

# Women's Policy Group NI

## **Women's Policy Group NI Evidence Submission to Justice Committee**

### **Domestic Abuse and Family Proceedings Bill 2020**

The Women's Policy Group NI (WPG) is a platform for women working in policy and advocacy roles in different organisations to share their work and speak with a collective voice on key issues. It is made up of women from trade unions, grassroots women's organisations, women's networks, feminist campaigning organisations, LGBT+ organisations, support service providers, NGOs, human rights and equality organisations and individuals. Over the years, this important network has ensured there is good communication between politicians, ministers, policy makers and women's organisations on the ground. The WPG represents all women of Northern Ireland and we use our group expertise to lobby to influence the development and implementation of policies affecting women.

#### **This evidence submission was written by:**

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On behalf of the Women's Policy Group NI, we welcome the call for evidence to the Justice Committee on the Domestic Abuse and Family Proceedings Bill 2020.

### **Introduction:**

The WPG NI welcomes the proposed legislative changes regarding domestic abuse and violence both within the Northern Ireland Assembly and in Westminster Parliament. Activists, women's organisations and support providers have spent many years calling for adequate domestic abuse legislation in Northern Ireland. In the current global pandemic, domestic abuse and violence has sharply increased as many are put at greater risk due to the ongoing government-issued social distancing and lockdown measures. Creating adequate domestic abuse and violence legislation could not be more pertinent than it is right now. Whilst the quick action to introduce Northern Ireland-specific legislation is to be welcomed, this legislation is now over three years old and it is essential that we learn from the lessons in other jurisdictions and ensure that the women's sector are included in the application and implementation of relevant legislation moving forward.

### **COVID-19 and Domestic Abuse:**

Refuge have reported a 25 percent increase in calls to their 24-hour national domestic abuse helpline<sup>1</sup> since the lockdown began, while hits to the national domestic abuse website increased by 150 percent during the initial stages of Covid-19 lockdown. Some further concerns highlighted by Refuge include:

- Ordinarily, the window for women to seek help is extremely limited. During periods of isolation with their perpetrators, this window narrows further,
- Isolation is often used as a tool to abuse – and while the current lockdown has the potential to exacerbate abuse – it is not the reason for it,
- Domestic abuse is a crime and is ultimately rooted in power and control. It is crucial that every woman who needs support knows where and how to access it.

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<sup>1</sup> Refuge (2020), '25 percent increase in calls to national domestic abuse helpline since lockdown measures began', (available online) <<https://www.refuge.org.uk/25-increase-in-calls-to-national-domestic-abuse-helpline-since-lockdown-measures-began/>> [Accessed 29.05.20].

## Existing Domestic Violence Statistics - Northern Ireland

The highest ever number of domestic violence crimes in Northern Ireland has been recorded by police. Between July 2018 and June 2019, there were 16,575 domestic abuse crimes recorded. It represents an increase of 10 percent on the previous 12 months and is the highest since records began in 2004/05<sup>2</sup>. In 2017, NI had the joint-highest levels of femicide in Europe<sup>3</sup>. In addition to this, the outcome rate for domestic abuse crimes has been falling over the last number of years, from 46.6 percent in 2010/11 to 26.7 percent in 2018/19; this fall is mainly seen in relation to crimes dealt with by means of charge/summons<sup>4</sup>.

In the months since lockdown began, reported domestic violence incidents have surged and three women have been murdered by their partners, this is a higher domestic violence death rate than all in of 2019. It is evident that domestic violence in Northern Ireland is rife and on the rise. Any legislation that addresses domestic abuse needs to fully fill the gaps that currently remain as a matter of urgency. This evidence submission will cover our response to the views welcomed by the justice committee, alongside our thoughts on what is missing from the bill and what needs to be included in the co-design of any miscellaneous bill to follow.

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<sup>2</sup> Niall McCracken, (2019), 'Domestic Violence: NI crime rates highest on record', *BBC News* (available online) <https://www.bbc.co.uk/news/uk-northern-ireland-49985489> [accessed 29/05/20].

<sup>3</sup> Blunt, R. (2017), 'Femicide: The murders giving Europe a wakeup call', *BBC News*, (accessed online): <<https://www.bbc.co.uk/news/world-europe-49586759>> [accessed 04.06.20].

<sup>4</sup> PSNI (2019), 'Domestic Abuse Incidents and Crimes Recorded by the Police Service in Northern Ireland 2004/5 to 2018/19: Annual Bulletin Published 08 November 2019', p4., (available online) <<https://www.psni.police.uk/globalassets/inside-the-psni/our-statistics/domestic-abuse-statistics/2018-19/domestic-abuse-incidents-and-crimes-in-northern-ireland-2004-05-to-2018-19.pdf>> [accessed 03.06.20].

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

We welcome the fast action by Minister Long to re-introduce domestic abuse legislation in Northern Ireland on 31<sup>st</sup> March 2020. However, as the proposed legislation is now over three years old, we strongly support calls made by Women's Aid Northern Ireland for the following key issues to be addressed:

- Introduction of Coercive Control and Stalking legislation
- Non-fatal and fatal strangulation legislation
- Recognition of Violence against Women and Girls and gender-based violence
- Grant of Secure tenancies in cases of domestic violence and abuse
- Review of the court systems in NI including criminal, civil and family courts
- Introduce a Domestic Abuse Commissioner
- Secure funding for specialised services and a review of tendering and procurement in relation to domestic violence and abuse services

We also note that even with the implementation of the Domestic Abuse and Family Proceedings, there are many gaps that still remain in the protections afforded to victims of domestic violence in Northern Ireland compared to those in Great Britain through the draft Westminster Domestic Abuse Bill 2019-21<sup>5</sup>. The WPG NI supports the views of Women's Aid and other organisations that the proposed Domestic Abuse Bill has the potential to create major change nationally in relation to domestic violence and abuse . This bill was introduced with the intention of creating stronger provisions for challenging domestic violence and abuse in England and Wales. In doing this, the aim of the bill is to fulfil the UK's international obligations to combat violence against women and domestic violence as a signatory of the Istanbul Convention<sup>6</sup>.

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<sup>5</sup> Draft Domestic Abuse Bill 2019-21: <https://www.gov.uk/government/collections/domestic-abuse-bill>

<sup>6</sup> Istanbul Convention: <https://www.coe.int/en/web/istanbul-convention/home?>

There are some gaps between this bill and the Northern Ireland bill, as certain protections afforded elsewhere in the UK through the bill do not apply to women in Northern Ireland.

These gaps include:

- Provide guidelines to employers on recognising the signs of abusive behaviour
- Introduction of a Domestic Abuse Commissioner (already in post for England and Wales)
- Powers to deal with domestic abuse:
  - Introduction of domestic abuse protection order
- Grant of secure tenancies in cases of domestic violence
- Safer family court and child contact system

The WPG NI supports the view of the Women’s Aid Federation Northern Ireland that ‘women experiencing domestic violence and abuse should have equal protections across the UK, their geographic location should not impact their recourse to justice<sup>7</sup>’. We ask that all elected representatives and political parties in Northern Ireland make themselves aware of the provisions in each bill to ensure women in Northern Ireland have the equivalency of services and do not have less rights than their mainland-UK counterparts.

We welcome these movements to create stronger domestic abuse bills across the UK, however, the Northern Ireland legislation should not be a diluted version of the GB bill, nor can the UK government leave Northern Ireland out of their effort to comply with the Istanbul Convention. We need the equal protection of victims and survivors across all of the UK.

## **A. Stalking Legislation**

We would take this opportunity to advocate for the introduction of stalking legislation in Northern Ireland and highlight the associated link between stalking and domestic abuse.

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<sup>7</sup> Women’s Aid Federation Northern Ireland (2020), ‘Call to Action the Domestic Abuse Bill’, (available online) < <https://www.womensaidni.org/call-to-action-the-domestic-abuse-bill/>> [accessed 10.05.20].

It is a myth that stalking only happens to well known personalities or that it is perpetrated by an obsessive person who is otherwise unknown to the victim. The reality of stalking is that it is much more likely to occur within a relationship where there is domestic abuse, a previously established relationship or be perpetrated by someone who is known to the victim. Stalking by partners or ex-partners is one of the most prevalent forms of stalking, with strong causal links between domestic abuse, coercive control and stalking. Statistics show that 80 percent of victims are women while 70 percent of perpetrators are male<sup>8</sup>. Often when victims come forward to police about stalking behaviours that they have been subjected to they are told that there is nothing that can be done, which can heighten victims' anxiety and reduce confidence in coming forward to report in the future.

Any legislation that is introduced in Northern Ireland in relation to stalking must be victim focused while considering the context of stalking and the reality that seemingly minor behaviours can be red flags. We would argue that there is merit in dealing with stalking in conjunction with coercive control legislation through this Bill given the close links between stalking and domestic abuse. We would also stress that for this legislation to be successful in transforming the lives of stalking victims, it must be followed by training across the criminal justice system and awareness raising for the wider public.

## **B. Non-Fatal and Fatal Strangulation Offence**

We would support a specific criminal offence for strangulation as part of the current review of domestic abuse legislation. Strangulation is an abhorrent act of control likely to cause serious injury or death, will be perceived by the victim as a threat to their life and is extremely predictive of future homicide. New Zealand introduced a non-fatal strangulation offence in 2018, carrying a maximum prison sentence of seven years after a report by the Law Commission concluded that 'strangulation is a common and particularly harmful form of family violence'<sup>9</sup>. Because of the seriousness of the

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<sup>8</sup> Women's Aid, 'What is Stalking?': <https://www.womensaid.org.uk/information-support/what-is-domestic-abuse/stalking/>

<sup>9</sup> Te Aka Matua o Te Ture (2019), 'New Strangulation Offence', (available online) <[6](https://www.lawcom.govt.nz/news/new-strangulation-offence#:~:text=Following%20a%20recommendation%20by%20the,of%20the%20Crimes%20Act%201961).>, [accessed 30.05.20].</a></p></div><div data-bbox=)

consequences of this type of assault and the harm done to victims we would strongly advocate for similar legislative provisions for Northern Ireland.

### **C. Recognition of Violence Against Women and Girls**

PSNI Statistics from 2019 show that during 2018/19, 69 percent of all domestic abuse crime victims were women and 31 percent were men<sup>10</sup>. The gender-neutral legislation does mirror aspects of legislation in Great Britain and we do acknowledge that men are also victims of domestic violence and any proposed legislation should protect and support all victims. However, it is worth noting that in the rest of the UK, domestic abuse legislation is accompanied by strategies to prevent violence against women and girls<sup>11</sup> and an LGBT Action Plan<sup>12</sup> which includes provisions for specific support for LGBT+ victims of domestic violence. In the absence of such strategies in Northern Ireland, and in adopting a gender-neutral approach to tackling domestic violence, it is essential that additional recognition and support is also given to those groups who are disproportionately impacted by domestic violence, including but not limited to: women and girls, LGBT+ people, disabled people, rural women and migrants.

In recognising groups at greater risk of domestic violence, we recommend that additional resourcing is allocated to ensure specific support services can be created, that educational campaigns are created that look beyond heteronormative messaging, and that through high-risk groups have support from the community organisations that support them. Further, as Northern Ireland is not included in the Westminster Domestic Abuse Bill, it is not included in the UK measures to protect and combat violence against women and girls and domestic violence. Therefore, the Justice Minister would like this Northern Ireland Specific legislation to fill the gap whereby the UK has to meet its duties and obligations of the Istanbul Convention. In order for this to be the case, a gendered definition of abuse and a recognition of gender-based violence against women and girls

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<sup>10</sup> Ibid (n4).

<sup>11</sup> Strategy to prevent violence against women and girls 2016-2020:

<https://www.gov.uk/government/publications/strategy-to-end-violence-against-women-and-girls-2016-to-2020>

<sup>12</sup> Government Equalities Office LGBT Action Plan:

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/721367/GEO-LGBT-Action-Plan.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/721367/GEO-LGBT-Action-Plan.pdf)

needs to be included in any Northern Ireland specific legislation to ensure compliance with the Istanbul Convention and CEDAW recommendations.

#### **D. Grant of Secure Tenancies in Cases of Domestic Violence and Abuse**

For many women who have left or are ready to leave domestic abuse situations housing is a major concern. Domestic abuse is a leading cause of homelessness, with one study by a homeless shelter identifying that, of their female clients, 50 percent had experienced domestic abuse<sup>13</sup>. Given that most domestic abuse victims are women and women's differential access to housing because of their differential position within the labour market<sup>14</sup>, this also amounts to a gendered issue. Making the decision to leave an abusive relationship is huge for many victims and survivors of domestic abuse, they should not be confronted with potential homelessness as a result. Survivors should not have to choose between their personal safety and making themselves and their children homeless, yet in many cases it is this decision that can be the difference in a woman leaving a relationship or staying.

It is accepted that the most dangerous time for a woman experiencing abuse is when she is making steps to or is about to leave her partner. The Femicide Census 2018 identified that 41 percent of women killed by their partner that year had separated or taken steps to separate from him<sup>15</sup>. Therefore, it is important that women have secure places to live when they have made the decision to leave. Specialised, secure, and appropriately funded refuges are key to ensuring that women have somewhere to turn. These are wrap around services that can support a woman through this time as well as give her a safe place to live. In 2018/19 654 women and 421 children stayed in Women's Aid refuges across

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<sup>13</sup> Save Lives: Ending Domestic Abuse (2018), 'Safe at Home: The Case for a Response to Domestic Abuse by Housing Provider', (available online) <<https://www.gentoogroup.com/media/1571446/2018-03-28-web-ready-safe-at-home-report.pdf>> [Accessed 03.06.20].

<sup>14</sup> Netto, Pawson and Sharp (2009), 'Preventing Homelessness due to Domestic Violence: Providing a Safe Space or Closing the Door to New Possibilities?', *Social Policy & Administration* (available online) <<http://citeseerx.ist.psu.edu/viewdoc/download?doi=10.1.1.911.4996&rep=rep1&type=pdf>> [Accessed 03.06.20].

<sup>15</sup> Femicide Census 2018 (available online) <<https://femicidescensus.org/about/>> (Accessed 03.06.20).



Northern Ireland. It is essential that these services receive secure funding that rises incrementally with the cost of living so that they may continue to support women through refuge accommodation.

The Domestic Abuse and Family Proceedings Bill makes no mention of housing provisions and thus ignores a fundamental issue confronting victims and survivors of domestic abuse. The Domestic Abuse Bill in England and Wales refers to housing and the government's responsibility to ensure that victims and survivors are not subject to homelessness when they leave abusive relationships. The DAB firstly provides ring fenced funding to local authorities who are obligated to use it to fund refuges and, secondly, the Bill provides for secure tenancies for social housing upon leaving abusive relationships. We appreciate that this lies outside the jurisdiction of the Department of Justice, but domestic abuse insects all sections of our society and thus any legislation must be cross departmental. We call for similar protections regarding housing to be afforded to victims and survivors of abuse in Northern Ireland.

Secure funding is essential to this legislation. If the Domestic Abuse and Family Proceedings Bill is to be functional it must be appropriately resourced. A period of sustained austerity has resulted in cuts across the third sector. No refuges in Northern Ireland have had an uplift to budgets for 12 years meaning that rising costs have been managed with the same money and charities have had to find additional funding to cover costs. In their concluding observations on the UK in 2019, the CEDAW Committee identified austerity cuts to funding to specialised services for women as a major concern<sup>16</sup>. These cuts cannot be allowed to happen again, particularly as we look towards another financial crisis post Covid-19. Specialised services for domestic abuse must be secured financially and any domestic abuse legislation should reflect that.

As discussed above, the Domestic Abuse Bill in England and Wales ensures that secure tenancies are protected for victims exiting abusive relationships. This is vital to ensure that women are not penalised for the abuse that is done to them and that they are not responsible for. We would call for similar protections to be afforded to victims leaving

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<sup>16</sup> CEDAW Concluding Observations (2019) CEDAW/C/GBR/CO/8

abusive relationships in Northern Ireland. We would also register concern at potential changes to social housing allocation, with the introduction of a policy that would allow the NIHE to offer private rentals on par with social housing and have these considered a reasonable offer. There are many reasons why social housing is beneficial to women who have experienced domestic abuse, not least the opportunity for longer tenancy agreements as opposed to the traditional year to year tenancies associated with private rentals. The opportunity of longer tenancies gives women and their children stability and a chance to rebuild their lives after abuse. We are concerned that private rentals will not afford women this stability. There are further concerns surrounding changes to housing allocation moving from a points-based system to a band system. We would stress the importance of ensuring that victims of domestic abuse are considered priority for rehousing.

This policy could also see changes to the amount of times a victim can refuse a “reasonable offer” of housing before they are discharged from NIHE services. We would argue that what is considered a reasonable offer by the NIHE may not be reasonable at all, particularly for people with disabilities who already face barriers to accessing services. Furthermore, changes to social housing have a disproportionate impact on women given that they are ‘overrepresented amongst social renters, largely because they are overrepresented amongst those in housing need and amongst homeless families’<sup>17</sup>. The social housing sector already understands how domestic abuse presents and how it impacts on victims who are largely women, moving away from that model will have a detrimental effect on victims and survivors of domestic abuse.

## **E. Review of the court systems in NI including criminal, civil and family courts and Aggravating Factors**

### *Review of Family Court System and Child Contact*

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<sup>17</sup> UK Women’s Budget Group, ‘Housing and Gender’ (available online) <<https://wbg.org.uk/wp-content/uploads/2017/11/housing-pre-budget-nov-2017-final.pdf>> [accessed 03.06.20].

Women's Aid NI repeatedly cites family court and child contact as an issue of concern for women and children within their services. Inadequate understanding of domestic abuse as a welfare concern continues to expose women and children to trauma and harm and lead to unsafe contact arrangements. Westminster announced a review of family courts in England and Wales in 2019 to build on the draft Domestic Abuse Bill. The review found a number of issues around how family courts operate in relation to domestic abuse, noting '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'<sup>18</sup>. It is our position that a review of family court proceedings in relation to domestic abuse is necessary in Northern Ireland and should have been addressed through the Bill.

The WPG NI supports the recommendation of our colleagues at Women's Aid NI that a review urgently takes place to improve the safety of child contact through:

- Prohibiting unsupervised child contact for a parent on bail for domestic violence and abuse, or where there are ongoing criminal proceedings.
- Child contact in cases of domestic abuse is based on an informed judgement on what is in the best interests of children, not the presumption of parental involvement.
- An independent statutory review of family courts in NI to assess how they deal with domestic abuse cases to work towards consistent outcomes across NI.

#### *Clause 8-9 – Aggravating Factors*

We welcome the inclusion of children as an aggravating factor. For too long children have been considered as passive witnesses to domestic abuse. This has never been the case. Children are victims of domestic abuse too and should be valued as such. We would like to see this extend to a full review of Family Courts to assess how children are protected and safeguarded across both legal systems. We would also call for other status groups or

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<sup>18</sup> Ministry of Justice (2019), 'Assessing Risk of Harm to Children and Parents in Private Law Children Cases' (available online): <[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)> [Accessed 01.06.20].

circumstances to be considered as aggravating factors including disability, BME women, LGBT+ people, women with NRPF.

*Clause 14 – Penalty for the offence*

We welcome the range of sentences available and the aggravating factor where there is a child present. We would note that there are no court mandate perpetrator programmes for domestic abuse in Northern Ireland. There must be effort to improve rehabilitative programmes for perpetrators of domestic abuse, a crime where there are high levels of reoffending. These programmes must be robust, effectively monitored and not simply tick box exercises.

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

We welcome this provision to ban cross examination of victims by unrepresented perpetrators in court. This practice has allowed the continued control and abuse of victims, diminished their ability to give evidence and retraumatised them for too long. However, we are concerned that this ban will only apply where there is a criminal conviction or court order in place and will be subject to the judge's discretion. We would suggest that this is where training across the whole CJS, including judges, is necessary to ensure that they are acutely aware of how domestic abuse presents and how perpetrators use court systems to their advantage. Furthermore, we call for the extension of the ban on cross examination to any proceedings in family court where allegations of domestic abuse are being considered or where the party has been found to have perpetrated or admitted to perpetrating domestic abuse.

*Clause 25* states that the DoJ will issue guidance in relation to the domestic abuse offence. We would call for clarity as to whether voluntary or statutory organisations will be involved in the drafting of this guidance.

*Clause 26* identifies that in family proceedings a person convicted, cautioned or charged with an offence may not cross-examine victims in person. This will not apply to spent convictions. Considering the reoffending patterns of perpetrators of domestic abuse, and the rate of under-reporting associated with this crime, this is deeply concerning.

## **F. Introduce a Domestic Violence Commissioner**

A Domestic Abuse Commissioner is essential to act as a mechanism of accountability for this legislation. A Commissioner's role is to scrutinise policy and practice, funding allocation and the provision of key services. To effectively implement the Domestic Abuse and Family Proceedings Bill will require huge amounts of training across the criminal justice system, a Commissioner can oversee this process and bridge any potential information gaps and inform on learning and best practice from other countries that have introduced similar legislation. The Commissioner would be able to oversee a number of key ongoing developments in domestic abuse service provision in Northern Ireland including the introductions of Domestic Homicide Reviews and the specialist domestic violence courts pilot proposed for Belfast. More so, the Commissioner could direct research and data collection on the application of the offence of coercive control to ensure that it is being applied to cases and is justiciable.

Through Covid-19 we have seen the impact of lockdown on victims of domestic abuse. Three women have been murdered by a male partner or relative since lockdown began at the end of March. In times such as this, having a designated champion to speak up on behalf of victims and survivors is essential. We have seen the positive impact that the Domestic Abuse Commissioner in England and Wales has made through this crisis. The Commissioner was able to oversee the implementation of appropriate support services for victims, challenge the government over the status of domestic abuse support workers as key workers and access emergency funding during lockdown - £76 million was allocated for specialised domestic abuse services to tackle increased demand on services during and after lockdown. At the time of writing this, no such funding has been allocated to specialised domestic abuse services in Northern Ireland; despite a £22 million Barnett consequential allocation of emergency funding for charities in Northern Ireland.

Given the broad range of gaps that remain in the legislation, and the issues we have highlighted above, there is ample evidence of the need for a Domestic Abuse Commissioner. A co-ordinated approach to implementing this legislation, training the

judicial system, identifying further gaps, adequately supporting victims and shifting the horrific culture of domestic abuse in Northern Ireland is needed. As stated, a Domestic Abuse Commissioner would be able to oversee this work, ensure the adequate implementation and roll out of any new legislation, whilst working with the third sector to identify further areas for improvement. We urge the Justice Committee to call for this to be included in the Domestic Abuse and Family Proceedings Bill.

New and existing Commissioners have been appointed across the Northern Ireland in relation to address a broad range of issues including child abuse and supporting victims of the troubles. As domestic violence levels in Northern Ireland have continued to rise, it is clear that much border work on a societal level needs to be done to shift the culture and to support victims. Domestic violence is an issue that is rooted in all aspects of our society and needs a single-focused commissioner. The UK has a duty under the Istanbul Convention to eradicate and prevent violence against women and girls and domestic violence. Currently, we are a long-way from meeting these obligations in Northern Ireland and it is unlikely that Westminster interventions will do so given the devolved nature of dealing with Domestic Violence.

Therefore, we see it as the responsibility of the Department of Justice to ensure that women and girls in Northern Ireland are adequately protected and that domestic violence is committed to the full extent of the Department's abilities. In the creation of a Domestic Abuse Commissioner, great effort beyond the creation of legislation could be made to fully prevent and combat domestic violence on a societal level. We consider the introduction of the role of an independent Domestic Abuse Commissioner the most effective model of raising awareness for domestic abuse, making recommendations for improvements where necessary and holding the government to account.

## **G. Provide Guidelines to Employers and Recognising Domestic Violence as a Workplace Issue**

In 2014, the Irish Congress of Trade Unions conducted a survey to explore the impact of domestic and sexual violence against women on the workplace<sup>19</sup>. The results were striking and proved that although this type of violence most often takes place behind closed doors, that the impact is felt throughout society, including in work. Of the nearly 1800 respondents, almost a third had experienced domestic violence with over 40 percent of those reporting that it affected their ability to get into work for reasons including financial control, threats, physical injury and restraint. Respondents also reported that the abuse continued at their workplace including being harassed through phone calls and emails, many people said that their partner physically turned up to their workplace. Disturbingly, fewer than one in three of those experiencing domestic violence discussed the violence with anyone at work. The main reasons for not disclosing were “shame” and “privacy”.

Building on this work and as part of the action plan under the Stopping Domestic and Sexual Violence and Abuse strategy, a task and finish group involving trade unions, employers and NGOs was established to draw up revised Guidelines for Employers on developing workplace policies on domestic and sexual violence. This was published in 2018. Whilst this work is encouraging and some employers are proactive at working with unions to ensure that victims of violence and abuse are supported in work, the WPG believes that additional measures are now necessary. Other areas of the UK have introduced legislation which places a duty on Government and Local Government to develop and implement strategies and action plans.

In 2015, the Welsh Government introduced the Violence against Women, Domestic Abuse and Sexual Violence (Wales) Act 2015. This was a groundbreaking piece of legislation, which built on the progress made since the publication in 2010 of The Right to be Safe strategy and places a strategic public sector duty and statutory focus on the key issues as

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<sup>19</sup> ICTU (2014), ‘Domestic Violence and the Workplace’ (available online) <[https://www.ictuni.org/download/pdf/final\\_ictu\\_domestic\\_violencesurveyresults.pdf](https://www.ictuni.org/download/pdf/final_ictu_domestic_violencesurveyresults.pdf)> [Accessed 02.06.20].

well as proactive powers. Internationally, there is also much to learn. Unions in Australia have successfully campaigned on domestic violence as a workplace issue and have negotiated 15-20 days of paid leave in cases of domestic violence across the whole of the public sector. The ability to take time off work without facing disciplinary action or losing out on pay is crucial for survivors of domestic violence who are trying to flee an abusive relationship. Finding a new home, getting a place at a refuge, securing school places for kids, seeking legal advice, opening a new bank account and seeking medical help and counselling all take time. Good workplace policies on domestic violence often offer advances on pay to help survivors of domestic violence get through a period when they may have no access to cash or their own money is being withheld by an abusive partner.

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

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

- (a) Places a duty on public sector bodies to prepare and implement local strategies;
- (b) Requires the development of a National Training Framework;
- (c) Places a duty to publish National indicators that may be applied for the purpose of measuring progress towards the achievement of the Act;
- (d) Gives the power to issue statutory guidance including in relation to workplace policies to promote the well-being of employees of relevant authorities who may be affected by gender-based violence, domestic abuse and sexual violence; training for the members and staff of a relevant authority; the sharing of information between relevant authorities or by a relevant authority with another person; co-operation between relevant authorities or between a relevant authority and other persons.



We would also suggest that demonstrating leadership on this issue is of vital importance and that the appointment of a Domestic Abuse Commissioner, similar to England and Wales, with the appropriate resources, to both advise and challenge the Government would be of extreme importance. Finally, we would urge the Department to consider the introduction of a period of paid leave for all workers who have been victims of domestic or sexual violence and abuse.

#### **H. Powers to Deal with Domestic Abuse: Introduction of Domestic Abuse Protection Orders and Domestic Abuse Protection Notices**

Another significant gap in the Domestic Abuse and Family Proceedings Bill is the failure to include **Domestic Abuse Protection Notices** (DAPN) and **Domestic Abuse Protection Orders** (DBPO). The purpose of introducing DAPNs and DAPOs is to provide the police with a mechanism to protect victims of domestic abuse for a short period in order to provide the victim with ‘breathing space’ and to allow referrals to support services without interference from the perpetrator. They are designed to address the problem of persistent offenders where the victim is sometimes unwilling to support a prosecution making it unlikely that they would largely be used in cases where a charge was not possible.

The WPG NI would support the introduction of the use of DAPNs and DAPOs for this stated purpose. In doing so it must be made clear in all guidance and training that they are not an alternative to prosecution. If the charging standard is met, then perpetrators should be charged with a criminal offence. Wrap around support for the survivor is crucial in the immediate aftermath of a DAPN being issued. This should come from specialist domestic violence support services.

The court fees the police pay to apply for a DAPO should be abolished. We are aware by both survivors and evidence from a pilot scheme conducted in England that the cost of making an application to the magistrates’ court is a factor prohibiting their use. Superintendents should not have their budgets at the back of their minds when

considering whether a case is suitable for a DAPO to be issued. It should be a criminal offence to breach a DAPO.

## **2. The definition of the offence and the definition of abusive behaviour**

### *Gendered Definition Needed:*

As stated in the response to question 1, the WPG welcomes the definition as it mirrors legislation in Great Britain. However, it is worth noting that in the rest of the UK, domestic abuse legislation is accompanied by strategies to prevent violence against women and girls<sup>20</sup> and an LGBT Action Plan<sup>21</sup> which includes provisions for specific support for LGBT+ victims of domestic violence. In the absence of such strategies in Northern Ireland, and in adopting a gender-neutral approach to tackling domestic violence, it is essential that additional recognition and support is also given to those groups who are disproportionately impacted by domestic violence, including but not limited to: women and girls, LGBT+ people, disabled people, rural women and migrants. In recognising groups at greater risk of domestic violence, we recommend that additional resourcing is allocated to ensure specific support services can be created, that educational campaigns are created that look beyond heteronormative messaging, and that through from high-risk groups have support from the community organisations that support them.

### *Raising Awareness of Domestic Abuse:*

We urge the use of a public awareness campaign around this offence in order to ensure that the public are aware of what abusive behaviour really is and means.

In line with the recommendations of the Gillen Review which urged the DOJ to commission a publicly funded public awareness campaign around rape myths in order to improve the legal outcomes in such cases, we note that a change in law must sit alongside

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<sup>20</sup> Strategy to prevent violence against women and girls 2016-2020:

<https://www.gov.uk/government/publications/strategy-to-end-violence-against-women-and-girls-2016-to-2020>

<sup>21</sup> Government Equalities Office LGBT Action Plan:

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/721367/GEO-LGBT-Action-Plan.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/721367/GEO-LGBT-Action-Plan.pdf)

a change in public perceptions and cultural awareness of the issues. Indeed, in the case of the Gillen Review, the idea was not just to inform people of the laws as they stand, but to actively seek to dispel the misconceptions that presently exist, specifically because these misconceptions prevent people from reporting, prevent perpetrators from grasping the reality of what they have done, and especially prevent jurors from discharging their duties adequately when they have internalised rape myths. Evidence shows us that those who internalise rape myths are liable to pass them on to their children and families, and this applies also to myths around domestic abuse.<sup>22</sup> The Report specifies the need to “conduct a public awareness campaign with an evidence based narrative through press, television, radio, outdoor and internet advertising specifically on the myths surrounding serious sexual offences.”<sup>23</sup>

The same is true of domestic abuse. It is vital that we ensure that the public are aware of what abuse is, when they are victims of abuse, when they are engaging in abusive behaviour themselves, and how the law sees these behaviours. Such an awareness campaign must be wide ranging, publicly funded, and cover schools and other educational establishments as well as less formal educational settings in the public sphere, including all of those listed by Judge Gillen as appropriate sites for such a campaign.

### *LGBT+ Relationships:*

Often public awareness campaigns focus on a woman victim and man perpetrator in a heterosexual relationship. This is a barrier for LGBT+ people not only reporting domestic abuse, but also from even recognising that what they are experiencing is domestic abuse. There are many myths that need to be addressed, such as where the victim and perpetrator are the same gender it is a ‘fair fight’. Public awareness campaigns, legislation, and awareness training for statutory, community and voluntary sector organisations must

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<sup>22</sup> Research Gate (2011), ‘Rape Myths: History, Individual and Institutional-Level Presence, and Implications for Change’, *Feminist Forum*, (available online) <[https://www.researchgate.net/profile/Jessica\\_Turchik/publication/226563223\\_Rape\\_Myths\\_History\\_Individual\\_and\\_Institutional-Level\\_Presence\\_and\\_Implications\\_for\\_Change/links/0912f513cecb164264000000/Rape-Myths-History-Individual-and-Institutional-Level-Presence-and-Implications-for-Change.pdf](https://www.researchgate.net/profile/Jessica_Turchik/publication/226563223_Rape_Myths_History_Individual_and_Institutional-Level_Presence_and_Implications_for_Change/links/0912f513cecb164264000000/Rape-Myths-History-Individual-and-Institutional-Level-Presence-and-Implications-for-Change.pdf)> [Accessed 01.06.20].

<sup>23</sup>The Gillen Report (2019) <<https://www.justice-ni.gov.uk/sites/default/files/publications/justice/gillen-report-may-2019.pdf>> p.209

recognise that there are multiple circumstances domestic abuse occurs in beyond a heterosexual adult relationship.

We welcome the gender neutral language in the legislation in relation to victim and perpetrator, we again acknowledge that the majority of victims and survivors of domestic abuse are women. Strategies can be used to target support at particular groups, for example a Violence Against Women Strategy, and A Sexual Orientation Strategy. A Domestic Violence Commissioner would be useful to ensure the different needs of different groups are raised. The use of gendered pronouns in describing victims and perpetrators risks alienating LGBT+ people and can lead to an assumption that they are not included in services, using terms such as victim and perpetrator avoids this. In addition specifically identifying LGBT+ people in public awareness campaigns means LGBT+ people will be more likely to engage with services<sup>24</sup>.

While some domestic abuse experience in same sex relationships is similar to heterosexual Stonewall research indicates that relationships, there are also particular experiences specific to the LGBT+ community. Stonewall research indicates that ‘Lesbian and bisexual women had experienced domestic abuse from another woman said that the abuse was emotional and physical. One in five of all lesbian and bisexual women said that they had been repeatedly belittled and “made to feel worthless”, and the same number said that they had been stopped from seeing friends and relatives. One in five have also been pushed or slapped by another woman and kicked and bitten. Over half of those who have experienced domestic abuse from a female partner had experienced some form of physical violence. One in fourteen say they had been forced to have unwanted sex’<sup>25</sup>.

LGBT+ victims may also experience unique forms of coercive control targeted at their sexual orientation or gender identity. For instance, the threat of ‘outing’ their sexual orientation or gender identity to family or networks or those not ‘out’ to wider networks. Further research by Stonewall found that over half (51 percent) of transgender people who

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<sup>24</sup> Slator, A., (2018) ‘Making Domestic Abuse Services Accessible To LGBT+ People’, *Safelives*. (available online) <[https://safelives.org.uk/practice\\_blog/making-domestic-abuse-services-accessible-lgbt-people](https://safelives.org.uk/practice_blog/making-domestic-abuse-services-accessible-lgbt-people)> [Accessed 3 June 2020].

<sup>25</sup> Stonewall.org.uk. 2008. *Prescription For Change*. [available online] <[https://www.stonewall.org.uk/system/files/Prescription\\_for\\_Change\\_2008\\_.pdf](https://www.stonewall.org.uk/system/files/Prescription_for_Change_2008_.pdf)> [Accessed 03.06.20].

had experienced domestic abuse in the last year reported that their partner had ridiculed their gender identity<sup>26</sup>.

### **3. Any identified issues regarding the investigation and prosecution of the new offence**

In terms of securing convictions, more rigorous and innovative evidence collection approaches to support successful prosecutions must be considered. These include:

- A. Use of the Domestic Violence register showing the number of times police have been called to the house, to build a picture of the frequency and nature of abuse (in line with CEDAW Recommendation 35 on gender-based violence);
- B. Use of PSNI intelligence and evidence gathered from incidents to build a picture of coercive control as a course of conduct;
- C. Use of body worn camera evidence from the scene on each occasion to effectively demonstrate the impact and seriousness of abuse. In parts of England where body worn cameras have been rolled out, there is a marked increase in the severity of sentences for domestic violence related crimes.

We believe that there is a particular need to expand Independent Domestic Violence Advisors (IDVAs) services across the country, since securing prosecutions will depend heavily on expert IDVA involvement. IDVAs have been shown to be a cost-effective way of supporting high-risk women and children, and improving local police responses to domestic violence. WPG NI recommends that IDVA posts should be made mandatory in police stations across the country, and that Children's IDVAs should also be seriously considered.

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<sup>26</sup> Safelives (2018). *Free to be safe : LGBT+ people experiencing domestic abuse*. (available online) <<https://safelives.org.uk/sites/default/files/resources/Free%20to%20be%20safe%20web.pdf>> [Accessed 03.06.20].

### *Further Comments Regarding Reporting and Investigating:*

Urgent work is needed to ensure there is effective reporting and monitoring of all section 75 groups by the PSNI. This will ensure the diverse needs of victims from various minority groups can be met. In particular, the needs of LGBT+ victims and survivors of domestic abuse could be highlighted by a domestic abuse commissioner, along with the needs of other marginalised groups.

Research by SafeLives in Great Britain shows just 2.5 percent of people accessing support from Insights domestic abuse services identified as LGBT+ . In the 12 months to the end of March 2018, only 1.2 percent of cases discussed at the Multi Agency Risk Assessment Conference (MARAC) were noted to involve LGBT+ victims/survivors. Over a quarter of MARAC cases (26 percent) recorded no LGBT+ victims/survivors at all during this period<sup>27</sup>.

However, we expect that these do not accurately reflect the levels of domestic violence in LGBT+ relationships. Research in England has found that underreporting of domestic abuse in the LGBT+ community is between 60 and 80 percent, similar to overall national underreporting of domestic abuse of 79 percent<sup>28</sup>. Stonewall reports that ‘One in four of all lesbian and bisexual women have experienced domestic violence in a relationship. Two thirds of those say the perpetrator was a woman and a third a man. One in four of the general population of women has experienced domestic violence’<sup>29</sup>. In 2017, Greater Manchester Police began recording LGBT+ domestic abuse figures, and in the first year recorded nearly 800 instances. They note this is 2 percent of all reports they received and that the issue of LGBT+ domestic abuse in particular is still under reported.

Even when LGBT+ people do report domestic violence, there is a lack of adequate recording, often making the LGBT+ community a hidden population in this area. We recommend that all section 75 groups should be monitored inclusive of sexual orientation

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<sup>27</sup> Ibid, (n26).

<sup>28</sup> KSS CRC. 2020. *Research: Domestic Abuse In LGBT Communities - KSS CRC*. (available online): <<https://www.ksscrc.co.uk/2020/04/30/research-domestic-abuse-in-lgbt-communities/>> [Accessed 03.06.20].

<sup>29</sup> Ibid, (n25).

and gender identity. If monitoring sexual orientation and gender identity is standard procedure, this will remove the onus on the individual to ‘come out’ in an environment they are not sure will be welcoming. Everyone has a sexual orientation and gender identity; we need to stop othering those who are not heterosexual and/or cis gender.

There must be mandatory training on best practice such as using gender neutral pronouns and sexual orientation awareness. There should be LGBT+ Domestic Violence Liaison Police Officers and specialist Independent Domestic Violence Advocates. Policies and procedures should be co-designed with representatives of section 75 groups as specialists and experts to ensure there are no oversights – for example, even when recorded, bisexual people are often mis-recorded based on the gender of their current partner.

#### **4. Whether the ‘reasonable’ defence included in the legislation is framed appropriately and the intent of when it would apply is clear**

The WPG NI supports the complete removal of the caveat of “reasonable defence”, as we are deeply concerned with such measures being used as a justification of abuse by defendants. In creating such a provision, we are concerned that perpetrators can justify their abusive behaviour through portraying victims of abuse as mentally unstable, unable to make decisions for themselves, having a history of addiction that can be used against them and so on. Further, victims may suffer from mental health issues caused by abuse and disabled women, who are already more likely to be victims of domestic abuse, could find themselves being disproportionately impacted by the implications of a “reasonable defence”.

Further, we support the comments made by Rachel Woods, MLA:

*“Clause 12 deals with the intention and reasonableness defence. My main concern is around those who are in care or in caring relationships, and those who have disabilities with their physical health and mental health. The concern has also been raised by*

*Eddie Lynch, the Commissioner for Older People, who has noted the phrasing in clause 12(2)(a) that the evidence: "is enough to raise an issue as to whether the course of behaviour is as described in subsection (1)". The phrase "enough to raise an issue" seems sufficiently loose as to conceivably allow for victim-blaming as a means of defence. It cannot be the case that the dominant person in a relationship needs only raise a query over the victim's behaviour in order to rationalise abuse, as such formulation may allow. I support calls for the inclusion of a safeguard in the legislation to protect family members.*

*However, as I raised in Committee, could person A, who is a carer and related to person B, be found to be acting abusively but be excused on the grounds of reasonableness? I do not think that it is specific enough to protect elderly or vulnerable people. We obviously need to make sure that it is, and I look forward to engaging with the Commissioner for Older People on that.<sup>30</sup>*

We do acknowledge that “reasonableness” or “reasonable belief” is a legal defense, at present, in a wide variety of alleged crimes. In rape cases in Northern Ireland, even if the prosecution can prove that the complainant did not consent to sex, it remains a defense for the accused to claim that they “reasonably believed” consent existed.<sup>31</sup> This remains a claim that is difficult to contest in court, and as such the conviction rate for these crimes remains extremely low and the prosecution rate is falling. Noting that this defense exists for this offense already and that sexual abuse and rape are already commonly acknowledged aspects of many abusive relationships, to further add a “reasonableness” clause seems to open the door to further problems.

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<sup>30</sup> Rachel Woods MLA, Green Party NI, Plenary, (available online): <http://aims.niassembly.gov.uk/officialreport/report.aspx?&eveDate=2020/04/28&docID=300528#2775521> [accessed 03.06.20].

<sup>31</sup> <http://www.legislation.gov.uk/nisi/2008/1769/article/5>



We are concerned that this clause could allow for a defense in domestic abuse cases, where the accused can claim that they reasonably believed that the complainant was behaving unreasonably or that they were somehow incapacitated in terms of their decision-making. Claims like these are equally difficult to disprove, and could set a legal precedent that can be very difficult to disentangle.

Further, there is a risk that this can be turned in the other direction - that defendants could argue that the behaviour or status of the complainant or victim caused them to become temporarily unreasonable. A significant number of states worldwide allow for a defense that relies on a claim that the defendant was somehow “panicked” by the LGBTQ+ identity of the victim, and their behaviour is explained by this panic. Colloquially known as the “gay panic” or “trans panic” defense, although campaigners prefer the term “LGBTQ+ panic”, and formally known in the UK as the “Portsmouth Defense” or the “Guardsmen’s Defense”, this approach is no longer used and considered obsolete, although it is not formally banned.

In the United States, several states allow for the use of this defense and its use has been connected both to acquittals for crimes as serious as murder, and to reduced charges and/or sentences. According to “the fact that the courts have, in the past, accepted the explanation that just the fact that a person is gay or trans is sufficient reason to provoke a murderous attack would appear to be tantamount to suggesting that gay or trans people are regarded as less worthy and their lives less important.<sup>32</sup>” In the case of domestic abuse, we should be careful not to introduce a clause that can be used to argue that the status of the victim in terms of the LGBTQ+ identity or indeed any minority status might introduce reasonable grounds for crimes committed against them.

As stated above, the WPG believes the most concerning aspect of Clause 12 is that it is open to manipulation by abusers. In particular, the WPG would like to echo the comments made in the Scottish Government’s Criminal Offence of Domestic Abuse Analysis of

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<sup>32</sup>Gay Lawyers (2018), ‘Gay and Trans Panic Defence’, (available online):<<https://www.gaylawyers.co.uk/site/news/gay-and-trans-panic-defence-prohibition-act-2018>>, [Accessed 03.06.20].

Consultation Responses<sup>33</sup>. Responses suggested that victims most likely to be at risk of the “reasonable defence” being manipulated include:

- *Women with disabilities, where the abuser is the carer.*
- *Women with health problems, including those with mental health conditions.*
- *Women with substance abuse problems.*

Responses to this consultation also raised the types of behaviour which the defence could be used to justify. These include:

- *Withholding or controlling access to medication or health services.*
- *Denying access to support services, for example by preventing a woman attending appointments.*

The WPG NI shares the concerns mentioned above. In particular, there is a risk of re-traumatising the victim through clause 12 of the Northern Ireland Domestic Abuse and Family Proceedings Bill. This would involve the disclosure of private, sensitive information as evidence in court. The disclosure of this evidence could be used to discredit the victim/contribute to the re-victimisation of the victim. When looking at legislation in Scotland, England and Wales, the WPG NI notes the following:

In the Domestic Abuse (Scotland) Act 2018<sup>34</sup>, defence on the grounds of reasonableness may apply where the accused acted in order to protect the household finances where their partner is suffering from a gambling addiction, or to prevent their partner from

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<sup>33</sup> Scottish Government (2016), ‘Criminal Offence of Domestic Abuse Analysis of Consultation Responses’, (available online): <https://www.gov.scot/publications/criminal-offence-domestic-abuse-analysis-consultation-responses/pages/3/> [Accessed 02.06.20].

<sup>34</sup> Domestic Abuse (Scotland) 2018: <http://www.legislation.gov.uk/asp/2018/5/notes>

associating with certain persons or frequenting certain places if they are recovering from alcohol or drug addiction, or to restrict the freedom of movement of a partner who is suffering from dementia. Under the Serious Crime Act 2015 in England and Wales, Controlling or Coercive Behaviour in an Intimate or Family Relationship Statutory Guidance Framework, subsections (8) to (10) of Section 76 of the Act<sup>35</sup>:

*‘Provide for a defence where the suspect or defendant believes he or she was acting in the best interests of the victim and can show that in the particular circumstances their behaviour was objectively reasonable’.*

Significantly, the above defence is not available to those who have caused another person to fear that violence could be used against them. The WPG NI is opposed to the inclusion of a “reasonable defence” the Domestic Abuse and Family Proceedings Bill for the many reasons outlined in this section. However, in the alternative, if the defence is allowed, safeguards should be introduced to ensure that it is not used as a mechanism to further abuse victims similar to the measure above.

The Scottish Government’s Consultation response also highlighted that there were more appropriate ways to safeguard against the issues identified rather than a “reasonableness defence”

*If someone's defence is that they were seeking to protect themselves or their partner or ex-partner from harm, then it is likely that the victim would be deemed an adult in need of support and protection under the Adult Support and Protection (Scotland) Act 2007. Given this, it was suggested that the test would be one of adult with capacity, rather than a defence, and that the procurator fiscal should need to take capacity into account before prosecuting.<sup>36</sup>*

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<sup>35</sup> Home Office: Controlling or Coercive Behaviour in an Intimate or Family Relationship Statutory Guidance Framework - Serious Crime Act 2015 England and Wales:  
[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/482528/Controlling\\_or\\_coercive\\_behaviour\\_-\\_statutory\\_guidance.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/482528/Controlling_or_coercive_behaviour_-_statutory_guidance.pdf)

<sup>36</sup><https://www.gov.scot/publications/criminal-offence-domestic-abuse-analysis-consultation-responses/pages/5/>

We agree that many of the justifications put forth in favour of the presence of the “reasonableness defence” in this bill revolve around the capacity of the complainant (and the Defendant’s behaviour in light of the potential diminished capacity). Therefore, it would be more appropriate for these issues to be handled as a test of capacity rather than as a defence. For all of the reasons identified in this section the WPG NI believes the risks of manipulation of the “reasonable defence” outweigh the benefits of having this clause.

## **5. Whether the penalties provided for in the Bill are appropriate and adequate**

### *Recidivism:*

The WPG NI recognises that there are legitimate concerns about the usefulness of a prison sentence in terms of the rehabilitation of offenders. Recidivism is a real problem with these kinds of offences, because they are driven by underlying attitudes rather than by circumstances. Indeed there are legitimate concerns that prison sentences which involve offenders being in close contact with other domestic violence offenders may worsen the underlying attitudes and further entrench harmful views. Despite this, in the current penal system, we need to take a balanced approach that considers what prison sentences communicate to the public, as well as to the offender in a given case.

### *Changing the Culture - Intolerance for Domestic Violence:*

Short prison sentences, and indeed decisions by PPS to refer serious cases to lower courts with limitations on the severity of sentences that they can impose - communicate something to the public regarding the severity of the offence. This is especially relevant when we see these cases in the context of how crimes such as drug possession are sentenced, where we see a large disparity in sentencing, it communicates a great deal about how our society quantifies the harm done to victims and survivors. We need to change the culture of how domestic violence and abuse is treated in Northern Ireland and a hefty sentence for domestic abuse is a means of highlighting the gravity of domestic abuse and the intolerance for it in our society.

### *Rehabilitation:*

It is regrettable that we have a system that does not prioritise true rehabilitation, but alternatives within the current system are not feasible. In the case of the often suggested approach of restorative justice, there are serious concerns as it applies to the crime of domestic abuse. Restorative justice, even if victim-led, has to be mindful of power disparities between participants, and in the case of a victim and abuser, power resides with the abuser by the nature of the offence. It is widely accepted that psychological abuse is routine in these cases and it damages a victim's self-esteem to such a degree that they regularly need several abortive attempts to leave before they have the necessary resources to do so. In light of this knowledge, it is important that we remember that restorative practices may be initiated by a victim who simply wants the legal trouble to "go away" and the relationship to resume. Further, power-dynamics must be acknowledged and many victims may feel pressured to undergo restorative justice practices by their abusers. The WPG is mindful also that survivors should not be belittled and it remains necessary for a very robust system of safeguards to be in place to ensure that this cannot be the case<sup>37</sup>.

### *Mandatory Sentencing:*

For the reasons highlighted above, the WPG NI believes that mandatory sentences for guilty pleas and when found guilty deserve serious consideration, in the absence of a better way to adequately capture the seriousness of the offence and the need for thorough rehabilitation. This is of particular importance given the falling levels of prosecutions that have taken place in Northern Ireland despite drastically increasing levels of domestic violence<sup>38</sup>.

### *Sentencing Guidelines:*

Sentencing guidelines for domestic abuse cases should be developed to support and encourage consistency across courts. This is important both at the symbolic and practical

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<sup>37</sup> Liebmann, M. and Wootton, L. (2010), 'Restorative Justice and Domestic Violence/Abuse', HMP Cardiff, (available online), <<https://restorativejustice.org.uk/sites/default/files/resources/files/Restorative%20Justice%20and%20Domestic%20Violence%20and%20Abuse.pdf>> [Accessed 04.06.20].

<sup>38</sup> Ibid, (n4).

level of the legislation, to reassure victims that cases are treated on an equitable basis across Northern Ireland and to provide clarity for the judiciary on how provisions in this clause are intended to operate. None of this takes away from the autonomy of an individual judge; rather, sentencing guidelines provide a framework within which autonomous and professional judgement can be most effectively employed.

In addition, with the introduction of the recognition of coercive control as domestic abuse, it is absolutely imperative that clear guidelines are created in order to not create a “hierarchy of abuse”. Evidence from England and Wales highlighted that the majority of coercive control cases were dropped without a charge<sup>39</sup>. Data obtained by the BBC from 33 police forces in England and Wales, for January 2016 to July 2018, showed that there were 7,034 arrests for coercive control, but only 1,157 cases ended with someone being charged as 4,837 cases were dropped by police or prosecutors.

Women’s Aid highlighted that:

*An Analysis of Merseyside Police domestic abuse data found that 95 percent of coercive control victims were women and 74 percent of perpetrators were men. 76 percent of coercive control cases happened within an intimate partner context. The study found that common abusive behaviours used in coercive control included “...use of technology (such as phone trackers, controlling social media usage, barrage of text messages or monitoring phone usage), sexual coercion, monitoring behaviours, isolation, threats, financial abuse, deprivation (depriving access to support) and physical violence (63% of coercive control cases featured reports of physical violence)” (Barlow et al, 2018)<sup>40</sup>.*

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<sup>39</sup> Cowling, P. (2018), ‘Domestic Abuse: Majority of Coercive Control Cases Dropped’, *BBC News*, (available online): <https://www.bbc.co.uk/news/uk-46429520> [accessed 04.06.20].

<sup>40</sup> Women’s Aid (2017), ‘The Nature and Impact of Domestic Abuse’, (available online): <https://www.womensaid.org.uk/information-support/what-is-domestic-abuse/the-nature-and-impact-of-domestic-abuse/#:~:text=Analysis%20of%20Merseyside%20Police%20domestic,used%20in%20coercive%20control%20included%20%E2%80%9C%E2%80%A6> [Accessed 04.06.20]; Barlow, C., Walklate, S., Johnson, K., Humphreys, L. and Kirby, S. (2018) Police responses to coercive control. Published online: N8 Policing Research Partnership (156 of the cases studies were listed as S.76 coercive control offences, the data studied were from January 2016-June 2017.)

It is for the above reason that the Women's Policy Group NI believes that sentencing guidelines, alongside judicial training in line with CEDAW recommendations to acknowledge the nature of gender-based violence, are necessary for the operationalisation of coercive control sentencing.

## **6. Any other legislative or non-legislative approaches to tackle domestic abuse not currently in place that should be taken forward either in this Bill or in another piece of legislation or by other means**

A significant proportion of the evidence presented in this submission involves a range of legislative and non-legislative approaches that the WPG NI believes is necessary to tackle domestic abuse in Northern Ireland. A summary of these include:

- The need to remove Clause 12 'reasonable defence',
- Introduction of Stalking legislation,
- Introduction of non-fatal and fatal strangulation legislation,
- Specific recognition of Violence against Women and Girls and gender-based violence,
- Grant of Secure tenancies in cases of domestic violence and abuse,
- Review of the court systems in NI including criminal, civil and family courts,
- Introduction of a Domestic Abuse Commissioner,
- Secure funding for specialised services and a review of tendering and procurement in relation to domestic violence and abuse services,
- Provide guidelines to employers on recognising the signs of abusive behaviour,
- Introduction of paid Domestic Violence Leave,
- Powers to deal with domestic abuse:
  - Introduction of domestic abuse protection orders,
  - Introduction of domestic abuse protection notices,

- Safer family court and child contact system
- Tackling heteronormative assumptions and increasing awareness of domestic violence in the context of LGBT+ relationships,
- Providing refuge for LGBT+ people,
- Robust recording of section 75 group victims and providing resources for specific support for each group,
- Wider education campaign and significant resourcing needed,
- Recognition of disproportionate impact on rural women, areas of paramilitary control, migrant women, LGBT+ groups, disabled people etc.,
- Creation of domestic violence register to track evidence of abuse in different areas,
- Addressing re-offending – highlighting the lack of a framework of prevention, rehabilitation and restorative justice in NI,
- Guidelines for sentencing for coercive control,

In addition to the above, the WPG NI calls for:

- **Guidelines for measuring non-physical harm**

In relation to the impact of non-physical harm on victims, guidelines are necessary on how this may be measured. If measuring non-physical harm includes a recognition of physiological harm, consideration needs to be given on obtaining medical evidence, ensuring the cost of gaining this is not placed on the victim, and that the impact of psychological harm is taken as seriously as physical harm.

- **Ensuring victim statements cannot be used against victims by prosecutors**

Victims need to be made aware that they can write Victim Impact Statements. With this, safeguarding measures need to be put in place to ensure the PPS cannot subpoena these to be used by the defence against the victim in court. Victim Impact Statements are crucial, but they cannot be weaponised against victims.



- **Creating secure tenancies and recognising differing needs of minority groups for example disabled women, trans communities, rural women, migrant women**

In the creation of secure tenancies, the differing needs of minority groups need to be taken into account. For instance, the access poverty that may be enhanced further when rehoming women in rural communities; the need for accessible housing for disabled women; the need for safe, secure housing for members of the LGBT+ communities who may be put at increased risk when placed in shared housing.

- **Guarantees that women with uncertain immigration status should be able to seek justice without their cases being reported to the Home Office**

Women with uncertain immigration status may fear coming forward to report abuse. The WPG NI suggests that the Department of Justice should introduce a ban on information sharing with the Home Office into the Domestic Abuse and Family Proceedings Bill and launch an information campaign that makes people aware of this. Additionally, migrant women who are being abused may also face hardship if they leave their abuser due to problems accessing welfare and housing. Whilst a significant ruling recently declared ‘No Recourse to Public Funds’ unlawful<sup>41</sup>, the policy still remains intact and will likely still negatively impact many migrant women. Their abuser could easily use this to keep them trapped. There should be some sort of safety net in place.

- **Addressing Bail Conditions vs. Non-Molestation Orders**

The WPG NI notes that at present, a non-molestation order cannot be granted if the provisions that would be included in this are outlined in bail conditions. We would like to

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<sup>41</sup> Spenser, M. (2020), “The Law of Humanity”: Home Office No Recourse to Public Funds policy ruled unlawful’, *UK Human Rights Blog*, (available online): <<https://ukhumanrightsblog.com/2020/06/03/the-law-of-humanity-home-office-no-recourse-to-public-funds-policy-ruled-unlawful/>>, [Accessed 03.06.20].

address the short-term nature of bail conditions, and that greater, long-term protections for victims is needed.

- **Mandatory Training and Codes of Practice**

The WPG NI believe that for the Domestic Abuse and Family Proceedings Bill to be fully operational, wide-spread, mandatory training should be implemented for the PSNI on domestic abuse. In addition, a Code of Practice, that is in line with international best practice and compliant with both CEDAW recommendations and the Istanbul Convention, should be created by the Department of Justice. This will be for Judges and should be developed alongside sentencing guidelines and the bill.

- **Children and Domestic Violence**

We defer to our colleagues in the children’s sector to raise concerns about the ability of the Domestic abuse and Family Proceedings Bill to address the impact of domestic violence on children. In particular, we defer to the evidence submissions from the Children’s Law Centre, Barnardo’s and NIACRO in raising their expert views on the impact of this bill on children. In particular, the WPG NI would like to reiterate concerns from the Children’s Law Centre relating to the ‘No Exceptions Principle’ relating to children being protected from violence in the home. There should not be any exemptions in relation to the protections provided in the bill in accordance with the UN Committee on the Rights of the Child’s General Comment No. 13<sup>42</sup>:

The UN Committee on the Rights of the Child’s General Comment No 13: The right of the child to freedom from all forms of violence<sup>9</sup> states that there should be no exceptions to the right of the child to freedom from all forms of violence:

*“The Committee has consistently maintained the position that all forms of violence against children, however light, are unacceptable.*

*“All forms of physical or mental violence” does not leave room for any*

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<sup>42</sup> UN Committee on the Rights of the Child (CRC), *General comment No. 13 (2011): The right of the child to freedom from all forms of violence*, 18 April 2011, CRC/C/GC/13, available at: <https://www.refworld.org/docid/4e6da4922.html> [accessed 04.06.20]

*level of legalized violence against children. Frequency, severity of harm and intent to harm are not prerequisites for the definitions of violence. States parties may refer to such factors in intervention strategies in order to allow proportional responses in the best interests of the child, but definitions must in no way erode the child's absolute right to human dignity and physical and psychological integrity by describing some forms of violence as legally and/or socially acceptable.<sup>43</sup>*

In addition, General Comment No 13 also states that State parties that have not already done so must:

*“Review and amend domestic legislation in line with article 19 and its implementation within the holistic framework of the Convention, establishing a comprehensive policy on child rights and ensuring absolute prohibition of all forms of violence against children in all settings and effective and appropriate sanctions against perpetrators.<sup>44</sup>”*

In line with our colleagues in the Children's Law Centre, the WPG NI would like to highlight the necessity for the Domestic Abuse and Family Proceedings Bill to be compliant with international human rights standards as outlined above. This includes aggravation where the victim is under 19, aggravation where a child is involved and the overriding principle that there should be no exceptions to the right of the child to freedom from all forms of violence.

- **Creating an inter-departmental approach of co-design with the third sector**

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<sup>43</sup> CRC/C/GC/13 Para 17

<sup>44</sup> CRC/C/GC/13 Para 41

The WPG NI calls for a cross-departmental approach to implementing this legislation, as certain aspects, such as refuge, secure tenancies, trauma support, educational programmes, rural support etc. will fall under the remit of other Ministers and NICS departments. All departments must work effectively together to avoid taking a siloed approach. Detailed information must also be outlined on the resourcing available to the PSNI, social services, legal professional, PPS etc. to ensure adequate implementation of the legislation. The WPG NI also calls for the full involvement of the women's sector, particularly in the drafting and implementation of any future Miscellaneous Bill to address issues not covered in the above legislation.

In order to make domestic violence legislation operational and reflective of the needs and realities of women in Northern Ireland, full consultation and communication with the sector is essential. This includes, but is not limited to, co-design with the women's. LGBT+, migrant, rural, disability, children's, human rights and trade union sectors. The WPG NI is a group with membership that represents a wide range of the women's sector alongside the LGBT+ sector, human rights organisation, trade unions and NGOs. We look forward to working with public representatives, department officials and ministers in the coming months on both the above legislation and any related legislation to follow.

**Closing remarks:**

The Women's Policy Group NI would welcome the opportunity to present evidence directly to the Justice Committee on the content included in this submission. For any questions or queries regarding this submission, or to arrange the presentation of this evidence, please contact Rachel Powell, Women's Sector Lobbyist, Women's Resource and Development Agency

**ENDS**

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