

relate ni
the relationship people

**Response to the
Domestic Abuse and
Family Proceedings Bill**

*Committee Stage – Justice
Committee
June 2020*

About Relate NI

Relate NI is the leading relationship support charity in Northern Ireland and has been supporting families and their relationships for over 70 years. We deliver a range of therapeutic and educational services across Northern Ireland. We provide support to approximately 3,000 people annually and we know that this support has an indirect impact on a further 4,395 people, mostly family members.

Relate NI recognises that domestic abuse occurs in relationships across all groups in society, regardless of age, gender, race, religion, sexuality and geography. Evidence confirms that experiencing domestic abuse is detrimental to the physical and mental wellbeing of those who are directly or indirectly impacted and that experiencing domestic abuse as child or an adult can lead to the development of depression, anxiety and a range other mental health issues.

Relate NI offers a range of support services to adults, children and young people impacted by domestic abuse provided by our team of highly trained therapists. The safety of those experiencing abuse is central to our work in this area and the main aim of this work is to promote healthy and non-abusive relationships.

1.0 Introduction

Relate NI welcomes the opportunity to respond to the Committee Stage of the draft Domestic Abuse and Family Proceedings Bill. Through our casework over many years, we are aware that domestic abuse has a devastating impact and legacy on those who are subjected to it and those who witness it, particularly children and young people.

Relate NI welcomes the intention of this bill to create a new offence of domestic abuse, including aggravating factors, and to reduce the potential for an individual to be further victimised during criminal proceedings. We recognise that the absence of an offence of domestic abuse has been a significant legislative gap which has hindered access to justice for those who experience abuse, either by having it perpetrated against them or by witnessing instances of domestic abuse. We also recognise the importance of the campaigning undertaken by our sector colleagues to highlight this legislative gap, resulting in this draft bill.

We believe that by placing this legislation on the statute books, a wider range of training, education and awareness raising, including public awareness raising initiatives will be required to ensure the effective administration of justice which will serve to drive a wider response to domestic abuse beyond the criminal justice system.

In considering the draft bill, we spoke with our counsellors who provide frontline services as well as to colleagues across the community and voluntary sector who are working on the issue of domestic abuse. Our feedback to the Committee has been informed by those interactions and by our experience of working with the issue of domestic abuse and violence.

2.0 The Draft Bill

Relate NI welcomes the introduction of the Domestic Abuse and Family Proceedings Bill. Through the work of campaigners, organisations and the voice of those who have experienced domestic abuse, this significant legislative gap around the issue of coercive control will now be closed. On review of the Bill, we have a number of general and specific points to make which are outlined below. We have collated our evidence against the points outlined by the Committee in their letter of 7 May 2020.

Point 1 - 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.

As indicated above, the Bill is a welcome development, seeking as it does to close an identified gap whereby patterns of coercive control are not viewed as a criminal offence. The provisions of the Bill, including a domestic abuse office, statutory and child aggravators and measures to reduce the potential for an individual to be further victimised during criminal proceedings offer the potential to increase access to justice for people who experience or are affected by domestic abuse.

However, the legislation alone in and of itself will not improve the ability of the justice agencies to prosecute domestic abuse cases. As members will be aware, domestic abuse is a complex issue, and actions taken by Person A (perpetrator) against Person B can often appear reasonable to other parties, including members of the justice agencies, who are not necessarily aware of the context of such actions.

For the provisions of the Bill to meaningfully improve the ability of justice agencies to prosecute cases, we believe that a significant programme of training, education and awareness raising must be resourced as a priority and in advance of the commencement of the provisions of the Bill. While many sectors and professions can benefit from such initiatives, we believe that police officers, legal professionals, judiciary, and jury pools should be required to access support to fully understand the provisions of the Bill. Furthermore,

clear guidance will be required for personnel from justice agencies to ensure the consistent and robust application of the Bill's provisions, including the need for guidance to be reviewed on a regular basis to identify and address weaknesses which become apparent through the prosecution process. We recommend that the Committee engage with the Minister and Departmental Officials to understand the scope and resourcing of wider plans to ensure the robust implementation of this legislation and include comment on this issue in their final report to the NI Assembly on the Bill.

Point 2 - The definition of the offence and the definition of abusive behaviour

We welcome the scope of the definition of the offence as contained in the Bill. In particular, we welcome the 'Reasonable Person' test as a means of adjudicating whether or not an offence has been committed. We also welcome the scope of definitions to recognise that third parties, including children and family members, can be involved in behaviours to harm Person B; and that behaviours includes 'saying or otherwise communicating' to recognise the current context of how domestic abuse can be perpetrated through digital and social channels. We believe this scoping of the legislation reflects the current realities of how abuse is experienced

However ensuring the consistent application of this standard, while not an issue for the legislation itself, is essential to its effective implementation, and as such is worthy of the Committee's attention.

Relate NI counsellors indicated the often sophisticated, nuanced and targeted actions which perpetrators undertook to control and cause harm to the person. Examples highlighted included 'plausibly' changing child contact arrangements with little or no notice with the aim of undermining the independence of Person B or decrease their free time with which to work; pursue new friendships and/or relationships; and providing 'excuses' to explain late or non-payment of financial commitments when the real intention has been to exert control and limit or restrict the available finances of Person B.

We believe that there is scope for further clarity on clause 5 and its application to fostering, adoption and kinship care arrangements. It is not at first clear whether the mention of 'affinity' in clause 5 is intended to cover such arrangements.

While we broadly welcome, subject to points above, the definitions contained in the legislation, we recognise that ultimately it will be the robust and consistent interpretation of these definitions by police, legal professionals, judiciary and jury members which will ultimately dictate the effective implementation of the law. As such, resources are required to support the training and education of relevant parties involved in the outworking of this bill. *We believe that the Committee must probe and satisfy itself that adequate plans and resources are in place to ensure the effective implementation of the Bill.*

Point 3 – Any identified issues regarding the investigation and prosecution of the new offence

Throughout this response, we have indicated the necessity of both planning and resourcing of training, education and awareness raising as essential foundations to the effective implementation (i.e. investigation and prosecution) of the legislation. We draw particular attention to the need to adequately support jury members in this regard. Abusers are often manipulative and in Relate NI's experience, abusers often deliberately choose certain courses of abusive behaviour for the very fact that they can appear reasonable to bystanders. We also draw attention to the need for adequate police resources to support robust investigation of complaints; and adequate guidance for and training of police personnel, including call handlers, responding to calls concerning abuse. This is particularly relevant when Person B might not wish to pursue a report or investigation and police personnel have to independently judge whether or not an offence has been committed.

To that end we repeat our recommendation that the Committee engage with the Minister and Departmental Officials to understand the scope and resourcing of wider plans in this regard, and address any resulting concerns through proposed amendment of the legislation.

We further recommend that police, prosecution service and the courts complete robust and Section 75 compliant monitoring of cases which are investigated and prosecuted under this law. Doing so will ensure the availability of a range of disaggregated data to enable the identification of differential impacts and outcomes associated with the legislation.

Point 4 - Whether the 'reasonable' defence included in the legislation is framed appropriately and the intent of when it would apply is clear

While we are not opposed to the principle that the Bill makes provision for a reasonable defence, we remain concerned about the scoping of the defence as contained in the draft Bill. The broad and non-specific language of 'enough to raise an issue' increases the opportunity for this defence to be abused by perpetrators, particularly in light of our previous commentary about the apparent 'innocuousness' or 'reasonableness' of behaviours intended to or which cause harm. We also believe that use of this defence may also be abused by basing the 'reasonableness' of the defence on personal factors in the lives of those who experience abuse. This is particularly relevant for example in instances where the person experiencing abuse experiences poor mental health or mental ill health, living with a disability or addiction. To this end, care and attention must be taken, both in the drafting of the legislation and in producing guidance for those responsible for implementing it to ensure a narrow and clearly defined basis for any 'reasonable' defence.

We recommend that the Committee consider how the language used in the Bill and the EFM can be tightened to reduce the possibility of this defence being abused and applied incorrectly.

Point 5 – Whether the penalties provided for in the Bill are appropriate and adequate

Relate NI believe that the criminal offence of domestic abuse must be supported with robust and effective sentencing provisions, and to that end, we welcome the provisions of the Bill in that regard.

Point 6 – 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.

The pandemic has clearly highlighted the issue of domestic violence and abuse in Northern Ireland. Media reports¹ indicate three domestic killings since lockdown began, and almost 2,000 domestic abuse calls to the police in the first three weeks of April 2020 alone.

Coordinated and resourced action is required across a range of areas, legislative, policy and services, to support those people who experience abuse, including children and young people; to ensure those who perpetrate abuse and violence are prosecuted; and also to prevent domestic abuse in the medium and longer term.

On a legislative basis, Relate NI welcomes the Minister's commitment to bring forward stalking legislation. Relate NI believe that such legislation is a vital strand of the criminal justice framework required to ensure access to justice for people who experience such behaviours, and as such call for draft legislation to be brought forward at the earliest possible opportunity.

Further, we support wider calls for attention to calls for the issue of strangulation and choking offences to be addressed and the legal framework to be strengthened in this regard.

We also add our support to calls for the issue of protection for migrants and people whose immigration status is not secure under this legislation. Migrants and people with insecure immigration status may be particularly vulnerable to the issue of domestic abuse with fewer options to remove themselves from the situation, particularly if they have no recourse to public funds, a situation which appears to undermine the vision of '*Stopping Domestic and Sexual Violence and Abuse in Northern Ireland*'. In considering amendments to be made to the draft legislation, we urge the committee to recommend provisions which will clarify protections for migrants whose immigration status may be

¹ <https://www.bbc.co.uk/news/uk-northern-ireland-52440662>

dependent on the person perpetrating abuse, or whose immigration status is insecure.

While domestic violence, and soon domestic abuse, are issues for consideration by criminal courts, the impact of such violence and abuse also plays out in civil and family courts. We welcome the recognition of this in the provisions of part 2 the Bill, however we believe that wider consideration of linkages between domestic abuse and wider family proceedings merit attention, including how the safety of those who experience abuse, both partner and children, are prioritised through consideration of child contact arrangements. Relate NI counsellors indicate that child contact becomes a 'site of dispute' where the potential for continued control plays out, as illustrated in the composite case scenario included in appendix 1. We believe that extending special provisions measures for people who experience domestic abuse to proceedings in both family and civil courts can address this and recommend that the Committee consider an amendment to the Bill to achieve this.

Relate NI add our voice to the calls for adequate levels of funding for short, medium and longer term support services for those who experience abuse. Services such as refuge and housing; information and support; access to financial support including the benefits system and emotional and therapeutic support all form a foundation to enable individuals and families to leave abusive situations and scenarios, yet services struggle to secure appropriate levels of funding. Adequate funding of the range of services required by those who experience abuse is essential, and is a matter which should concern the Committee both in its scrutiny of this bill and in its wider work programme. In addition to the impact on the person directly experiencing abuse, the impact on children and young people in the household is significant. Ensuring the provision of support to this group of people affected by domestic abuse must be a clear and resourced priority.

Perpetrator programmes are another essential element of an approach to tackle domestic abuse. Ensuring perpetrators take responsibility for their actions and the impact they have had on others is essential to stop repeat offences. Ensuring the availability of effective and evidence based perpetrator

programmes offer the opportunity to work with perpetrators to reduce incidence of repeat offences of abuse.

Education is also an essential feature of a longer term approach to reducing domestic abuse. Empowering people from an early age to understand what healthy relationships look like offers a universal approach to building knowledge and understanding among future generations. Relationships and Sexuality Education is available throughout Northern Ireland, however it is not a routine element of young people's journey through education, and so engagement with the programme can be ad-hoc. From September 2020, RSE provision will become compulsory in schools in England. While not directly the domain of the Justice Committee, it is important to note in the context of debates about approaches to tackle domestic abuse that universal access to appropriate education is an essential element.

Finally, we believe that there is merit in further consideration of the need for and role of a Domestic Abuse Champion or Commissioner. The arguments made about an independent voice to scrutinise, promote best practice, advocate and focus on an issue as important as domestic abuse warrant further consideration.

Appendix 1 – Case Scenario

An individual presented for counselling. They had three children, ages 13, 11 and 9. They had been married for 15 years and separated for 18 months. The person described the marriage as one-sided, in that their partner gave priority to friends and interests outside the family over participation in home and family life. The person was left with all of the child-care and rearing responsibilities and the partner chose which family routines and events they wished to participate in. When the person made requests for fuller involvement and commitment, their partner would deride them for not being organised. This impacted on the person and they would feel incompetent and eventually began to doubt their ability to be a good parent.

Following separation, they were able to organise contact between the partner and the non-resident parent (NRP) every third Friday until Sunday morning. After approximately six months the resident parent (RP) began to notice small changes. The NRP would arrive late to collect the children and often return them earlier than the agreed time. The RP began to attribute this change in reliability to comments the NRP made about how the RP was developing friendships and going places.

The magnitude of these changes grew as the NRP began to default on collecting the children for the agreed weekend contact by sending a text message one hour prior to the pick-up time. When this would happen, the RP described feeling devastated, powerless and controlled. Their plans for the weekend free from child-care responsibilities were wrecked and they felt isolated. The children, were bewildered by the NRP's behaviour. Eventually, the RP felt in a constant state of anxiety, unable to plan arrangements when the children were on contact because they, in an unpredictable way, either made a late excuse for not being able to take the children or contacted during the contact period to return the children regardless of the RP's availability. The RP ultimately felt controlled by these events.