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Mr Paul Givan
Chairman,
Committee for Justice
Northern Ireland Assembly
Room 242
Parliament Buildings
Belfast

BY EMAIL ONLY

8 June 2020

Dear Mr Givan

Domestic Abuse and Family Proceedings Bill

I am writing in response to your letter of 7 May inviting a written response in respect of the new Domestic Abuse and Family Proceedings Bill. Thank you for this opportunity to comment on the draft Bill, which is welcomed.

Please be assured that I am very supportive of the new legislation and officials from the PPS are working collaboratively with the Department of Justice and others to ensure that it can be brought into practical effect without undue delay.

Feedback has been restricted to those provisions which relate directly to the PPS and our role in prosecuting domestic abuse cases in the criminal courts. We have no comment to make in respect of Part 2 of the Bill which relates to family proceedings.

The response below is set out according to the specific headings outlined in your letter and, as requested, follows the structure of the Bill where possible.

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

Clause 2 of the Bill sets out what constitutes abusive behaviour. There is currently no direct provision in existing legislation in Northern Ireland to protect victims from psychological abuse or other coercive and controlling behaviour. The extension of the definition of abusive behaviour means that the PPS will now have the ability to prosecute perpetrators for the more subtle forms of controlling behaviours. These behaviours have previously fallen short of a criminal offence, yet are common in cases of domestic abuse received by the PPS.

The extension of abusive behaviour in Clause 2, to include persons other than the victim or the victim's child, will capture incidents where the perpetrator involves a third party in their efforts to continue to have certain effects on the victim. We receive many cases where certain behaviours are directed, for example, at new partners or friends of the victim. These persons would not be covered under the definition of 'personally connected' and the Department supports the recognition of these incidents under the umbrella of domestic abuse.

Clause 5 of the Bill sets out the meaning of 'personally connected'. The Bill casts the net widely in respect of the pool of domestic abuse victims. The Domestic Abuse (Scotland) Act 2018 restricts the victims of domestic abuse to partners and ex-partners. The Serious Crime Act 2015 which introduced coercive and controlling behaviour to England, defines parties as personally connected if they are in an intimate relationship, where they live together and are members of the same family or they live together having previously been in an intimate relationship with each other. We support the wider definition applied in the Northern Ireland Bill and the recognition that domestic violence is not restricted to intimate relationships or households. The inclusion of parents or grandparents, for example, will capture incidents of elder financial abuse in which prosecutors frequently encounter evidential difficulties when considering prosecutions under the legislation currently available.

We welcome the inclusion of the domestic abuse offence aggravators and the single incident domestic abuse aggravators at clauses 8, 9 and 15 of the Bill. The latter aggravator will have particular significance in prosecuting cases of domestic abuse and should make it easier to identify serial perpetrators from their criminal records.

We are supportive of clauses 21, 22 and 23 of the Bill relating to the removal of a right of election, special measures eligibility and prohibition of cross-examination in person in cases involving domestic abuse. Automatic eligibility to special measures for victims of offences involving domestic abuse is a significant step forward in improving the support available to victims at court.

The definition of the offence and the definition of abusive behaviour

We support the wording of clauses 1 and 2 of the Bill. Whilst these clauses are sufficiently prescriptive, they are not exhaustive. Therefore tailored training will be provided to all prosecutors on the terminology used to describe the domestic abuse offence and abusive behaviour more generally.

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

We do not anticipate any issues arising and we have provided feedback to the Department on various previous drafts of the Bill to address any matters that appeared to require clarification.

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

Clause 12 of the Bill is drafted as follows-

Defence on grounds of reasonableness

12.—(1) In proceedings in respect of a charge against a person ("A") of the domestic abuse offence, it is a defence for A to show that the course of behaviour was reasonable in the particular circumstances.

(2) That is shown if—

(a) evidence adduced is enough to raise an issue as to whether the course of behaviour is as described in subsection (1), and

(b) the prosecution does not prove beyond reasonable doubt that the course of behaviour is not as described in subsection (1).

PPS notes that the wording of the “reasonableness” defence clause largely follows the same provision set out at section 6 of the Domestic Abuse (Scotland) Act 2018 -

6 Defence on grounds of reasonableness

(1) In proceedings for an offence under section 1(1), it is a defence for A to show that the course of behaviour was reasonable in the particular circumstances.

(2) That is to be regarded as shown if—

(a) evidence adduced is enough to raise an issue as to whether the course of behaviour is as described in subsection (1), and

(b) the prosecution does not prove beyond reasonable doubt that the course of behaviour is not as described in subsection (1).

A similar defence also exists in England & Wales by virtue of section 76 (8) and (9) of the Serious Crime Act 2015 which states-

(8) In proceedings for an offence under this section it is a defence for A to show that—

(a) in engaging in the behaviour in question, A believed that he or she was acting in B’s best interests, and

(b) the behaviour was in all the circumstances reasonable.

(9) A is to be taken to have shown the facts mentioned in subsection (8) if—

(a) sufficient evidence of the facts is adduced to raise an issue with respect to them, and

(b) the contrary is not proved beyond reasonable doubt

PPS is not aware of any particular issues with the operation of the reasonableness defence clause in other jurisdictions due to a lack of clarity and the framing of

Clause 12 appears substantively in line with the equivalent wording in the rest of the United Kingdom.

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

The PPS does not generally comment on the adequacy of sentencing powers by nature of our role in the criminal justice system.

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

We recognise the prevalence of non-fatal strangulation within domestic abuse. Non-fatal strangulation can have serious consequences for the victim and in the majority of cases is a precursor to more serious injury, including death. Despite the seriousness of these types of assault, non-fatal strangulation is very difficult to prosecute. The PPS has collaborated with physicians from St Mary's Hospital in Manchester to raise awareness on this issue at conferences held by Women's Aid and the Domestic Violence Partnerships.

The PPS Policy and Information Unit has updated the Service's internal guidance on non-fatal strangulation. This guidance takes account of the recent Court of Appeal decision in **R v Campbell Allen [2020] NICA 25**. A PPS representative will also be involved on a new project team with DOJ, PSNI and a number of stakeholder groups to work on measures to address this serious issue, both by legislative and non-legislative means.

Stalking is a concerning feature in many domestic abuse cases in Northern Ireland. The PPS has been liaising with DOJ and DSO to progress draft legislation in respect of stalking. Until such legislation is in place, prosecutors will continue to make full use of the existing harassment provisions and restraining orders.

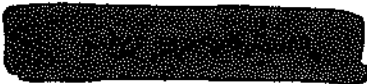
The PPS has been involved in planning with the Judiciary, DOJ, NICTS and PSNI to introduce a new domestic violence court in Belfast. The aim is to implement the court on a pilot basis before the end of 2020. It is hoped that this initiative

will significantly improve the experience of victims of domestic violence and reduce delay in bringing these cases to conclusion.

By way of completeness I would also advise that PPS is also presently scoping the establishment of specialist domestic violence and abuse prosecutors to dovetail with the introduction of the new legislation. It is envisaged that these prosecutors would receive more intensive training in these areas, and in particular in relation to coercive control and the identification of patterns of domestic abuse behaviours. They would also act as the first point of contact for police to assist in providing prosecutorial advice and working to ensure that all reasonable lines of enquiry are pursued to maximise the opportunities for bringing fair but robust prosecutions.

I hope that this is helpful and that you are keeping well in these challenging times.

Yours sincerely,



STEPHEN HERRON
Director of Public Prosecutions
for Northern Ireland

Copy: Deputy Director
Senior Assistant Directors
Head of Policy and Information