



Northern Ireland

Submission to Justice Committee on the Domestic Abuse and Family Proceedings Bill 2020

1. About PCS Union

The Public and Commercial Services Union (PCS) represents almost 160,000 members in the UK civil and public services with around 2,000 based in Northern Ireland. We represent workers in a number of departmental and non-departmental agencies including HM Revenue & Customs, UK Border Force, Ministry of Defence, Department for Work and Pensions, HM Passport Office.

PCS are pleased to make this submission on the proposed Domestic Abuse and Family Proceedings Bill to the Justice Committee. We have campaigned for years for suitably robust domestic abuse legislation, with comprehensive supporting strategies, for Northern Ireland.

2. Introduction

We appreciate the pace of the Justice Minister is introducing Domestic Abuse legislation since the return of the NI Assembly and welcome its introduction. However it is important that the legislation is compliant with the Istanbul Convention and recommendation outlined by the Committee on the Elimination of Discrimination Against Women and address the differences between the proposed Northern Ireland Bill and the GB Draft Domestic Abuse Bill, particularly gaps in enforcement action.

3. The definition of the offence and the definition of abusive behaviour

PCS welcomes the definition of the offence and the definition of abusive behaviour. However this must be accompanied by robust strategic equality strategies including, Race, Sex, Disability, LGBT, Age, Religious and political beliefs and anti-poverty/social deprivation, in order to protect the most vulnerable and marginalised groups. Refugees and migrant women and their children face specific issues with their status being used by perpetrators to abuse.

The absence of such strategies dilutes the impact of the proposed legislation. Legislation and strategies will also be limited in their impact without additional adequate support, resources, funding and training across the public, private and charity sectors.

We acknowledge that anyone can be a victim of domestic violence including men, the evidence is clear that women are more likely to be victims of domestic violence and men the perpetrators. A gender neutral approach could minimise this and disadvantage women and children. It is important the gendered nature of domestic abuse is recognised in the legislation and that the additional difficulties of the marginalised groups detailed above are adequately reflected in the legislation.

This legislation is an opportunity to improve practice across a range of settings and public services. Whilst the legislation is for Northern Ireland only, it is important that

UK government departments based in NIreland, including UK Border Force and Immigration Services, HM Revenue & Customs etc are compliant with the legislation and operate on an inter departmental basis, to support the legislation and strategies.

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

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.

We recommend

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;

Use of PSNI intelligence and evidence gathered from incidents to build a picture of coercive control as a course of conduct;

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.

Improving the quality of domestic violence training and expanding training delivery 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 all relevant sectors on the nature of coercive control and the impact of this behaviour on women and children and marginalised and vulnerable groups,

Independent Domestic Violence Advocates (IDVA) services across Northern Ireland must be expanded through adequate funding and resources, 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.

We recommend that IDVA posts should be made mandatory in police stations across the country, and that Children's IDVAs should also be seriously considered.

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

PCS have significant concerns about the Clause12 defence on the grounds of reasonableness. The wording is not specific enough to prevent perpetrators from justifying their abuse or blaming the victim.

We urge you to listen to the concerns raised by Women's Aid, the Belfast and Area Domestic and Sexual Violence and Abuse Partnership, the Commissioner for Older People, Nexus NI and ICTU.

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

The severity of the offence of domestic abuse is addressed by the maximum penalties as led out in the Bill. We believe the sentencing guidelines should provide consistency and equity for domestic abuse cases in courts throughout Northern Ireland.

7. 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

As noted in paragraph 3 above. The proposed legislation will have a limited impact without accompanying equality strategies, education and investment in funding and resources.

Trade Unions have been campaigning on the issue of domestic violence and abuse and violence against women and girls for many years. There is a considerable body of work which demonstrates that domestic violence is a workplace issue. The results of domestic violence and abuse also impact on the economy in hours of lost productivity. We believe that the government, employers and trade unions have an important role in making the workplace a safe and supportive place for everyone.

In 2014, the Irish Congress of Trade Unions conducted a survey to explore the impact of domestic and sexual violence against women on the workplace¹

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”.

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 Employers² on developing workplace policies on domestic and sexual violence. This was published in 2018.

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, ICTU 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, which PCS have engaged in.

In 2015, the Welsh Government introduced the Violence against Women, Domestic Abuse and Sexual Violence (Wales) Act 2015³. This was a ground-breaking piece of legislation, which built on the progress made since the publication in 2010 of The Right

¹ https://www.ictuni.org/download/pdf/final_ictu_domestic_violencesurveyresults.pdf

² <https://www.nibusinessinfo.co.uk/sites/default/files/Developing-a-Workplace-Policy-on-Domestic-and-Sexual-Violence.pdf>

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

to be Safe strategy and places a strategic public sector duty and statutory focus on the key issues as well as proactive powers.

Internationally, there is also much to learn. Unions in Australia have successfully campaigned on domestic violence as a workplace issue and have negotiated between 15-20 days of paid leave in cases of domestic violence across the whole of the public sector⁴. 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.

In June 2019, at the Centenary Conference of the International Labour Organization (ILO),⁵ the Violence and Harassment Convention (No. 190) and its accompanying Recommendation (No. 206) were adopted. The global community has made it clear that violence and harassment in the world of work will not be tolerated and must end.

The Preamble to the Convention notes that “domestic violence can affect employment, productivity and health and safety, and that governments, employers’ and workers’ organizations and labour market institutions can help, as part of other measures, to recognize, respond to and address the impacts of domestic violence”. As such, the Convention requires Members to “take appropriate measures to ... recognize the effects of domestic violence and, so far as is reasonably practicable, mitigate its impact in the world of work” (Art. 10(f)), and the Recommendation provides further guidance.

The inclusion of provisions regarding domestic violence in Convention No. 190 and Recommendation No. 206 reflects a fundamental change: historically, domestic violence was relegated as a “private” issue, with no connection to work, and it is now being acknowledged as having real consequences for workers, enterprises and the society at large.

The new instruments finally recognize the negative spillover effects that domestic violence can have on the world of work and the positive contribution that work can make towards improving the well-being of victims of domestic violence.

Trade unions recognise the wide ranging effects of domestic and sexual violence and abuse and the impact on victims as workers and on the workplace. We would therefore urge the Department to consider additional measures such as:

Developing an Act, similar to that in Wales, which places a strategic public sector duty requiring the Northern Ireland Executive to prepare, publish and review a strategy and which:

- Places a duty on public sector bodies, including NDPBs, health trusts and local authorities, to prepare and implement local strategies;
- Requires the development of a National Training Framework;
- Places a duty to publish National indicators that may be applied for the purpose of measuring progress towards the achievement of the Act;
- 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;

⁴ <https://publicsector.sa.gov.au/wp-content/uploads/20171120-Determination-3.1-Employment-Conditions-Hours-of-Work-Overtime-and-Leave.pdf>

⁵ <https://www.ilo.org/global/topics/violence-harassment/lang--en/index.htm>

training for the members and staff of a 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.

We would also suggest that the Northern Ireland Executive ensure that the UK Government ratifies ILO Convention 190 and that the Executive considers measures which can ensure it is brought into effect.

Demonstrating leadership on this issue is of vital importance and that the appointment of a Domestic Abuse Commissioner, similar to England and Wales, with the appropriate resources, to both advise and challenge Government would be of extreme importance.

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

We also believe that a period of paid leave should be introduced for all workers who have been victims of domestic or sexual violence and abuse.

The Northern Ireland Executive has 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.

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.

We 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.

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.

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. It should be a criminal offence to breach a DAPO.

PCS believes that the issue of fatal and non-fatal strangulation should be addressed within the Bill. 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. We 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.

PCS believe it is important to fully fund specialist support services for vulnerable groups including for LGBT+ groups, BME people and people with disabilities, young and older people. Funding for vital services including Women's Aid and the Men's Advisory Project have been cut as a result of austerity driven policies and short term planning.

There must be a strategic and wide ranging public awareness campaign aimed at educating the public and changing the attitudes and understanding of the public on domestic abuse. It is important to ensure that the public and statutory agencies are aware of the new definitions and offence. This must coincide with adequate funding for state and charity agencies to address any resulting increase in demand for help and assistance from the public.

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