

the
rainbow



project

Domestic Abuse Bill 2020

RESPONSE TO NI ASSEMBLY JUSTICE COMMITTEE

Background

The Rainbow Project supports the health and wellbeing of lesbian, gay, bisexual and/or transgender people, and their families, across Northern Ireland. We seek to achieve this through, research, advocacy, community engagement and the development and delivery of services to improve mental, physical and sexual health.

We are engaged in tackling the domestic abuse experienced by LGBT people through participation in various fora including the PSNI Inter Agency Group on Domestic Abuse, the Belfast Area Domestic and Sexual Violence Partnership to share information, develop strategic interventions and raise public awareness with statutory and community/voluntary sector partners.

Domestic Abuse Bill 2020

We welcome the publication of the draft domestic abuse legislation and the call for evidence by the NI Assembly Justice Committee. We particularly welcome the bill's recognition of coercive control and the serious impacts that it has on victim's health and ability to seek support. Having engaged with departmental officials and Justice Minister Naomi Long on the particular domestic abuse experiences of LGBT people, we welcome the opportunity to provide our perspective on the legislation as drafted.

Over the course of The Rainbow Project's 26-year history we have conducted significant pieces of research into the health and wellbeing inequalities experienced by LGBT people in Northern Ireland. Our research has identified two key overarching themes which contribute to negative outcomes for LGBT people; isolation and invisibility.

Isolation derives from the unique experience of LGBT people, compared to other minority populations, having to come to an understanding of a fundamental aspect of who you are, often without anyone else in your immediate family or community being aware of this experience, or sharing the characteristic. As this understanding is most commonly experienced during adolescence, and is coupled with a fear of rejection from family and friends, it fundamentally shapes an LGBT person's life and particularly contributes to a trend of poor help-seeking behaviours amongst LGBT populations.

The invisibility of LGBT people arises from the failure of statutory authorities to take steps necessary to understanding the experiences of LGBT people. Although all public authorities have a statutory duty to promote equality of opportunity for LGBT people and to maintain appropriate datasets on LGBT people, many public authorities fail to faithfully

execute their statutory duties. When public authorities do not understand the experiences of LGBT people, LGBT people are invisible to them. The experiences, needs and aspirations of LGBT people are then absent from policy development processes and service delivery frameworks. When LGBT people do not see themselves or their experiences reflected by public authorities they are forced into positions of invisibility; always having to come out, repeatedly, in order to access appropriate services. The invisibility of LGBT people is caused by heterosexism; the assumption of straightness as normal; as default. This is particularly relevant in considerations of domestic abuse, where LGBT people are made invisible by the absence of research by statutory authorities on their experiences.

LGBT Experiences of Domestic Abuse: Invisible Victims

The GB-based LGBT advocacy organisation Stonewall has previously conducted research on the domestic abuse experiences of lesbian & bisexual women and gay & bisexual men. Key statistics emerging from the research were:

One in four lesbians and bisexual women have experienced domestic abuse in a relationship. Two thirds of those say the perpetrator was a woman, a third a man.

Four in ten lesbians and bisexual women with a disability have experienced domestic abuse in a relationship.

More than four in ten lesbians and bisexual women who have experienced domestic abuse experienced this for more than a year.

Sixty two percent of lesbians and bisexual women who have experienced domestic abuse from a female partner have experienced some form of **physical violence**.

Fifty four percent of lesbians and bisexual women who have experienced domestic abuse from a male partner have experienced some form of **physical violence**.

Half of all gay and bisexual men have experienced at least one incident of domestic abuse from a family member or partner since the age of 16.

Almost two thirds of gay and bisexual men with a disability have experienced at least one incident of domestic abuse from a family member or partner since the age of 16.

More than one in three gay and bisexual men have experienced at least one incident of domestic abuse in a relationship with a man.

Almost one in four gay and bisexual men have experienced at least one incident of domestic abuse from a family member.

Seven percent of gay and bisexual men have experienced at least one incident of domestic abuse from a woman.

Four in ten gay and bisexual men who have experienced domestic abuse experienced this for more than a year.

Fifty nine percent of gay and bisexual men who have experienced domestic abuse from a male partner have experienced some form of **physical violence**.

Source: Stonewall – Domestic Abuse Health Briefing (2012)

There has been limited research conducted on the levels of domestic abuse experienced by transgender people. However, research conducted by the Scottish Transgender Alliance found that:

80% of respondents stated that they had experienced emotionally, sexually or physically abuse behaviour by a partner or ex-partner

60% of respondents reported experiencing controlling behaviour from a partner or ex-partner

45% of respondents reported experiencing physically abusive behaviour from a partner or ex-partner

47% of respondents reported experiencing sexual abuse from a partner or ex-partner

Source: Scottish Transgender Alliance – Out of Sight, Out of Mind? Transgender People's Experiences of Domestic Abuse (2010)

The settled consensus in domestic abuse research correctly recognises that the vast majority of domestic abuse is experienced by women at the hands of male perpetrators and it is correct that visibility and resources are directed at this reality. We also agree that in the vast majority of cases, domestic abuse is gendered violence informed by the disproportionate power held by men over women.

However, it is also correct to say that abuse can occur in any relationship and in order to tackle the hidden problem of domestic abuse experienced by LGBT people we must broaden our understanding of who can experience abuse and who can perpetrate it. This broadening in our understanding should be evidenced in monitoring of victims reporting abuse to police, helplines and other agencies, in public awareness campaigns to raise community understanding of the domestic abuse experiences of LGBT people and in the

allocation of resources to meet the needs of LGBT victims of domestic abuse including refuge services.

It is difficult to accurately estimate the levels of under-reporting for any crime type, but our own research has shown over 56% of all other crime against LGB people were never reported. Source: The Rainbow Project Through Our Eye: Perceptions of Policing by Lesbian, Gay and Bisexual people (2009)

The Rainbow Project Advocacy Officer working alongside the PSNI Public Protection branch, has effectively lobbied the Police to starting record the victim's sexual orientation or gender identity alongside other section 75 characteristics in domestic abuse offences. This work is now ongoing with the Equality Commission and we look forward to the publication of the information.

There is a need for specialist LGBT services in terms of Domestic Abuse, leading in both supporting victims of domestic abuse and assisting with research, training, awareness.

The Rainbow project Advocacy project over the last ten years has developed a fully wrap around service, where upon referral the victim/survivor is supported not only throughout their criminal justice journey. But in addition to this is supported in accessing counselling, housing support, peer support, sexual health testing or legal assistance. Additional where a client does not wish to engage in criminal justice progress, they can still access good quality advice, support and advocacy services.

The PSNI have made substantial progress in gaining the co-operation of the LGBT community and improving perceptions of the PSNI. But we need to recognise that there is still an issue in regards to level of understanding within the PSNI and criminal justice partners to the particular barriers to LGBT people in accessing support and reporting incidents of domestic abuse.

For those people who feel unable to report a crime to the police, they can directly report it to the LGBT advocate who can make the report on their behalf or discuss options in a non-judgemental consultation.

The development of a referral pathway from criminal justice partners, support organisations and the helpline will be an integral way to approach to domestic and sexual violence and abuse in order to support LGBT individuals (and their families) through the immediate and longer-term consequences of violence and abuse.

The Rainbow Project and Advocacy Officer in association with criminal justice partners will continue to ensure that LGBT people, particularly some of most vulnerable and marginalized in society, can have their voice heard around domestic abuse and sexual violence.

The definition of the offence

We welcome many of the provisions of the legislation and we particularly welcome the inclusion of coercive control and familial violence. We are aware that LGBT people can experience particular forms of domestic abuse within the family, whether from parents, siblings or other relatives.

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

We agree with the assessment of the Belfast Area Domestic and Sexual Violence Partnership that training of police officers and other key agencies will be essential for the successful implementation of the legislation.

We also welcome the prohibition of cross examination by alleged perpetrators.

We recognise that there are additional barriers to accessing support for BAME immigrants and asylum seekers who are LGBT.

People who have come to Northern Ireland to live with a partner can be particularly vulnerable when experiencing domestic abuse. They can often feel trapped and afraid that if they leave an abusive relationship or report domestic violence, they will lose their immigration or refugee status and have to leave the country. LGBT asylum seekers in particular already face increased scrutiny by the Home Office on their refugee status because of their sexual orientation and gender.

There are legitimate fears of what will happen to their immigration status if they leave an abusive spouse, civil or unmarried partner. The Home Office Immigration Rules state that a victim of domestic violence can apply for indefinite leave to remain in the UK during their five-year probationary period if they can provide proof of the domestic abuse. Also, the financial resources of many victims/survivors who are immigrants or asylum seekers are connected to a partner and victims may fear if they leave that they will be destitute with no recourse to public funds. There are supports in place but many clients who are experiencing abuse are not aware of these.

Research and frontline work done by BAME organisations in the rest of the UK, has shown that BAME individuals are not accessing generic domestic abuse services. They want to use specialist organisations which have the cultural competence to support them. We must recognise here in Northern Ireland there is not effective investment into BAME

organisations leading to barriers for clients accessing support due to lack of language and interpretation services.

We would call for further protections for LGBT/BAME immigrants and asylum seekers, that no information is shared with the Home Office unless it is necessary for the victim to access additional support and that the NI Department of Justice invests into specialist services, working with victims from LGBT/BAME communities to co-develop awareness campaigns.

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

We are concerned about the potential of the 'reasonableness' defence being perverted to justify the abuse of vulnerable, mentally ill or disabled people. We agree with the concerns raised by Green Party representative Rachel Woods MLA who stated:

"Clause 12 deals with the intention and reasonableness defence. My main concern is around those who are in care or in caring relationships, and those who have disabilities with their physical health and mental health. The concern has also been raised by Eddie Lynch, the Commissioner for Older People, who has noted the phrasing in clause 12(2)(a) that the evidence: "is enough to raise an issue as to whether the course of behaviour is as described in subsection (1)". The phrase "enough to raise an issue" seems sufficiently loose as to conceivably allow for victim-blaming as a means of defence. It cannot be the case that the dominant person in a relationship needs only raise a query over the victim's behaviour in order to rationalise abuse, as such formulation may allow. I support calls for the inclusion of a safeguard in the legislation to protect family members. However, as I raised in Committee, could person A, who is a carer and related to person B, be found to be acting abusively but be excused on the grounds of reasonableness? I do not think that it is specific enough to protect elderly or vulnerable people. We obviously need to make sure that it is, and I look forward to engaging with the Commissioner for Older People on that." P 44 Rachel Woods, Green Party, Plenary. However, we would highlight the need to educate the public and professionals on what constitutes coercive control so they can fully understand the offence and the various behaviours that could be included within it.'

If the 'reasonableness' defence is to be maintained within the legislation, the training and guidance for officers and agencies must ensure that the dignity and safety of vulnerable victims must not be sacrificed in defence of those who have caring responsibilities for them. It will be important for police and other agencies to recognise the particular forms of abuse which can be experienced by LGBT people from other members of their family, including parents and that hostility to, disbelief of, or distress about a family member's sexual orientation or gender identity may not be used as a defence for abusive behaviour.

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

We are content with the maximum penalties and aggravating factors as set out in the bill.

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 agree with other partner agencies who believe that the creation of a Domestic Abuse Commissioner for Northern Ireland would be an effective additional agency in understanding and tackling domestic abuse.

We believe that a section 75 compliant public authority dedicated to domestic abuse could provide welcome research and visibility to the particular domestic abuse experiences of LGBT people and specific policy recommendations for police and other public authorities on how to engage, support and empower LGBT victims of domestic abuse.

We welcome the commitment of Justice Minister Naomi Long MLA to introduce Domestic Violence Protection Notices/Orders, however we agree with partner agencies that it would be preferable for these provisions to be included in the Domestic Abuse Bill.

We believe that in the implementation of this legislation, significant training programmes, recognising the specific needs of different groups of people including LGBT people, should be co-developed between police, criminal justice agencies and community/voluntary sector organisations and delivered to police at all levels of service.

Additionally, we believe that there should be investment in public awareness campaigns to increase public awareness and understanding of the provisions of the legislation and the avenues of support for victims. These public awareness campaigns should be co-developed with specialist community-based organisations and tailored to represent the diverse backgrounds and experiences of domestic abuse and that consideration should

be given to public awareness campaigns specifically directed at groups which are less likely to report experiences of domestic abuse such as LGBT people.

Conclusion

We welcome the publication of the Domestic Abuse Bill and commend the Department of Justice and Justice Minister for their commitment to respond to the needs of people experiencing domestic abuse in all its forms. We look forward to reading the Justice Committee's report on the bill and will continue to work in partnership with government, statutory agencies, community/voluntary sector partners and the victims of domestic abuse to ensure that the law, and its implementation, work for the benefit of victims and turn the tide against domestic abuse in Northern Ireland.