

## **The Domestic Abuse and Family Proceedings Bill**

### **Women's Aid Federation Northern Ireland Response to the Call for Evidence June 2020**

Women's Aid Federation Northern Ireland (WAFNI) welcomes the opportunity to submit evidence to the Justice Committee on the draft, The Domestic Abuse and Family Proceedings Bill. Women's Aid is the lead expert voluntary organisation in Northern Ireland addressing domestic violence and abuse, providing a range of services for women and children. Women's Aid seeks to challenge attitudes and beliefs that perpetuate domestic and sexual violence and, through its work, promote healthy and non-abusive relationships.

The core work of Women's Aid in Northern Ireland, including Women's Aid Federation Northern Ireland (WAFNI) and local Women's Aid groups is to:

- Provide refuge accommodation to women and their children suffering from coercive control, mental, physical and/or sexual abuse within the home.
- Provide a range of support services, to enable women who are affected by domestic violence and abuse to rebuild their lives and the lives of their children.
- Provide a range of support services to children and young people who have experienced domestic violence and abuse.
- Deliver preventative education programmes in schools and other settings.
- Educate and inform the public, media, police, courts, social services and other agencies of the impact and effects of domestic violence and abuse.
- Advise and support all relevant agencies in the development of domestic violence policies, protocols and service delivery.
- Work in partnership with all relevant agencies to ensure a joined-up response to domestic violence and abuse.

All local Women's Aid groups are members of WAFNI. Each Women's Aid group offers a range of specialist services to women, children and young people who have experienced domestic violence and abuse. Further information on services provided is detailed in the website [www.womensaidni.org](http://www.womensaidni.org).

Our response to the Justice Committee, has been informed by our local groups across NI, staff, volunteers, and extensive consultation with our member services and survivors, including a survey conducted in 2020 that survivors responded to (please see annex attached at the back of this document – Women’s Voices. We welcome the Bill as an opportunity to change the response to domestic violence and abuse and all forms of violence against women and girls (VAWG).



Women’s Aid across NI welcome the Bill but are also aware that in other jurisdictions across the rest of the UK, there are more robust measures being put in place through the current Domestic Abuse Bill going through Westminster which has the opportunity to transform lives with many robust measures to restore confidence in the legal system for victims and survivors in NI. We would also call on the Justice Committee to consider that domestic violence and abuse does cross many sectors and departments and does not just fall within the criminal justice sector in NI. We would call on all government departments to take ownership of the key issues because without their support, no reforms to domestic violence and abuse legislation will work. It is paramount that our housing departments, health departments, education and family courts all take part to make this work moving forward and transform and change the lives of all those experiencing domestic violence and abuse.

**The new legislation needs sustainable funding which enables life-saving specialist services, and the public sector agencies that respond to domestic abuse, to meet the increasing demand for help and ensure every victim and survivor gets the support they need.**

We would ask our Justice Committee to consider the following omissions that are not included in our proposed legislation but are in the DA Bill going through Westminster:

- A statutory gendered definition of Domestic Abuse to include violence against women and girls
- Domestic Abuse Commissioner and office
- Reforms to the family court and review of child contact system
- Changes to housing and homelessness legislation for those escaping domestic violence and abuse
- Ensure that welfare policies protect women and their children
- Reforms to ensure migrant survivors have equal access to protection and support
- Funding and resourcing of the Bill which is essential to respond to domestic violence and abuse in NI

Further concerns:

- Urgent need for Stalking legislation
- Review of current law in relation to fatal and non-fatal strangulation
- Safeguarding of our children and young people including the introduction of: Operation Encompass

*The above will be discussed in further detail throughout the document.*

***“This is a very necessary bill but education is also vital for all professionals involved with victims about reporting abuse and gathering evidence. Children's rights need to be paramount and laws need to reflect this. Having an abusive parent is not better than no parent. There is a lot of evidence to suggest people who abuse (particularly emotionally and psychologically) are not likely to change. The burden of proof that they've changed should be on them and the legal system should not allow children to continue to be unsupervised by abusive people allowing the cycle of abuse to continue. No child deserves this”***

### **Measures not included 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:**

### **Statutory Definition of Domestic Violence and Abuse**

A statutory definition of domestic abuse is going through the Westminster DA Bill, they have chosen to proceed with a 'gender-neutral' definition. The proposed 'gender-neutral' definition undermines the government's obligations under international law, including the Convention of the Elimination of All Forms of Discrimination against Women and the Istanbul Convention. This statutory definition should apply to all genders and we of course recognise this, but the dynamics and impact of domestic violence and abuse on women and girls must be explicitly recognised by our local Assembly, either by inclusion in the Stopping Domestic & Sexual Abuse Strategy or in the Bill itself. The Istanbul Convention provides a clear precedent for this.<sup>1</sup> Women's Aid would state that a statutory definition would and should explicitly name the gendered nature of domestic abuse to truly reflect the reality of the crime. Domestic abuse is a form of violence against women - a cause and consequence of women's

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<sup>1</sup> 4 Council of Europe Convention on preventing and combating violence against women and domestic violence requires states to recognise “the gendered dynamics, impact and consequences of these forms of violence and [operate] within a gender equality and human rights framework”.

inequality. Not only are women far more likely to be victims and men perpetrators, but women overwhelmingly experience coercive control within a context of fear.<sup>2</sup>

- There was a total of **16,182** domestic abuse crimes in 2018/19.
- There were **four** murders with a domestic abuse motivation, compared with eleven during 2017/18. Of these murders, all four victims were female. Three involved partner/ex-partner and one involved “other family relationship”.
- **69%** victims of all domestic abuse crimes were female and **31%** were male. Of all offenders dealt with by police in 2018/19 in connection with domestic abuse crimes that resulted in an outcome, **86%** were male and **12%** were female. The majority (**94%**) of offenders were aged 18 and over.<sup>1</sup>

Without recognition of gender, the disproportionate scale and impact of domestic abuse on women, as already recognised by the government, will not be consistently understood. In NI our local government has a ‘gender-neutral’ approach to domestic violence and abuse, which obscures the reality of how abuse is perpetrated, who the victims and perpetrators are most likely to be, and what gender-specific services are required to meet the needs of both male and female victims. This really needs to be considered, as again we are the only part of the UK that does not recognise domestic violence and abuse as a gendered crime. We need to recognise violence against women and girls and have a strategy to finally acknowledge this.

### Domestic Abuse Commissioner

Women’s Aid will actively continue to campaign for a Domestic Abuse Commissioner. It is essential. It is an accountability mechanism for scrutinising legislation, policy, practice, commissioning, funding and provision. Our Justice Minister is not convinced of the need for a commissioner. Women’s Aid would reflect on the statement below and would not agree that there are close and constructive working relationships are enough to ensure scrutiny.

*“I remain to be convinced of the need for a domestic abuse commissioner. Given the very close and constructive working relationships with our key statutory and voluntary sector partners and the fact that a single police service covers the entire jurisdiction, it is unclear to me what additionality a commissioner would bring. Further, and while not a reason in and of itself, commissioners generally cost in the region of £1 million, money that would, in my view, be better invested in other services such as our new advocacy support service or behavioural change programs to address abusive behaviour. However, I am listening carefully to representations in that regard”. P21 Plenary – Justice Minister*

<sup>2</sup> Dobash & Dobash, 2004; Hester, 2013; Myhill, 2015; Myhill, 2017

Another issue unique to NI is the current Victims Commissioner is only for troubles related crimes and so does not, like in other parts of the UK, represent all victims and survivors. The Victims Commissioner for England and Wales, Dame Vera Baird, is such a true champion for the sector. We would advocate for a Commissioner for the work in the sector, there needs to be some form of monitoring and evaluation of current services. Following on how from the introduction of the DA Commissioner in England, it is so positive the work she has already undertaken in the short time she has been there. There is much learning from other parts of the UK who are ahead of us in relation to legislation but also other good practice including the introduction of the Commissioner. The feedback is so positive especially during Covid-19 that they had someone to go to, to oversee implementation of appropriate support services and of course to access emergency funding during the lockdown, which was promised through Westminster - £76 million in total. At time of writing there has been no offer of emergency funding to support specialized DV services in NI.

Last month, Justice Minister Naomi Long said that at least three people have been killed in domestic violence incidents since the start of the lockdown.

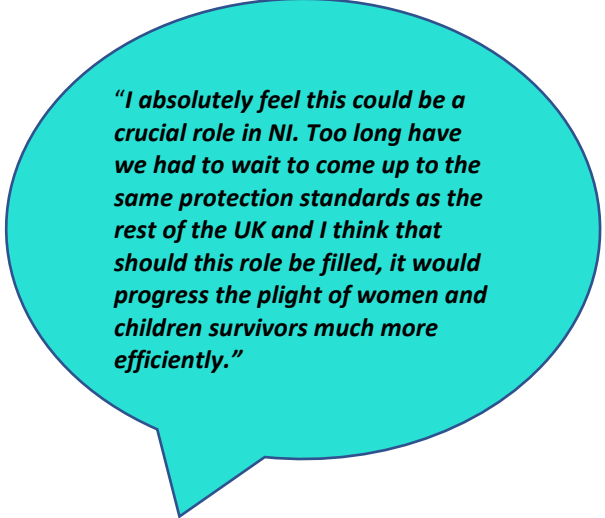
*On 13<sup>th</sup> March 2020 the Police Service of Northern Ireland (PSNI) revealed that they have received at least 3,755 calls related to domestic abuse since the coronavirus lockdown began. Pre-lockdown, domestic incidents and crimes in Northern Ireland were already running at a 15-year high, according to figures published on Friday by the Northern Ireland Statistics and Research Agency. Officers recorded 18,640 cases, equivalent to 51 a day and representing an increase of 2,476 (15%) in the 12 months up to the end of March.*

The introduction of the new Bill into NI is an opportunity to introduce a Commissioner to oversee its implementation across the region. They would provide public leadership on domestic violence and abuse, standing up for victims and survivors and their children. They would be able to monitor the provision of domestic violence and abuse services across NI and publish the results. In doing this, they will highlight areas of best practice, point out service provision which falls short of what is expected and make recommendations to public bodies to improve their service provision, thereby bringing improvements to the response to domestic violence and abuse across NI. They would also be able to oversee other ongoing developments in NI including playing a key role in the Domestic Homicide Review introduction, overseeing compliance with the Specialist Domestic Violence courts proposed as a pilot in Belfast, Coercive Control training to all specialist organisations including PSNI and legal professionals including the Judiciary.

## **What the Domestic Commissioner does:**

*The Commissioner will be tasked with encouraging good practice in preventing domestic abuse; identifying victims and survivors, and perpetrators of domestic abuse, as well as children affected by domestic abuse; and improving the protection and provision of support to people affected by domestic abuse.*

*To do this, we expect the Commissioner to map and monitor provision of services, make recommendations to public bodies about their response, carry out research, work jointly with public authorities and voluntary organisations, and raise public awareness of domestic abuse*



***“I absolutely feel this could be a crucial role in NI. Too long have we had to wait to come up to the same protection standards as the rest of the UK and I think that should this role be filled, it would progress the plight of women and children survivors much more efficiently.”***

*The Commissioner will consider both specialist domestic abuse services such as refuges or specialist victim services, as well as how mainstream services identify and respond to victims and survivors.*

*The Commissioner will have the power to publish reports and lay them before Parliament; these reports will hold local commissioners, statutory agencies and national government to account and make recommendations on how they can improve their response. Specified public bodies will be under a duty to cooperate with the Commissioner, and they and government ministers will be required to respond to each recommendation made to them within 56 days.*

*To safeguard and secure the Commissioner’s independence, we will publish a statutory framework document agreed with the Commissioner, which will set out in greater detail how the Home Secretary will work with the Commissioner and will address, in particular, issues of governance, funding and staffing.*

## **Why can’t the government carry out these functions itself?**

*We consider that an independent Commissioner is the most effective model for carrying out these functions. They will be able to make challenging and robust recommendations, as well as being able to make recommendations directly to central government itself and hold it to account. The Commissioner will also be able to play an important role in providing independent and objective advice which can be relied upon by statutory agencies and the voluntary sector alike.<sup>3</sup>*

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<sup>3</sup> <https://www.gov.uk/government/publications/domestic-abuse-bill-2020-factsheets/domestic-abuse-commissioner-factsheet>

## Reforms of the Family Court System and Child Contact

The Westminster government announced a three-month review of the family courts in 2019 to see whether they were effectively protecting children and parents in cases of domestic abuse and other serious offences. The review was set to build on the draft Domestic Abuse Bill. It was chaired by a panel of experts, the government announced, and aims to ensure the courts work in “the explicit interest of the child”.

*I feel that the family court needs to start taking domestic abuse more seriously in not just the impact of the survivor but also the children involved and understand how the perpetrator uses the system to continue his abuse in what I can only describe as "state funded and supported domestic abuse".*

The review looked at:

- How Practice Direction 12J is being applied in practice, and its outcomes and impact for children and parents, including its interaction with the presumption of parental involvement in s.1(2A) of the Children Act 1989;
- How FPR Part 3A and Practice Direction 3AA are being applied in practice, and their outcomes and impact in cases involving domestic abuse or other serious offences against parties and/or children;
- How s.91(14) of the Children Act 1989 is being applied in practice, and its outcomes and impact in cases involving domestic abuse;
- In each case, the challenges of implementing these provisions and the nature and causes of any inconsistency and inadequacy in their operation;
- The risk of harm to children and non-abusive parents in continuing to have a relationship and contact with a parent who has been domestically abusive (including coercive and controlling behaviour) or who has committed other serious offences against the other parent or a child such as child abuse, rape, sexual assault or murder.

**The Report: Assessing risk of harm to children and parents in private law children cases Progress Update, Ministry of Justice, Family and Criminal Justice Policy Directorate 2019** shows:

*“The evidence gathered highlights systemic issues in relation to how risk is identified and managed which need to be addressed to ensure that victims and children involved in these proceedings are better protected from further harm. Much of this evidence relates to both the experience of the family justice process and to the outcomes it delivers. For example, many respondents who were victims of abuse felt that their experience of family court process (including but not limited to direct cross-examination by their abuser) was degrading and re-traumatising. In respect of outcomes, respondents often raised concerns about how the family court prioritised*

*the child's relationship with a non-resident parent over the welfare of the child and the risks to which this could expose the child and other parent.”<sup>4</sup>*

Women's Aid would welcome a review of the family court system in Northern Ireland with a panel of experts to see how we can transform our family court system to reduce the continued hardship to children and young people together with their parent (often the mother) who is being dragged through the court system and experiencing further trauma.

***“Family Court is very difficult to access in my experience. A fathers rights are paramount over a child's and they are enabled to continue their psychological & emotional abuse using threats of the court”***

Child contact is a major concern and Women's Aid groups across NI repeatedly have issues with regard to this process. The safety of the child contact process is an urgent concern. Our courts need to recognise domestic violence and abuse and not treat it differently from other court settings. e.g. criminal court. Inadequate understanding of domestic abuse as a welfare concern continues to lead to unsafe contact arrangements, and women and children exposed to further harm through the child contact and family court systems. We urgently recommend that a review takes place, and this could and should have been included in the new DA Bill to improve the safety of child contact through:

- Prohibiting unsupervised contact for a parent on bail for domestic violence and abuse related offences, or where there are ongoing criminal proceedings for domestic abuse – our Courts need to link together between criminal and family proceedings.
- A change to the law to ensure that in cases of domestic violence and abuse that child contact arrangements are decided on an informed judgement of what's in the best interests of the child(ren) and not on the presumption of parental involvement.
- Providing for an independent statutory inquiry with relevant legal powers and necessary resources to deliver a review of the family courts in NI and how they are dealing with domestic violence and abuse cases, and work towards a consistent response across jurisdictions.

#### **Powers to Deal with Domestic Violence:**

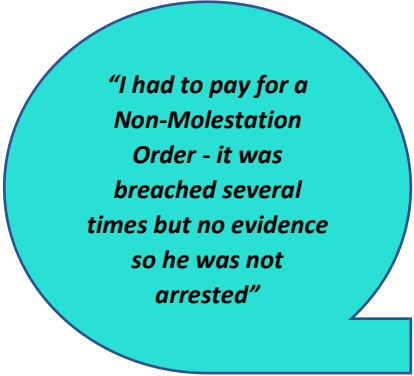
- Introduction of domestic abuse protection order
- Introduction of domestic abuse protection notice

Currently in NI there are no emergency powers to remove a perpetrator from the home after an incident of domestic violence. Women's Aid welcome the introduction of Protection Orders and Notices through the new legislation but would like the Committee to consider the introduction of DAPO and DAPN's instead of the older Domestic Violence Protection Order and Notice. Within NI the proposed introduction of Domestic Violence Protection Orders is

<sup>4</sup> [https://consult.justice.gov.uk/digital-communications/assessing-harm-private-family-law-proceedings/supporting\\_documents/assessingchildrenharmprogressupdate.PDF](https://consult.justice.gov.uk/digital-communications/assessing-harm-private-family-law-proceedings/supporting_documents/assessingchildrenharmprogressupdate.PDF)



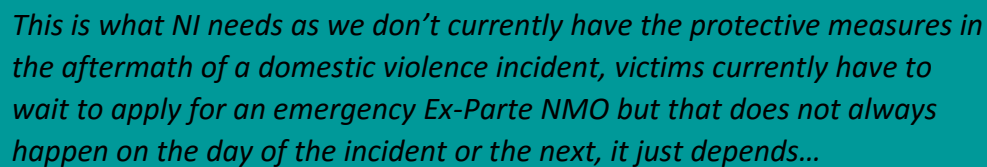
imminent according to the Department of Justice. We would ask the DOJ to reconsider this in light of the new orders coming into force in England and Wales, DAPO's and DAPA's which are due to be piloted in England and replace the Domestic Violence Protection Orders. We would be cautious of introducing a new Order which already has many problems and issues in England and Wales.



***“I had to pay for a Non-Molestation Order - it was breached several times but no evidence so he was not arrested”***

### **Domestic Violence Protection Notices and Orders:**

Domestic Violence Protection Notices (DVPNs) and Domestic Violence Protection Orders (DVPOs) were introduced by the Crime and Security Act 2010. In its guidance on the use of the orders the Government said their purpose was to fill a “gap” in providing protection to victims of domestic abuse “by enabling the police and magistrates’ courts to put in place protective measures in the immediate aftermath of a domestic violence incident where there is insufficient evidence to charge a perpetrator and provide protection to a victim via bail conditions.



*This is what NI needs as we don't currently have the protective measures in the aftermath of a domestic violence incident, victims currently have to wait to apply for an emergency Ex-Parte NMO but that does not always happen on the day of the incident or the next, it just depends...*

In the response to the consultation in England and Wales published with the draft Bill, the Government said its aim in introducing DAPNs and DAPOs was to “combine the strongest elements of the various existing orders and provide a flexible pathway for victims and practitioners.” Victoria Atkins, the then Home Office Minister, said the Government intended DAPOs to become the “go to” protective order for cases of domestic abuse.

There have been many issues and problems, main concerns are:

- Lack of consistency between police forces, police awareness and implementation poor
- Lack of training within police
- Police encouraging victims to go down civil protection orders
- Cost incurred by police to get an order
- Breach was never a criminal offence, so the orders had “no teeth”
- They incur expensive court fees

- COST of an Order: An application for a DVPO costs the police £205 and a contested hearing costs £515 -police services did not get any extra funding to cover this when the orders were rolled out, which is a great concern
- Concerns around assessment and safeguarding
- Many judges not giving orders where there is no physical abuse:

*Dame Vera Baird said “some judges are reluctant to authorise a DVPO where there is no evidence of physical violence”; while Ms Craig identified the move from requiring “violence” to “abuse” as “one of the positives” of the proposed scheme. The DAPN scheme requires that the behaviour of the perpetrator be “abusive” rather than “violent” which seems to us to be in line with the purpose of the draft Bill, and to go some way towards resolving the problem with interpretation identified by our witnesses.*

New orders DAPO’s and DAPA’s are seen as offering wider provisions including:

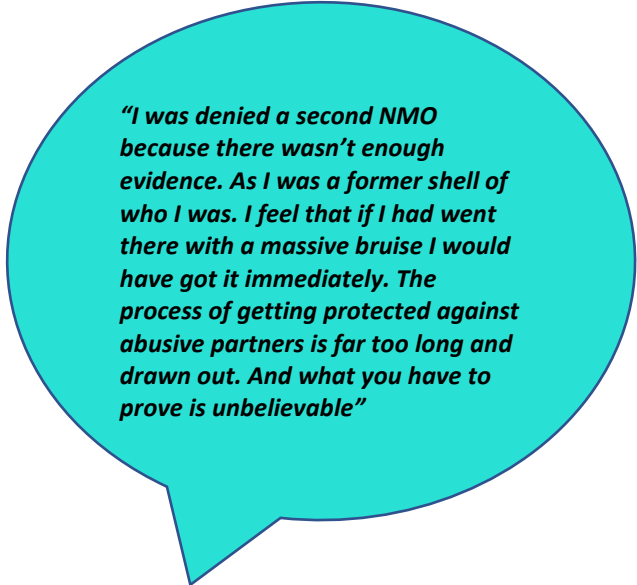
- Will be the Order that fits widely instead of having to look at lots of different remedies including, NMO, Occupation Order, Restraining Order, Undertaking etc.
- Breach of Order will be a criminal offence
- Abuse, not violence so this is an advantage taking into consideration coercive and controlling behaviour and not only physical abuse
- Domestic Abuse Protection Orders can be imposed by both the civil and criminal courts

Concerns regarding the new Orders are as follows:

- Third parties can apply for the Orders, e.g. family members and other third-party organisations
- Less people will get the orders
- An application for a DAPO would not require the victim’s consent, mirroring a key element of the DVPO procedure. Furthermore, an application for a DAPO can be made not only by the police but also by the victim, specialist agencies and other third parties at the discretion of the court.

Women’s Aid recommend the Government carry out a thorough review of the protective measures currently available before going ahead with its proposals for the Domestic Abuse Protection Order. Following that review, we would welcome if the Assembly would amend to introduce DAPO and DAPA to tackle the flaws seen in the Domestic Violence Protection Order process and to ensure that the courts are not obliged to take a restrictive approach to imposing the new order.

Whilst that review is being undertaken, we recommend additional resources are allocated to the police specifically for training and application fees for Domestic Violence Protection Orders.



*"I was denied a second NMO because there wasn't enough evidence. As I was a former shell of who I was. I feel that if I had went there with a massive bruise I would have got it immediately. The process of getting protected against abusive partners is far too long and drawn out. And what you have to prove is unbelievable"*

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

Women's Aid would call for more resources to be put in place for investing in reporting incidents of domestic violence and abuse through specific training in this area for our police force and all first responders to any domestic violence and abuse incident. There is a need for better evidence to be produced in these cases to enable more cases to go through the criminal justice system. There needs to be appropriate investment in training for the PSNI, all legal professionals including PPS and Judiciary. The role of an independent advocate to support the victim who is a witness in a case will encourage less withdrawal of charges and with the introduction of the new offence of domestic abuse to include physical and psychological harm, training is essential before this comes into legislation to enable clearer understanding of coercive and controlling behaviours. The Criminal Justice Inspectorate NI (CJINI) states *"In terms of outcomes recorded by the police, three in five offences committed in a domestic context did not progress to prosecution due to evidential difficulties and in more than two fifths, the victim did not wish to engage with/ support or continue to support the criminal justice process. Data collected for this inspection suggests that around a third of cases did not meet the evidential or public interest tests required to proceed to a prosecution and just under a third resulted in a conviction at court. This inspection considered the approach of the criminal justice system in handling cases of domestic violence and abuse."*<sup>5</sup>

**Recommendation 4** *The Criminal Justice Board, in conjunction with its partners, should, in the nine months following the publication of this report, ensure the delivery and roll out of Northern Ireland wide schemes to enhance the criminal justice system's approach to domestic violence and abuse, in relation to:*

- *where volume is assessed to be sufficient, providing services to enable the clustering of domestic abuse cases to a designated court in each Administrative Court Division; and*

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<sup>5</sup> NO EXCUSE PUBLIC PROTECTION INSPECTION II: A THEMATIC INSPECTION OF THE HANDLING OF DOMESTIC VIOLENCE AND ABUSE CASES BY THE CRIMINAL JUSTICE SYSTEM IN NORTHERN IRELAND, JUNE 2019

- a properly costed contract for an IDVA service to address the safety of victims at high risk of harm (paragraph 7.12).<sup>6</sup>

It will be important to ensure that the existing criminal offences continue to be robustly enforced, and that the PSNI, PPS and our courts do not view the Domestic Abuse Offence as a minor or less important matter and it does not lead to the issue being downgraded and treated less seriously. Women's Aid would call on the need for specialist training and guidance for all legal professionals including the judiciary, adult and child protection professionals and courts on the nature of coercive and control behaviour and the impact of this behaviour on women, children and young people.

### Stalking Legislation

Women's Aid would call on the Justice Committee to consider the need for stalking legislation as this is also a huge gap in legal provisions available to those experiencing domestic violence and abuse in NI. There is much evidence to associate a link between domestic violence and abuse, stalking and coercive control but there is also a common public misconception that stalking is necessarily unwanted attention and stalking from an obsessive stranger, possibly with specific mental health issues or delusions that have resulted in the stalking behaviour. The most common victim is assumed to be a celebrity or person in the public eye, such as an actor or celebrity. While this can and does happen, the common reality of stalking in NI and across other jurisdictions is quite different. Stalking is much more likely to occur within the context of domestic violence or a previously established relationship, or be perpetrated by someone who is known in some way to the victim.<sup>7</sup> This is certainly the experience of Women's Aid in Northern Ireland and the women we have supported. Research across multiple jurisdictions shows that most victims of stalking are women, and the majority of perpetrators are men,<sup>8</sup> although this is not exclusively the case.

#### **Link to domestic violence and coercive control:**

Stalking by ex-partners who are domestic abusers is one of the most common forms of stalking. There is a strong link between domestic violence, coercive control and stalking. Control is the cornerstone of stalking, whether it be to force a relationship on a victim without their consent, or to impose a state of fear and terror on a victim as an act of revenge or malice. In some cases, it is a combination of both, or, fluctuates between the two depending on the

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<sup>6</sup> AS ABOVE

<sup>7</sup> See Hall, 1998; Kohn et al 2000

<sup>8</sup> This pattern has been borne out by the British Crime survey by Walby and Allen (2004). Also, Coleman et al state in their research that "Just under a quarter of women (23%) reported having experienced stalking since the age of 16." (Coleman et al, 2007). UK National Stalking Helpline: 80% women, 20% men callers.

reaction of the victim.<sup>9</sup> Whether relational stalking or revenge stalking, control and entitlement are at the core of the stalking behaviours. And whether stalking behaviour is intended to force a relationship or to cause pain or seek revenge, the impact of the unwanted contact invariably causes fear and distress on the part of the victim.

### **Types of stalking**

In the course of our work, Women's Aid staff have heard countless disclosures of stalking behaviour from victims, have witnessed stalking behaviour directly from perpetrators, and have seen the severe effect stalking has on victims.

### **Common stalking behaviours include:**

- Unwanted, often persistent, communication via text messages, phone calls, silent phone calls, emails and social media contact
- Following victims to work to find out where they work or monitor their daily movements
- Following victims home, sometimes to find out where the victim has moved to in a bid to escape their stalker
- Waiting outside Women's Aid resource centres and sometimes refuges or trying to gain access to these spaces.
- Leaving 'gifts' for victims – this is often misconstrued by law enforcement and courts as a 'nice gesture', but usually these 'gifts' are a way of reminding the victim of the perpetrator's presence and omniscience, or have a sinister meaning understood exclusively by the victim.
- Contacting friends and family of the victim to get information
- Contacting social security, Women's Aid, or other agency pretending to be a social worker or other professional, to try and obtain information about the victim.

Examples of stalking include perpetrators who have left gifts in or around the house, to remind the victim that they know where they live and can get access to their property. Damage to property is also common: tyres being slashed, other damage to cars, brake fluid lines cut, smashed windows of home, offensive graffiti sprayed on house or car. All very difficult to prove who has done it, although there are always clear signals to the victim as to who has committed these crimes. Technology has undoubtedly made it easier for stalkers to stalk their victims, using tracking devices, smartphone GPS, social media accounts, and spying/surveillance apps for phones, tablets and computers.

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<sup>9</sup> Infield & Platford's research in 2000 on stalking confirms that "Stalking forces a relationship upon the victim whether they want it or not" and that "Controlling the victim is what the stalker wants, and needs, to feed their obsession."

## **There is an urgent need for having specific stalking legislation for Northern Ireland**

Women's Aid would agree that there is significant potential benefit in strengthening the law around stalking. Women's Aid supports victims and survivors of stalking on a regular basis, through risk assessment, safety planning, and emotional and practical support. However, if the police tell victims that "there's nothing we can do", this exacerbates victims' anxiety and counteracts our efforts to keep them safe and make them feel that they are getting justice and being protected. Any law that is formulated should be victim focused. It should be able to deal with the realities of stalking, and the seemingly minor behaviours that in conjunction cause fear and alarm to victims. Intent shouldn't have to be proven, but instead objective reasonable test applied. A victim's reaction of fear and alarm, and the reasonableness of this fear given the context of the relationship between stalker and victim, should be central to the offence. Women's Aid would also point out that there is potential for this issue to be dealt with in conjunction with a coercive control offence through the new Bill. There is much overlap between these types of offence, and one could argue that stalking in the context of domestic violence is a form of coercive control.

We would also stress that a new law alone will not improve the lives of stalking victims without successful awareness raising among police, judges, prosecutors, and the general public. This has been shown to be the case in other jurisdictions where stalking and harassment offences have been put on the statute books. For example, in one case in the US, Peggy Klinke was murdered by her abusive ex-partner turned stalker, despite laws being in place to protect her. She was stalked for a long period of time, kept a record of everything her stalker had done over the years, reported everything to the police, and moved states after he burned down her house. Yet law enforcement failed to take the threat seriously enough or put sufficient protections in place, and her stalker tracked her down and killed her before killing himself. This case has been used to educate criminal justice agencies on the importance of responding effectively to stalking in the US.

**New Stalking Protection Orders (SPOs)** will allow courts in England and Wales to move quicker to ban stalkers from contacting victims or visiting their home, place of work or study. This will grant victims more time to recover from their ordeal. In addition to banning perpetrators from approaching or contacting their victims, SPOs can also force stalkers to seek professional help. The Orders will usually last for a minimum of 2 years, with a breach counting as a criminal offence that can result in up to 5 years in prison.

According to the Crime Survey for England and Wales, almost one in five women over the age of 16 have experienced stalking, as well as almost one in ten men.

## Strangulation

Strangulation is a very symbolic act of control which leaves its victim in no doubt that there is a real and visceral threat to their life. If you put your hands on someone's throat and squeeze the message and terror for the victim is clear. We would support a specific criminal offence, as part of the current review of domestic violence legislation. This will give the power to police and the justice system to treat these offences with the seriousness it deserves. Some violence is more dangerous and frightening than others, not just in that it is more likely to cause death or serious injury, but in what it predicts. Strangulation is a very particular form of assault for three reasons:

1. It is likely to cause serious injury or death
2. It is perceived by the victim as a direct threat to their life
3. It is a highly predictive of future homicide

In NI we would welcome a review of our current DASH forms which ask the question around choking, if this question is answered alone it should be marked HIGH risk, at present this is not the case and it is an extremely prolific high risk indicator of harm for that victim. This would involve a lot of training in relation to our PSNI, social services, medical professionals, and all legal professionals. Any case of attempted strangulation needs to be given the time and space it needs regarding the high risk of that case and dealt with appropriately. Not everyone uses a strangulation or simulated strangulation assault in an altercation – it is controlling people who do this, and the message to them must be clear. Too often strangulation assaults in the UK are either not charged, or are explained away as 'sex games'.

## New Zealand Law on Strangulation

Following a recommendation by the Law Commission, a new offence of strangulation or suffocation came into force on 3 December 2018, carrying a maximum penalty of seven years imprisonment (section 189A of the Crimes Act 1961). The new offence implements the Law Commission's recommendation in its 2016 report *Strangulation: The case for a new offence*. The Commission's 2016 report concluded that strangulation is a common and particularly harmful form of family violence. A victim of family violence who is strangled has a much greater risk of a future fatal attack by the perpetrator than a victim who was not strangled. The Commission found the risks following strangulation were not well understood by police, judges and others who assist victims of family violence. NZ Recent figures reveal that between 3 December 2018 and 28 February 2019, Police charged 416 people with strangling or suffocating their partners – that is around 33 people per week and almost five each day. Non-fatal strangulation a new offence that carries a maximum penalty of seven years in prison. Women's Aid would propose a new law on non-fatal strangulation and strangulation based on a strong body of evidence and research.

### *Operational Recommendations: 1*

*The DoJ should review, with input from relevant stakeholders, how potential inadequacies in current legislation regarding the act of choking or strangulation by defendants could be addressed (paragraph 2.17).<sup>10</sup>*

## **Housing**

Housing is a major concern for many women who are thinking of leaving or who have left abusive relationships. Within the United Kingdom domestic violence and abuse is known to be a contributing factor to homelessness. A study by St Mungo's Sheltered Lives found that, of their female clients, 50% had experienced domestic violence and abuse compared to 5% of their male clients<sup>11</sup>. Further connections between homelessness and domestic violence and abuse can be identified when one considers the mental health implications of domestic violence and abuse and the strong causal effects between homelessness and mental illness<sup>12</sup>. Deciding to leave an abusive relationship is difficult enough for victims and survivors, without being faced with the possibility of making yourself and your children homeless as a result. In some cases it can be the difference between a woman ending an abusive relationship or staying.

The Domestic Abuse and Family Proceedings Bill omits mention of housing and therefore ignores the fundamental reality that domestic violence and abuse causes homelessness and threat of homelessness. It is also an issue with gendered implications when we consider women's differential access to housing because of their disadvantaged position within the labour market<sup>13</sup>. Similar legislation in England and Wales very clearly mentions housing and the government's duty pertaining to victims and survivors of domestic violence and abuse. We would be remiss not to insist on similar protections within our own legislation. We understand that this lies outside the remit of the Department of Justice but insist that domestic violence and abuse cuts through all sections of our society. Therefore, this legislation must be cross departmental for it to be robust and effective. There are two main ways through which legislation in other jurisdictions of the UK addresses socio-economic issues confronting victims and survivors; ringfenced funding for refuge and secure tenancies for social housing. We understand that NI is a different jurisdiction with different laws. However, we will address both as they pertain to victims and survivors and survivors of domestic violence and abuse in Northern Ireland should be given the same protections.

## **Funding for refuges**

Women's Aid Northern Ireland provides refuge accommodation to women and their children fleeing domestic violence and abuse. Our nine local groups operate thirteen refuges across

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<sup>10</sup> CJINI : NO EXCUSE PUBLIC PROTECTION INSPECTION II: A THEMATIC INSPECTION OF THE HANDLING OF DOMESTIC VIOLENCE AND ABUSE CASES BY THE CRIMINAL JUSTICE SYSTEM IN NORTHERN IRELAND, JUNE 2019

<sup>11</sup> <https://www.gentoogroup.com/media/1571446/2018-03-28-web-ready-safe-at-home-report.pdf>

<sup>12</sup> <http://citeseerx.ist.psu.edu/viewdoc/download?doi=10.1.1.911.4996&rep=rep1&type=pdf>

<sup>13</sup> <http://citeseerx.ist.psu.edu/viewdoc/download?doi=10.1.1.911.4996&rep=rep1&type=pdf>



Northern Ireland. In 2018/19 Women's Aid provided refuge to 654 women and 421 children. It is accepted that one of the most dangerous times for victims and survivors of domestic violence and abuse is when they begin to take steps to leave their partners, or just after they have left. This is evidenced by the UK Femicide Census 2018, which identifies that 41% (37 of 91) of women killed by a partner that year had separated or taken steps to separate from him<sup>14</sup>. Therefore, it is of paramount importance that these services are financed appropriately so that women have a safe place to go once they have left their abusers.

The Domestic Abuse Bill in England and Wales makes provisions for ring fenced funding for refuge to be managed by local authorities. Women's Aid accept that our refuges are funded through Supporting People and that process is different and must be treated as such within our own legislation. However, we believe that funding for specialised services like refuge needs to be secured and it must rise incrementally with the cost of living. It is our position that this should be considered within the framework of any domestic violence and abuse legislation implemented in Northern Ireland. A period of sustained austerity has resulted in cuts to funding across the sector. No refuge in Northern Ireland has had an uplift to budgets for 12 years. No uplifts are a cut in real terms. Rising costs have had to be managed within a set pot and this has meant that some Women's Aid groups have had to either raise additional funds or cover costs from reserves. The CEDAW Committee's concluding observations in 2019, identified the cutting of funding to specialised services for women as a result of austerity as a major concern<sup>15</sup>. This cannot be allowed to happen again, particularly as we begin to look at what a post-Covid19 society might look like financially. Specialised services for victims and survivors of domestic violence and abuse must have secure funding, and domestic violence and abuse legislation must reflect that.

For women living in Northern Ireland with no recourse to public funds, accessing services for domestic violence and abuse can be especially difficult. Partners of settled persons, students or temporary workers and people seeking asylum with their partners do not have access to public funds, which means they do not have access to housing benefit<sup>16</sup>. This means that women with insecure immigration status fleeing abusive partners can have issues accessing refuge services. This is an issue that majorly affects BAME women. If we are to have legislation in Northern Ireland that protects all victims and survivors, this must include women with no recourse to public funds. Currently if a woman or a woman with children with no recourse needs refuge then the refuge that accepts them must take a potentially huge financial risk to accommodate them. Different Health Trusts respond differently to the situation and these cases can be complicated and protracted. If any refuge cannot find a source of financial support, then the costs fall to them and the needs of an abused woman and the needs to have a sustainable organisation can be incompatible. If we wish to support all victims and survivors, then we require systems that place the immediate safety of victims and survivors at their heart.

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<sup>14</sup> <https://femicidescensus.org/wp-content/uploads/2020/02/Femicide-Census-Report-on-2018-Femicides-.pdf>

<sup>15</sup> CEDAW Concluding Observations (2019) CEDAW/C/GRB/CO/R.8

<sup>16</sup> Monica McWilliams BAME women

## Secure social housing

The Domestic Abuse Bill in England and Wales gives protections for secure tenancies for people exiting domestic violence and abuse relationships. Women's Aid would assert that rehousing women after they have left domestic violence and abuse relationships or when they feel ready to leave refuge is extremely important, not only to helping women get back to a semblance of normality, but also freeing up space in refuge for other women who need to access it. In 2018/19 381 women could not access our refuges because they were full. Sadly, not an unusual situation. Therefore, having a robust social housing supply and priority system of allocation for victims and survivors of domestic violence and abuse is integral to having wrap around domestic violence and abuse protections. At present, the Domestic Abuse and Family Proceedings Bill does not address housing or secure tenancies at all. It is our position that it must given that domestic violence and abuse causes homelessness and threat of homelessness.

Women's Aid is concerned that changes to the system for allocating social housing could negatively impact on survivors of domestic violence and abuse when trying to move on from refuge. A move away from a points system towards a band system for housing allocation must prioritise people who have been made homeless because of domestic violence and abuse. As discussed above, domestic violence and abuse is recognised as a leading cause of homelessness in the UK and disproportionately impacts upon women. Women should not be expected to choose between their personal safety and homelessness. Any domestic violence and abuse legislation must address this so that victims and survivors will not be impeded from leaving their abusive situations by the prospect of insecure housing.

Women's Aid are also concerned that potential changes to the types of properties that the Housing Executive can call a "reasonable offer" may negatively impact upon victims and survivors of domestic violence and abuse. We are referring to a policy which could see the NIHE able to offer social housing and private rentals on an equal footing with a reduction in the amount of refusals a client is allowed to make to "reasonable offers" before they are discharged from the service for a year. This will have a disproportionate effect on women generally, given that 'women are overrepresented amongst social renters, largely because there are overrepresented amongst those in housing need and amongst homeless families'<sup>17</sup>. It will impact upon women experiencing domestic violence and abuse as they could potentially have to accept a private rental, have that house potentially damaged by their ex-partner and have that be misrepresented as anti-social behaviour as opposed to domestic violence and abuse. The social housing sector already has a keen understanding of how domestic violence and abuse can present and its implications for tenants. Moving away from that model is detrimental to survivors of domestic violence and abuse. Women's Aid are further concerned by what can be considered a reasonable offer by the NIHE. Our service users have reported issues with properties not meeting the needs of disabled children and

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<sup>17</sup> <https://wbg.org.uk/wp-content/uploads/2017/11/housing-pre-budget-nov-2017-final.pdf>

still being considered reasonable offers. This will have a disproportionate impact on disabled women and women with disabled children, who already face barriers to accessing services.

### **Operation Encompass**

Women's Aid have campaigned tirelessly for many years for the introduction of Operation Encompass in NI and it is hoped that this will be added through the Miscellaneous Provisions Bill and finally come into operation in NI to provide support to children and young people experiencing domestic violence and abuse.

## Comments on proposed Domestic Abuse and Family Proceedings Bill NI

### Part 1: Domestic Abuse: Offence and Aggravation

#### **The definition of the offence and the definition of abusive behaviour:**

Women's Aid welcomes the extended definition of the domestic abuse offence and abusive behaviour, however there is a need to establish strategies for addressing domestic violence and abuse offences for marginalised groups including victims and survivors who are LGBTQ, have a disability, BAME and other marginalised groups as noted earlier in the document it should include the gendered nature of domestic violence and abuse to include violence against women and girls.

#### **The domestic abuse offence**

1. includes the creation of a new domestic abuse offence, child aggravators associated with that offence, a general aggravation of domestic abuse associated with any other offence, and a number of associated changes to criminal procedures, evidence and sentencing in domestic abuse-related cases. Both the child and general aggravator would enable sentencing to be increased up to the maximum that would otherwise not be available. Women's Aid welcome the domestic abuse offence, we have campaigned for many years for the introduction of an offence for coercive and controlling behaviour and for it to be recognised as a crime.


Women's Aid believes that the current approach to domestic violence and abuse has not delivered justice for victims and survivors. Domestic violence and abuse is a unique crime, necessitating a unique response. We believe that a coercive control offence will lead to a criminal justice system which more accurately reflects the reality of domestic violence and abuse and hope that this will facilitate justice agencies to have more robust remedies to deal with perpetrators of abuse. This is an opportunity to create an offence and sentencing regime that matches the seriousness of the crime and its impact on victims. We recommend that certain elements of the law could be mandatory, so that there is no room for error as a result of individual lack of understanding of domestic violence and abuse and coercive control on the part of police, solicitors, barristers or judges etc. It does raise the issue of rehabilitation and how that currently happens in relation to the disposal of cases and options available to put this in context in NI at this time.

Women's Aid does have concerns that children could be criminalised and that a person under 18 years old could be charged with a domestic abuse offence.

## The benefits of a Domestic Abuse Offence will be:

- 1. Giving the police the tools to arrest & charge perpetrators:** An offence which incorporates the coercive control element of domestic abuse would give police more scope to pursue perpetrators and bring them to justice. Police will be able to secure more convictions, disrupt domestic abuse at an earlier stage, and take people who they know to be dangerous off the streets.
- 2. Tackling serial perpetrators:** Most perpetrators of domestic violence and abuse are serial perpetrators. In other words, perpetrators who move on to abuse future partners once their current victim has finally managed to break free from the relationship. Creating a domestic abuse offence which criminalises all elements of abuse will enable police to take these perpetrators off our streets and prevent them from moving from one victim to another with impunity.
- 3. Changing how we talk about domestic violence:** Creating a domestic abuse offence would remove the ambiguity of how we talk about domestic violence in public and in the media. Currently when a woman is killed or assaulted, newspaper reports rarely use the phrase domestic violence or domestic abuse. If it was a specific offence, this would encourage public discourse to recognise this violence for what it is and give a very hidden crime some more public visibility and recognition.

Women's Aid welcomes the recognition to include coercive and controlling behaviours to recognise this behaviour as impactful and can include both physical and emotional, psychological and controlling behaviours. This is important to each individual the impact of the behaviour and the short and long-term effects it has on the victim of the abuse.



*"My solicitor was very helpful. However, despite this, I felt disappointed that, despite my ex-partner threatening to take my daughter away, I had to prove that the situation was a genuine emergency and it seemed impossible to prove that my ex-partner had been emotionally abusive towards me. I am now living in a foreign country with my daughter after my ex initiated Hague Convention proceedings against me and the only support I really have is Women's Aid"*

**Clause 2** sets out what amounts to abusive behaviour. The description is very comprehensive and it includes violent or threatening behaviour, including sexual violence, as well as abusive behaviour more generally; that is behaviour that is directed at the victim, their child or another person that may have certain effects on the victim. It does not have to be abusive behaviour that is directly towards that individual. Women's Aid feel it is important to name sexual violence within an intimate partner relationship and recognise how difficult it is for an individual to come forward and discuss this form of abuse. We also welcome the great detail

in relation to the relevant effects of the abusive behaviour. Sexual violence is often not disclosed and often remains a hidden aspect of abuse. Reporting or disclosing this form of abuse is very difficult for many individuals because of the public perception of rape within an intimate partner relationship and the woman's relationship to the abuser.<sup>18</sup> Public awareness is needed in relation to all forms of violence against women and girls. Police Service of Northern Ireland (PSNI) statistics for rape showing the relationship between victim and offender in the first six months of 2017 highlight that 30 percent involved an intimate, current or previous partner, while 29 percent involved a known male(s), and 14 percent involved a family member other than an intimate partner. The statistics show prevalence of sexual violence perpetrated within existing or former relationships.

**Clause 3** - outlines that the effects of the abusive behaviour, such as dependency, subordination, isolation and control, do not have to have caused harm in order for an offence to occur and it is important to recognise the impact that behaviour does have on a victim and survivor.

**Clause 4** – brings up the important issue of abuse through a third party. Again, this has come up on so many occasions whereby a woman's abuse continues through a third party, e.g. when a partner goes to prison, other family members or friends continue to intimate and abuse.

#### **Clause 7 – (2) Notice is service on the person by**

Women's Aid would take issue at (c) sending it by post to the person at the person's proper address. This has been a major issue for many years and is not secure and safe for the victim and survivor to know if the notice has been served, how is this proved as service. This is also relevant in 20 (C).

#### **Clause 8 - Aggravating Factors**

Clause 8 aggravates the domestic abuse offence when the victim is under 18. It does not cover a situation where the victim is the child of the perpetrator/child is someone the perpetrator has parental responsibility for. This does not cover a situation where the victim is the child of the perpetrator or the child is someone the perpetrator has parental responsibility for and this is a major concern as coercive and controlling behaviour will not be criminalised in this situation.

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<sup>18</sup> Bergen, R.K. (2006) Martial Rape: New Research and Directions: Applied Research Forum, National Online Resource Centre on Violence against Women

We do however, welcome the inclusion of the aggravating factors for both adults and children as a whole. Abusive behaviour where a child is involved is to become an aggravated offence and sentencing to reflect impact on children. We would like to see this extend to a full review of the family courts including a review of the duty to protect and how written agreements are being used. Other vulnerabilities that should be considered as aggravating factors are disabled women, mental illness, women with no recourse, BME women to reflect the inequality which underpins domestic violence and abuse. We note below the revised wording in relation to vulnerable victims used by the Sentencing Council.

*“The Sentencing Council has decided to revise the wording to ‘victim is particularly vulnerable (all victims of domestic abuse are potentially vulnerable due to the nature of the abuse, but some victims of domestic abuse may be more vulnerable than others, and not all vulnerabilities are immediately apparent)’. This wording is designed to allow courts to take a broad view of whether a victim is vulnerable or not, and not just by reference to a set of specific factors, such as age, disability etc., which cannot hope to include every instance of possible vulnerability. Victims of domestic abuse are individuals, and need to be treated as such, rather than to be cross referenced against a list of factors which may not apply to them and may not address their particular vulnerability.”<sup>19</sup>*

### **Clause 9 – Aggravation where relevant child is involved**

Women’s Aid understands that the aggravation under clause 9 would also apply where a child sees, hears or is present during a single incident of domestic abuse that forms part of a course of abusive behaviour. The aggravator introduced is welcomed but we do not feel it goes enough in addressing the issue. We also have concerns that stating in 9.(2)(b) : *the child saw or heard, or was present during ...* does not adequately address the issue or recognise the persistent, ongoing nature of the impact of abuse on a child living in a home with domestic violence abuse and may have unforeseen consequences in the application of other criminal justice legislation and protection from domestic abuse towards children.

We are encouraged that children are no longer the silent witness and that they are being taken into consideration within the Bill, as they too are affected. Women’s Aid would call on children to be treated as victims in their own right and not as associated persons. There needs to be an assurance of a child centred approach within this clause and a focus on appropriate safeguarding mechanisms. If the perpetrator engages in a course of behaviour that is coercive and controlling of the child in an attempt to get at the child’s parent then the parent is recorded as the victim and any prosecution for that behaviour directed at the child will be dependent on the parent making a complaint to police and therefore the child cannot do this in their own right.

*“Women’s Aid NI calls for full recognition of children and young people as equal victims of domestic violence. We want to see a collective strategic response to meet their needs at individual, community, organisation and government levels. Children and young people have*

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<sup>19</sup> <https://www.sentencingcouncil.org.uk/wp-content/uploads/Domestic-Abuse-response-paper-web.pdf>

*a voice and want to be heard ...we believe it is time to see, hear and act for all children who are living with domestic abuse.”<sup>20</sup>*

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

#### **Clause 12 - Defence on grounds of reasonableness**

Women’s Aid are concerned about Clause 12 the “defence on grounds of reasonableness” We understand that there is a need for a safeguard in there to e.g. protect family members of dementia sufferers who may need to be confined/controlled etc in their own interest. Though this should not come at the expense of the Bill having no teeth and a Defendant pleading reasonableness if they feel that things aren’t going their way or to portray a victim as someone who is mentally unstable (especially if the victim has mental health issues caused by the abuse). We concerned that this defence is open to manipulation by abusers. It could be used against disabled women, where the abuser is the carer, or against women with health problems, particularly those with mental health conditions, and those with substance abuse problems, a doubly unfortunate result where the woman’s health or substance abuse problem is a consequence of the abuse. Abusers can be very manipulative and can portray an image of a very caring partner, outcome then is that the victim is not believed. We would believe other minority groups at risk would also be disabled women, LBT women who have the added barriers of ho homophobia, biphobia, or transphobia from a perpetrator and multiple forms of discrimination. Similarly BAME women experience “double discrimination” and very specific forms of coercive control from perpetrators, such as threats around their immigration status and abusive use of religious scriptures, aggravating the impact of the abuse and obstructing their opportunities to seek help through the civil and criminal justice systems. Consequently, it is perfectly possible for a perpetrator to present as a “reasonable person” who, “might engage in behaviour which amounts to controlling their partner which may be, in the particular circumstances of the case, reasonable, for example because they reasonably believed that their actions were necessary to protect themselves, their partner or other family members from harm.”<sup>21</sup> This is an issue, not only in relation to the perpetrator presenting this position as a defence but also in relation to the “reasonable person” test as to whether behaviour was abusive and caused harmful effects to the woman.

**This is of great concern to Women’s Aid and we would call on this Clause to be removed from the Bill.**

#### **Clause 14 – Penalty for the offence**

Women’s Aid welcomes the range of sentences available and ability to increase the sentence due to aggravation including where a child (defined as a person under the age of 18) is a victim of domestic abuse, either as a partner or family member, or sees, hears or is present while abusive behaviour is being carried out, (though we do have concerns as raised above at Clause 9): *the maximum penalty in the Magistrates’ Courts will be 12 months’ imprisonment, and 14*

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<sup>20</sup> See Hear Act: A strategy for children and young people (2019 – 2029)

<sup>21</sup> <https://womensaid.scot/wp-content/uploads/2017/09/SpecificOffence-justicecommittee.pdf>



*years in the Crown Court and it may also include a fine or both at each Court tier.* It is important to look at the options in relation to domestic violence and abuse cases in relation to disposal. In NI there are no Court mandated programs for perpetrators of domestic violence and abuse but again there needs to be investment and work in relation to the rehabilitation of abusers as there is such a rate of reoffending in domestic violence and abuse cases.

Women's Aid were a partner organisation with PBNI for over ten years rolling out the Women's Safety element of Court-mandated Perpetrator programmes. These programmes have not run for over 3-4 years, apart from a pilot programme in Foyle area in 2018/19. During the ten-year period these programmes were very active with up to 3 rolling programmes in Belfast, Armagh, Foyle and at least 1 running in Antrim and Omagh. We would question the non-referral to these programmes via Court process and would question this major gap in holding perpetrators to account, given the major increase in PSNI domestic abuse incidents year on year. The attrition rate in Northern Ireland is very low and Women's Aid believes this needs to be seriously addressed as does the entire PPS process in relation to domestic violence and holding perpetrators to account. If legal remedies for victims of domestic violence are not providing positive outcomes for women, they will be reluctant to go through what is a traumatic experience. Non-adjudicated Promoting Positive Relationships Programmes was piloted in Foyle area in 2018/19 and then rolled out through five Health Trust areas over 2019/20 and there is a plan to run similar programmes during 2020/21. The aim of the PPRP intervention is to provide 60 men, alleged to have been abusive within their intimate relationships, with the opportunity to engage in an intervention programme aimed at developing knowledge and skills in which to develop healthy, non-abusive relationships. Women's Aid welcomed the introduction of these programmes supported through Department of Justice with programmes delivered under the expertise of the PBNI. Women's Aid partner role is to take referrals of female partner/ex-partners and provide Women's Safety process. We would be calling for the continuation of these programmes as a positive response to addressing domestic abuse within Trust settings.

There is much work to be done in NI in relation to early intervention and preventative education work in relation to healthy relationships through RSE programs within our schools on a statutory footing. For over forty years, Women's Aid in Northern Ireland has sought to provide support and increase protection and safety for women and children who use their services and who are victims and survivors of domestic violence and abuse. Working from a multi-agency perspective they have sought to address the needs of all victims of domestic violence and abuse. As part of that "policy to practice" response we have been innovators in producing preventative education programs that assist in prevention and early intervention for children and young people who do not feel safe. It is essential to provide children and young people with a series of coping strategies to use in any situation when they feel that they are unsafe e.g. bullying, experiencing street/gang violence, abuse and domestic violence.

One of those programs, Helping Hands, for children aged 7-11 continues to be delivered successfully in schools by teachers and others concerned with the safety and of children in Northern Ireland and beyond. At 1st April 2019, 1,445 teachers from 582 primary schools had been trained as Social Guardians to deliver the Helping Hands program in schools.

The success of the Helping Hands program at primary stage has been astounding and this has recently been evidenced in the independent evaluation conducted by Dr Helga Sneddon involving over 100 teachers which found, after participating in the training;

The success of preventative work at primary school age along with feedback from ongoing consultations with young people, teachers and external agencies has highlighted the need for a robust preventative model at post primary level, in education and youth settings to increase awareness of differences between healthy and unhealthy relationships and promote sound values of respect, equality and trust. To address this need Women's Aid Federation NI, in collaboration with the nine Women's Aid groups across NI has developed the Stand up for Healthy Relationships program. Women's Aid NI believes that eliminating abuse begins with **preventing** abuse. The Stand up for Healthy Relationships program is the next stage of the evolving response of Women's Aid in Northern Ireland to developing preventative education interventions that address the context and impact of domestic violence and abuse in Northern Ireland.

Educating young people is perhaps one of the most vital and important steps in eliminating domestic violence. All young people are developing relationships and they need to know the differences between what is healthy and what is abusive. This fits clearly with curriculum statutory requirements for Learning for Life and Work: Personal Development at key stage 3 and 4 in the areas of self-awareness, personal health and relationships.

We want young people to be fully informed about rights in relationships and to be equipped to recognise the signs and symptoms of unhealthy relationships....to know the difference between what is love and what is not love and to have the confidence and knowledge to draw the line at abuse. We want every young person to have this knowledge and we want every young person to be able to act, for themselves and for their peers and to play their role in preventing abuse and developing a safe society.

## **Chapter 2: Aggravation as to Domestic Abuse**

### **Sentencing Aggravation**

In addition, if criminal damage takes place as part of domestic abuse and involves a child, the sentence can also be increased. This is so important as it is a factor that many women have had to suffer and common in relation to domestic violence and abuse cases. We would also like the Committee to consider repeated offences to be included, to take into account those serial perpetrators of domestic violence and abuse offences on not just one woman but several different women. Women's Aid would have concerns as to how this evidence would be gathered in relation to children and young people and the evidence of the impact and how that evidence could be challenged in court. We do not wish any victim of domestic violence and abuse to be challenged in court and indeed subject to revictimisation. We would need assurances that this would be completed in a child centred way with formal protocols in place with regard to gathering of evidence. More detailed measures would need to be put in place in relation to this process.

## Chapter 3: Amendments and Guidance

### Special Measures Direction

Special protection measures such as separate waiting rooms, separate entrance and exit times for the parties, screens and video-links support victims to give quality evidence and can reduce some of the trauma of the process. We welcome the new legislation's inclusion and a commitment to make legislative changes to provide automatic eligibility for special measures in domestic violence and abuse cases in the criminal courts. Separate waiting rooms or a safe place within the court designed to ensure victim safety and accessibility and to continue to use video link where possible. But this problem is most acutely within the family court, where access to special measures is so poor that survivors are being attacked, abused, harassed and left too frightened to effectively advocate for the ongoing safety of their child. Failure to ensure parity in the court systems will leave survivors at continued risk of harm and an inconsistent approach to safety between the court systems. There needs to be a guarantee of special measures for victims and survivors of domestic violence and abuse in the family courts. At present we have many examples where special measures have been assured but on the day of court, they are unavailable. This is not good enough and there needs to be reassurances for victims and survivors.

### Prohibition of cross-examination in person (including Family Proceedings)

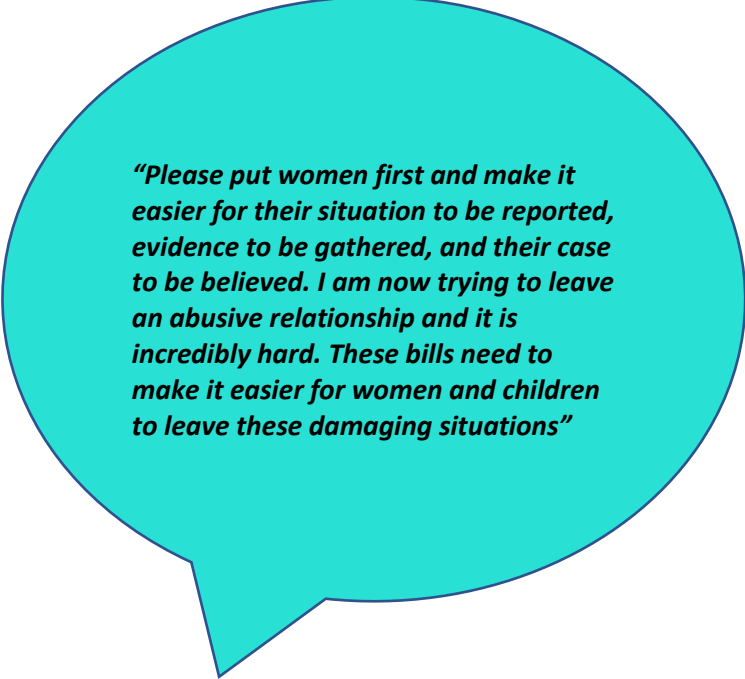
Within our current legal system in NI, it has witnessed victims and survivors facing direct cross-examination by an unrepresented former partner. This abhorrent practice prolongs the impact and trauma caused by domestic violence and abuse, diminishes the quality of evidence that victims and survivors can provide and bars them from advocating for their child's safety. Women's Aid is delighted that this Bill includes a ban on cross-examination. However, the prohibition will only apply where there is a criminal conviction or court order in place and, in other cases, will rely on judicial discretion. Given the current low reporting to police of domestic violence and abuse this is concerning and something that needs to be considered.

Women's Aid would suggest that the prohibition is extended to direct cross-examination in any family proceedings in which allegations of domestic violence and abuse are being determined, or where either party has admitted or found to have perpetrated domestic violence and abuse to assure safety in relation to cross examination.

**Clause 26** which relates to family proceedings is any person convicted, cautioned or charged with a specified offence may not cross-examine a victim/alleged victim in person. Paragraph 3 states that this will not apply to spent convictions. The rehabilitation period (the amount of time that must pass between conviction/disposal before an offence becomes spent) is set out in the Rehabilitation of Offenders (NI) Order 1978. The rehabilitation period will depend on the method of disposal i.e. caution, fine, period of imprisonment and the age of the defendant at the time. If a defendant gets probation (which is often the case) then the rehabilitation period can be as little as 1 year. It goes up to 5 years for a fine or community service order. So, this is concerning for Women's Aid.

Women's Aid would have concerns in relation to **Prohibition of cross-examination in person: evidence of domestic abuse**: It states at **11D** that it prohibits cross examination between persons involved in abusive behaviour. What this means exactly is unclear in the Bill as it states that specified evidence must adduced to prove the behaviour and the evidence specified will be set out in regulations from the DoJ as set out in 11D(3). This is unclear as to what the regulations are, and we would prohibit cross-examination in cases where there is a domestic violence history whether reported to authorities or not. Women's Aid would like to know what the regulations would be, and have they been drafted?

**Clause 25** sets out that the Department will issue guidance related to the domestic abuse offence. Women's Aid would like to seek clarity in relation to this guidance and the assurances that we, voluntary and statutory partners will be involved in this process.



*"Please put women first and make it easier for their situation to be reported, evidence to be gathered, and their case to be believed. I am now trying to leave an abusive relationship and it is incredibly hard. These bills need to make it easier for women and children to leave these damaging situations"*

## **Annex 1: Voices of Women Survivors**

Women's Aid NI produced a short survey to send out to our service users across Northern Ireland to give them the opportunity to feed their experiences into our evidence. The questions asked were constructed around themes within the Domestic Abuse and Family Proceedings Bill that our organisation felt would benefit from personal testimony from survivors of abuse. These themes include reporting abuse to authorities, experience of the criminal justice system, experience of family court, experience with housing authorities and thoughts on the role of a Domestic Abuse Commissioner. We received twenty-six responses in total and all respondents were anonymised for their privacy and safety. These are the voices of those women.

### **Section 1 – Reporting Abuse.**

**Answer only if you reported your experience of abuse to the authorities.**

- 1. Do you have any comments about how your report was handled by the authorities? Eg. did you feel believed, did you feel safe telling your story, were you given any information about how to seek support? Etc.**

"I was outside the time frame for my report being used for criminal proceedings. I feel there were mitigating circumstances but it made no difference. These were: I have a progressive disability, I was pregnant and had to return to work after a period of illness to maintain my job prior to my baby being born."

"I was not believed and was in fact arrested on the basis of his false allegations and given 10 minutes to leave my home"

"Very well by most of the police I met, however one wasn't very supportive"

"I was happy with how things were dealt with"

"On the occasions I reported to the police I was most often met with reluctance to take matters seriously or further. Quite often with an officer scaremongering with regards to having to testify in court, or being told that it would go nowhere as it was my word against his"

"I felt believed and that my story was true"

"The officers involved have been very considerate and continue to do so"

"Some police officers were very empathetic while others looked like they couldn't be annoyed"

**2. Do you have any comments on how your report was followed up on? Eg. Were you kept informed on the process of reporting?**

“I rang on 4 Feb to ask about a court case happening on 7 Feb only to find out it was dropped on 29 Jan” [Dates changed to protect ID]

“Yes I was kept informed and very happy with the process”

“The whole process has been long and drawn out which has caused immense stress and anxiety. The large periods of time that have gone by with little to no feedback and constantly having to chase for information and guidance have been the most difficult”

“Yes I was called every two weeks”

“The judge was appalled by how the PSNI dealt with my case. The judge said she could not understand that he was in breach of this order so many times, 29 in total, and nothing was done until months later”

“Some of my main witnesses were not contacted to make statements”

“Very seldom did I get to speak to the police officer who attended my incident and I had to explain my situation yet again”

**Section 2 – Criminal Court**

**Answer only if you have experience of going to criminal court because of a report of domestic abuse.**

**3. Do you have any comments about your experience of going to court?**

“The process of getting protected against abusive partners is far too long and drawn out”

“I was terrified to get my Non-Molestation Order...Thankfully I was given the judge’s chambers which were more private”

“It was very intimidating and if possible courts should have separate entrances for the victims so they shouldn’t have to walk past perpetrators and their family”

“There was no protection in the courthouse to protect me from the intimidation from him or his family. Eventually it was left to my own mother to arrange to get us a safe room as I wasn’t offered one”

“While waiting to testify my ex was able to walk over in front of police officers who had attended the incident at my home...consequently I felt too intimidated to testify”

**4. Were you made aware that you could ask for special measures in court to help you feel safer? If you asked for special measures, how do you feel they were implemented?**

“The work in Dungannon court but not in Belfast as its too far from the court and you can easily miss your slot as it’s so busy”

“They were not implemented...I was too late for any special measures”

“Special measures were very well catered for”

“I wasn’t told about special measures, like screens or anything, it was Women’s Aid that told me about screens being put in place to make me more comfortable because I couldn’t deal with looking at my ex. I was so scared that day”

**5. Do you have any comments on how the court experience could be improved for survivors of domestic abuse?**

“I feel that mental and controlling abuse must be taken as seriously as sexual and physical”

“Judges need to recognise that the abuser is also using the court to abuse their partner”

“Separate rooms/harder sentences/ and for the law on this to be taken more seriously as abuse has long lasting effects on victims”

“Take into consideration care commitments for those with disabled children”

“If the victim feels supported, safe, and encouraged and not made to feel like just another number in the same situation as all the rest. Each incident is unique and frightening for the victim”

“After care once court is finished. You need help with the mental impact of it all”

“All court officials, especially judges, should have to attend mandatory training on domestic abuse to raise awareness of the issues surrounding it, including impact and ongoing effects and how harrowing it is for women to have to confront him again in any capacity”

**Section 3 – Family Court**

**Answer only if you have experience of going to family court where you have experienced domestic abuse.**

**6. Do you have any comments on your experience of family court? Eg. Did you feel safe, were there procedures put in place to help you feel safer? Etc.**

“More often than not the judge provided him with numerous opportunities to have me bring the children to him/have to see him face to face”

“Felt safer as I had Women’s Aid with me”

“Father’s rights are paramount over a child’s [rights] and they are enabled to continue their psychological and emotional abuse using threats of the court”

"It seemed impossible to prove that my ex-partner had been emotionally abusive towards me. I am now living in a foreign country with my daughter after my ex initiated the Hague Convention proceedings against me and the only support I really have is Women's Aid"

"I have been to the Family Courts [a number of] times. Each time I have felt unsafe, humiliated and extremely concerned for the safety of my children...I have had to discuss being sexually assaulted, domestic abuse incidents and child safeguarding concerns for my children in a busy corridor with no privacy"

"He's using the system to torture me"

"The fact that we could have a private room to wait in that meant I didn't have to risk seeing my ex-husband in the waiting room made such a difference"

"My ex had no interest in my daughter, by taking me to court was just another chapter in his game which was to cripple me financially as it cost me to go but not him as he was unemployed. I had to go several times but he did not turn up on several occasions. He thought this was funny. This caused me stress, anxiety and put me into debt paying court fees"

**7. Do you have any suggestions on what could be done to make Family Court better for survivors of domestic abuse?**

"Video link should be used more often and perpetrators should never be allowed to cross examine the victim"

"Not having to prove that emotional abuse is as bad as physical abuse"

"Make children's rights equal to parents' rights. Provide and enforce suitable targets for abusers to meet to be in their child's life without continuing the abusive cycle i.e. send them on parenting and other courses"

"Family court needs to start taking domestic abuse more seriously and not just in impact on the survivor but also on children involved and understand how the perpetrator uses the system to continue his abuse in what I can only describe as state funded and supported domestic abuse"

"The same judge should preside over all hearings. On my third hearing it was a different judge who was totally unsighted as to what had gone on previously"

"Family court officers must speak to both parents individually to hear their concerns"

"Penalties for abusers who don't turn up and less adjournments"

"Separate waiting rooms and special measures"

"It would help if the cases were given time slots at court rather than having everyone arriving early and having to wait for some time"

"I think all cases of domestic violence going to court should have an automatic referral to Women's Aid. The courts or police need to fund a Women's Aid worker in every family court so that they are on the ground and available for those women who have no family support"



#### **Section 4 – Protection Orders**

**Answer only if you have or have had a legal order, for example a Non-Molestation Order or an Occupation Order, against a perpetrator of domestic abuse.**

- 8. Do you have any comments on the effectiveness of these orders? Did you have to pay to get them? Did they make you feel safer? If they were broken, was the perpetrator dealt with effectively by the authorities in your opinion?**

“I had to pay for it. It was broken but wasn’t able to prove it was the perpetrator so he got away with it. Police very supportive though”

“Breached several times but no evidence so he was not arrested”

“Social services forced for it to be lifted...they stated it would make for better handover arrangement. Looking back I should have fought harder to keep that as he then felt it was ok to walk into my house and sit outside it also”

“When I had my NMO it was a positive experience and when he broke it by writing to me. Thankfully, the judge took it very seriously and he was arrested”

“breaches were never taken seriously by police and loopholes nearly always sought or excuses made”

“I can’t get an order on him as he has told his solicitor not to take court papers on his behalf nor will he provide an address”

“He breached this order 29 times in so many ways and nothing was done about it”

“An Undertaking gives very little protection and has left me extremely concerned for myself and child whereas the NMO provided me with some ease”

“During the duration of my NMO my ex had been leaving me gifts at my house and putting notes through my door...This was reported to the police who stipulated that my ex could be doing worse things than leaving gifts and notes”

#### **Section 5 – Housing**

**Answer only if you have issues with housing or being re-housed because of domestic abuse.**

- 9. Do you have any comments about the process of being rehoused by the Northern Ireland Housing Executive in the aftermath of your experience of domestic abuse? Were you offered housing that met your needs? If not, what was unsuitable about the housing that you were offered?**

“I was given 3 unsuitable offers due to my son’s special needs. I am currently seeking private rent as my ex has stopped paying my mortgage. This happened from I tried to take him to court firstly. It’s financial abuse”

“I have been in refuge for 7 and a half months with no offers or help on housing”

“Women’s aid disclosed they could help me with housing if I choose to leave my ex partner, not only did this provide me with a feeling of safety at such an uncertain time but gave me the confidence to

take that step. They have also helped me with the housing executive as I wait to receive a suitable offer so I felt very supported by them through this”

“I did go to the Housing Executive to ask about housing...I was 7 months pregnant and they told me they could put me on the list but because I had no proof of domestic abuse they couldn't give me extra points. I personally found the experience very embarrassing as I felt that maybe they thought I was saying it to get housing because I was pregnant”

## **Section 6 – Domestic Abuse Commissioner**

**Similar legislation in England and Wales has created the role of a Domestic Abuse Commissioner. Their role is to oversee the implementation of domestic abuse legislation and policies, hold agencies to account when standards are not met, collect data and information on domestic abuse and coercive control and produce reports.**

**The Domestic Abuse legislation in Northern Ireland does not make provisions to create this same role here.**

**10. Do you have any comments on the role of a Domestic Abuse Commissioner? Would this be something that you think could be useful to have in Northern Ireland? Give reasons for your answer.**

“Too long have we had to wait to come up to the same protection standards as the rest of the UK and I think this role should be filled”

“This is vital...Victims need to feel their experiences are evidence and need reported”

“Most definitely is a required role...to ensure continuity and consistency of thoughts, opinions, policies and procedures throughout every organisation in order to bring together a more unified approach”

“A Commissioner would help give victims more confidence in the systems and organisations who deal with domestic abuse”

“We need the Coercive Control law passed”

“It would hold agencies to account”

“I think a one stop knowledgeable, responsible and transparent person of contact and power is essential to ensure victims are not passed from pillar to post and then forgotten”

“They could look at implementing more in depth discussions of what domestic abuse is and how it can occur; within schools for children that may be suffering or unaware of the emotional control in their homes and for the likes of pregnant women when in hospital. I was asked in hospital if I was impacted by domestic abuse and I said no each time as I had only assumed this meant he had to have hit me, had I been given more knowledge and understanding of abuse I don't feel my answer would have been the same throughout my pregnancy”

“I think it is an essential role to oversee the running of the legislations and standards”

**11. Do you have any further comments on the Domestic Abuse and Family Proceedings Bill or any of the topics discussed above?**

“I believe that far too many professional agencies still lack the awareness and understanding of the nature and complexities of domestic abuse. Hopefully this Bill will go some way to raising that awareness but I know it is an ongoing battle”

“More training, understanding and empathy”

“Over the past few months I have regretted asking my abuser to leave because while he lived in the family home I could protect my children from his abuse...Now I am unable to protect my children when they are with him and I have no idea what they are being subjected to. It is a sad indictment of our society and our legal systems that I was happier being sexually assaulted in an abusive relationship; were I was able to protect my children from their abusive father 24/7. I now feel I am in a worse situation due to the horrific worry I now have when my children are in his care”

“if a father wants to see a child he should appear at court. They are given far too many chances if they use the court system in the way my ex has used it death threats and so many damaging lies then they should be made to prove that contact is suitable”

“I thought that I would escape at 60 when my parents had died and my children were married. Alas it was not to be. I received word lately that I had another 6 years to wait for my pension. I think the pension age of women on their 60's should be reviewed. Equality did not exist in my working life or family life. Awareness as to demeaning derogatory inequality at the hands of an abuser should be highlighted and the need for equality within the marriage. My husband protected his work pension At the cost of mine. Now I haven't even got my state pension. I am at a permanent state of lockdown”

“I need this bill for me and my child's human rights to be protected so we can live in peace. My abuser is still able to stalk, monitor my whereabouts and isolate me and somehow in Northern Ireland this is legal”

“I feel like a large part of domestic violence is the psychological, emotional & coercive control, but because police cannot see this as clearly as a break or bruising it is not taken seriously enough when the victim does have the courage to phone the police”

“I just want it to be taken more seriously, and harsher punishments and more safety procedures to be implemented, and that perpetrators are made aware of the seriousness of their act and the impact is has on us. I am five years out of it now and I'm still going through it. It effects my everyday life”