a child³. This test was included in the Scottish legislation in large part to avoid children having to give evidence about their experiences in court. Following that same reasoning, we recommend that a ‘reasonable person’ test is also added to this clause.

Clause 11: exception where responsibility for children

As presently drafted, the Bill allows for the possibility of an adult committing an offence of domestic abuse against a child. However, clause 11 of the Bill states that A (an adult) does not commit an offence towards B (a child) where A has parental responsibility over B.

While creating a minimum age of 16 for this offence, as called for above, would render this exception unnecessary, if such an age threshold is not introduced, we would be opposed to this clause. The explanatory memorandum justifies this inclusion by providing that there are other, more appropriate provisions for dealing with such situations⁴. However, these provisions risk making the law as it affects children unclear. The exception risks creating an inequity where the same behaviour is deemed unacceptable for some children and not for others.

Clause 12: defence on the grounds of ‘reasonableness’

We are not convinced that the defence contained in clause 12 is sufficiently clear. We would welcome more detail on how ‘reasonable’ is defined.

³ Domestic Abuse (Scotland) Act 2018, s5(4)

⁴ Bill 03/17-22 EFM, p10

A statutory duty on Health and Social Care Trusts to deliver support services

We advocate the inclusion of a duty on Health and Social Care Trusts to provide support services for adults and children affected by domestic abuse.

With the right support, children affected by domestic abuse can recover and go on to lead happy and healthy childhoods. In creating the specific offence, we also need to ensure there is sufficient provision for those affected by domestic abuse. This is particularly pressing in the context of the COVID-19 pandemic, when there will almost certainly be increased need and demand. A child's experience of domestic abuse is different to that of an adult and so specialist, child-centred support is needed to help children recover and move forward with their lives.

Evidence has identified that children have a better chance of recovering from domestic abuse when they have a strong relationship with the parent victim of abuse, usually the mother.⁵ The Domestic Abuse Recovering Together (DART) service run by the NSPCC, and delivered from our Belfast service centre, helps children and mothers talk to each other about domestic abuse, learn to communicate and rebuild their relationship. Over a number of sessions, mothers and children aged 7-14 meet for a weekly two-hour group session, and then take part in activities in separate groups. Mothers learn about how domestic abuse happens and the impact it has on children. Children take part in activities together that help them build their own understanding of domestic abuse, how they're feeling and how to keep themselves safe. They then join together again to conclude the session. Evaluations of the programme found that:

- mothers' self-esteem and confidence in parenting increased, and they reported more affection towards their children
- children had fewer emotional and behavioural difficulties; reductions were greater among children who received DART than those involved in an alternative service

The Domestic Abuse Bill at Westminster includes a duty on local authorities to provide support to adult and child survivors in accommodation-based services, like refuges. The NI Bill should include a similar provision, although ensure it is not limited to accommodation services only. We advocate the addition of a duty on Health and Social Care Trusts to deliver to make available specialist support services for all adult and child victims, as well as perpetrators and children exhibiting abusive behaviours, regardless of where they live.

Creation of a Commissioner for Domestic Abuse

NSPCC NI supports calls made by Women's Aid Federation Northern Ireland (WAFNI) for the introduction of a Domestic Abuse Commissioner. Such a role would provide leadership and scrutiny in tackling domestic abuse. It will also be vitally important that the functions of the Commissioner sufficiently address the needs of children affected by domestic abuse.

Part 2 – Family Proceedings: Cross examination

⁵ Katz, 2019.

We support provision which prevent those who engage in abusive behaviour from directly cross-examining their victims. The family courts should be a place of safety, where the protection of children and adult survivors are put first, and their fears listened to and respected.

These measures strongly reflect the importance of children's best interest in the process. Ensuring victims are able to give their best evidence at court is critical to successful outcomes for them, and the safety of children who are in need of protection. In addition, this ban rightly affords victims of domestic abuse in family proceedings the same protection as is available to victims of sexual and other offences in criminal proceedings.⁶

⁶ The Criminal Evidence (Northern Ireland) Order 1999