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**FROM: TIM LOGAN**

**DATE: 26 JUNE 2020**

**TO: CHRISTINE DARRAH**

**UPDATE TO THE JUSTICE COMMITTEE ON THE DOMESTIC ABUSE AND FAMILY PROCEEDINGS BILL**

**SUMMARY**

**Business Area:** Safer Communities – Community Safety Division

**Issue:** Briefing to update Justice Committee Members on developments on:

- (i) a number of issues associated with the Domestic Abuse and Family Proceedings Bill;
- (ii) Departmental domestic and sexual violence and abuse initiatives; and
- (iii) Domestic and sexual violence and abuse Covid-19 related work.

**Restrictions:** Official – Policy in development.

**Action Required:** Members to note the written brief.

## **BACKGROUND**

The Domestic Abuse and Family Proceedings Bill was introduced into the Assembly on Tuesday 31 March and is currently being considered by Members as part of the Committee stage deliberations. We understand that the Committee is likely to write to the Department in early July, following the conclusion of the oral evidence sessions, and we look forward to the opportunity to further engage on this and the content of the Bill. At this stage we thought it would be helpful however to provide the Committee with an update on work that is being undertaken in relation to a number of issues, including some that have been raised during the evidence sessions, both within and outside the Department.

2. The paper also provides an update on key work areas that the Department is currently progressing as well as covid-19 related work in the area of domestic and sexual violence and abuse.

## **DOMESTIC ABUSE BILL RELATED ISSUES**

3. This section provides members with an update on developments on a number of issues touched on during the second stage debate and Committee evidence session as listed below:
  - Domestic Abuse or Victims Commissioner/Champion;
  - Timing of Stalking legislation;
  - Review on Non-fatal strangulation;
  - Paid Leave;
  - Operation Encompass;
  - Secure tenancies; and
  - Justice (Miscellaneous Provisions) Bill.

## **Domestic Abuse or Victims Commissioner/Champion**

4. Members, as well as stakeholders, have raised the issue of a Domestic Abuse Commissioner as well as a Victims Commissioner. The Minister has further considered these matters, looking at the scope of Commissioner posts locally and nationally; the introduction of a Mental Health Champion by the Department of Health; as well as other options.
5. In taking forward work in this area the Minister is keen to ensure that there is robust consideration of any gap that currently exists and needs to be addressed, while ensuring that any post materially makes a difference to victims' experience of the criminal justice system. Importantly, the Minister is keen to develop a model in a way which promotes co-operation with stakeholders and extends opportunities for Government to be supported in developing sound policy, including through Ministerial requests for advice and suggested actions. The focus will be very much on working collaboratively with Government and key stakeholders, providing advice, strengthening key networks and providing a healthy challenge function.
6. In considering the best way forward, not least taking account of the size of Northern Ireland, the significant number of unitary statutory and voluntary sector service providers, as well as close and robust working relationships with our key stakeholders, the Minister is minded to develop a model for a Victims of Crime Commissioner, with a specific role in regard to taking cognisance of, and providing a focus on, victims with specific vulnerabilities such as domestic abuse.
7. It is intended to progress work in this area with the advice of a Ministerially commissioned Reference Group, which would include organisations such as Men's Advisory Project, Nexus, Victim Support NI and Women's Aid Federation among others. Through engagement, collaboration and partnership working with statutory and voluntary sector partners this will secure delivery of an approach that best serves

the needs of victims through robustly considering what is needed from the post, what the gap is, and how best this can be addressed to ensure value for money.

8. In order to ensure there is no delay to commencing this process, we are minded to develop a model whereby the Commissioner post could operate on a designated basis ahead of legislative change in order that the necessary benefits can be secured as soon as possible. Legislative change for a Victim of Crime Commissioner model would sit outside of the scope of the Domestic Abuse and Family Proceedings Bill

### **Timing of Stalking legislation**

9. Members may find it helpful at this stage to have an update on the Stalking Bill. Good progress has been made since the return of the Assembly. Receipt of first draft provisions is expected towards the end of June and we anticipate drafting of the Bill to be finalised by the end of summer. Introduction of the Bill to the Assembly is planned for September/October 2020 (after completion of pre-introduction clearances; preparation of supporting documentation; and securing of appropriate Executive approval). Members will also wish to note that the Stalking Bill will most likely include in excess of 20 clauses. Officials look forward to briefing, and engaging with Committee Members, on the Bill in due course.

### **Review on Non-fatal strangulation**

10. As Members may be aware the offence of choking, suffocation or strangulation is found in the Offences Against the Person Act 1861. It can only be tried in the Crown Court and carries a maximum penalty of a life sentence. A component part of the offence is that the offender also intended to commit a further indictable offence. Without evidence of this further element, the offence cannot be prosecuted. The impact of this requirement is that most strangulation cases are progressed under alternative charges. CJINI recommended that the Department should review how

potential inadequacies in current legislation could be addressed.

11. Members will wish to note that the Minister has agreed:

- (i) a review of the legislation, including a public consultation, to assess the effectiveness of the current law and to identify improvements where appropriate; and
- (ii) awareness-raising and training measures within relevant justice agencies should continue to be developed.

12. From 2002 to the end of 2019 there were:

- 502 suspects charged by PSNI with choking/strangulation;
- 20 prosecutions for choking/strangulation;
- 206 no prosecution decisions; and
- 259 prosecutions for alternative offences.

13. PSNI and the Public Prosecution Service are already working to raise awareness and to address evidential difficulties. Similarly, the Judicial Studies Board ran a training session in summer 2019, with a 'strangulation toolkit' now available on the judicial studies website. In the voluntary sector Women's Aid continues to campaign to raise awareness with its annual conference this year focussing on strangulation. Most recently, the Court of Appeal issued judgment in a strangulation case on 5 May 2020. It stated that it considered strangulation to be a substantial aggravating feature to be taken into account by courts when imposing sentence. It is anticipated that this judgment will significantly raise the profile of sentencing for strangulation across the judiciary, criminal justice agencies and the legal profession, and training materials will be updated to take account of it.

14. Further administrative initiatives are under consideration, including:

- specific training for prosecutors and PSNI, including subtlety of visible injury, difficulty in obtaining complaints from the injured party, and the fact that strangulation may be a precursor to more serious offending;
- gathering of evidence from PSNI body-worn cameras; and
- provision of information flyers for victims of domestic violence.

15. In light of the issues outlined above, the Minister has agreed that the Department should review the law as it stands with a view to continuing to develop and expand administrative measures, consulting on improvements, and bringing forward appropriate legislative change as soon as is practicable. The Department has prepared draft Terms of Reference, and commenced work on the Review. These will shortly be considered by an expert reference group and a Review Board is being set up to oversee and steer the work of the review. The Department aims to consult on the findings of the review over autumn/winter with a view to completing all preparatory work for any legislative change by the end of the current mandate. More detailed information on this issue is set out at **Appendix A**.

### **Paid Leave**

16. During an earlier Committee session, and the second stage debate on the Bill, Members raised the issue of special leave for those affected by domestic abuse. As Members are aware, the Minister wrote to Minister Dodds advising that Members had raised this issue, noting that this is in place elsewhere (in the form of both paid and unpaid leave), and advised that there is merit in exploring if it should be introduced in Northern Ireland.

17. Minister Dodds has asked her officials to give consideration to this issue alongside a

range of other employment related matters, as part of a longer term vision for employment relations in Northern Ireland. Minister Dodds has also advised that if there is a consensus that legislative provision is required, that her Department will identify a suitable legislative vehicle at that time.

18. While acknowledging that this matter lies outside the responsibilities of the Department of Justice, the Minister is keen to work with Minister Dodds to progress action to provide further support to those affected by domestic abuse. The Minister welcomes Minister Dodds' positive response and hopes that by working closely together, they can help ease the burden which many victims of abuse carry, juggling the huge stresses of complex family and personal situations with trying to maintain their focus at work.

19. Members will also wish to note that a review is being undertaken by the Whitehall Department for Business, Energy and Industrial Strategy, which will include support in the workplace for survivors of domestic abuse. Views are being sought on the availability of flexible working, unplanned leave and other employment needs for domestic abuse survivors. This will involve liaison with officials in the devolved administration. We will of course keep members updated on the outcome.

### **Operation Encompass**

20. Members have previously raised the issue of Operation Encompass, a scheme which is in operation in England and Wales whereby a school is notified where a domestic abuse incident has occurred the night before in which police have been called out. As Members will be aware a multi-agency Task and Finish group is exploring how such an approach could be introduced locally. It is intended that this will be piloted later this year. Members will also wish to note that both the police and Safeguarding Board for Northern Ireland have considered the issue of legislative cover for such a scheme. They are both of the view that currently there is insufficient legislative cover to enable

the sharing of information between the police and schools, for well-being as opposed to child protection purposes, and that legislative change is needed to facilitate this. Discussions are ongoing with colleagues in the Department of Education about an appropriate legislative vehicle which could facilitate the necessary information sharing provisions for education purposes. This would be outside the scope of the Domestic Abuse and Family Proceedings Bill.

### **Secure tenancies**

21. Members have raised the issue of similar provision being made in relation to secure tenancies as that contained within the Westminster Domestic Abuse Bill, whereby those who have to move as result of domestic abuse would continue to hold a secure tenancy. Following the second stage debate the Minister wrote to Minister Hargey asking whether provision would be made in relation to this. As Members will be aware Minister Hargey advised that given the clear differences between current structures here, in terms of local government responsibility for housing and homelessness and social care services, when compared to England; she was content that it is not necessary to replicate the provisions in Northern Ireland. Members will wish to note that discussions are ongoing with Department for Communities colleagues in relation to the legislative cover and the Committee will be further updated on this in due course as necessary.

### **Justice (Miscellaneous Provisions) Bill**

22. As Members will be aware the Minister intends to bring forward a Justice (Miscellaneous Provisions) Bill to sweep up a mix of relatively non-controversial legislative changes falling outside the scope of the other Bills in the programme (Domestic Abuse and Family Proceedings; Committal Reform; and Stalking) that have emerged over the course of the mandate. Drafting of the Bill is expected to commence in early July 2020 and – allowing five to six months for drafting – it is expected to be



finalised for introduction by the end of this calendar year. Introduction is planned for early 2021, to ensure that the Bill can complete its Assembly passage before the House rises in March 2022, ahead of the next Assembly election in May 2022.

## **DEPARTMENTAL INITIATIVES**

**23. Domestic Homicide Reviews:** Three Independent Chairs have recently been selected. These are Dr Jan Melia (former CEO of Women's Aid NI), Anne Marks (former PSNI Detective Superintendent, Public Protection Branch) and Nina Noddings (former police Superintendent with experience working in several jurisdictions). Members are currently being identified to sit on the multi-agency panels that will support the Domestic Homicide Review Process. Training of the Chairs and panel members will take place over the summer. Following this three historic cases will be used to further refine the model ahead of formal introduction around the end of the year.

**24. Advocacy service for victims of domestic and sexual abuse:** The Department is currently progressing work on the business case and specification for a new advocacy service for victims of domestic and sexual abuse. Officials had been engaging with voluntary sector partners, with a view to the service being operated by a local consortium. As no lead organisation was agreed, the Department will have to initiate a procurement process for delivery of service, which it is hoped would take effect from early in the next financial year. As Members will be aware, with a tender process, there can be no guarantee that the service will be awarded to a local organisation.

**25. Listing arrangements:** Members may be aware that specialist listing arrangements are in place in Foyle under Judge McElholm. Judge Bagnall is currently considering arrangements for Laganside Magistrates court that would enable the clustering of domestic assault cases there, accompanied by improved file quality processes and support for high risk repeat victims. This work is currently at an early stage with

discussions ongoing between the judiciary, the Department, police, the Public Prosecution Service and voluntary sector partners as to how best this could operate. Depending on the arrangements in relation to court business which has been impacted by Covid-19 it is hoped that this could be piloted before the end of the year.

### **COVID-19 RELATED WORK**

26. Given the impact of COVID-19 the Department and partner agencies are aware that for many, home is not a safe place. A range of activity has been undertaken since the start of the Covid-19 pandemic in the domestic abuse field, involving voluntary and statutory sector partners.
27. **Demand for services:** Locally, domestic violence and abuse incidents reported to police have increased by around 15% over the COVID-19 period (compared to calls for the same period in the previous year) or slightly under 10% compared to the annual average. Calls to the 24 hour Domestic and Sexual Abuse Helpline have also, at varying levels, increased over April, May and June compared to pre-lockdown. Voluntary sector partners have also experienced an increased demand for services.
28. **Operational response:** The police have led a multi-agency proactive operational response, in collaboration with the Communities, Health and Justice Departments as well as a range of voluntary sector partners. Police officers have been contacting victims of the 1200 highest risk cases, with a dedicated team contacting low and medium risk victims reporting abuse, providing them with signposting to key services and support. There is also a fortnightly police led teleconference with a number of Departments and voluntary sector service providers to keep all partner organisations informed and ensure a joined-up approach to preventing harm and provision of support. Accommodation is an area of particular focus within this forum, with much valuable work progressed. We understand that the Department for Communities and the Housing Executive have increased temporary accommodation places for victims

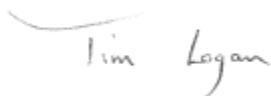
of domestic abuse, while Women's Aid have established three 'crash pads' (48 hour period) in three key locations for high risk victims.

29. **Promotional work:** The PSNI relaunched its 'behind closed doors' social media campaign, which was promoted by partners, with the message that help remains available. The Department also re-launched its 'see the signs' campaign, raising awareness of the issue of domestic violence and abuse and promoting information on the 24 hour Domestic and Sexual Abuse Helpline, as well as encouraging reporting to police. This ran across TV, radio and social media channels for five weeks through to late May.
30. Work is ongoing to promote non-verbal ways for victims to reach out through the 24 Domestic and Sexual Abuse Helpline e.g. via web and instant message. The police are also encouraging use of its 'silent solution' system which enables a 999 caller who is unable to make speak, to press 55 when prompted – this lets police know it is a genuine emergency.
31. Additional guidance (<https://www.justice-ni.gov.uk/publications/covid-19-guidance-support-victims-domestic-abuse>) was drawn up and published, in the context of the coronavirus pandemic, advising victims as to the range of support services that continue to be available. A range of promotional materials in the health sphere are also referencing the contact details for the 24hr Domestic and Sexual Abuse Helpline.
32. **New actions/policy areas:** A range of new work is also being considered and brought forward. The Justice and Infrastructure Ministers have agreed to provide free public travel (rail and bus) for victims of domestic abuse travelling to emergency accommodation. Discussions are ongoing in terms of the implementation, which it is hoped could be in place for early July.
33. Victims of domestic abuse are now able to access consultation rooms in Boots pharmacies as 'safe spaces' where they will be able to contact the Domestic and

Sexual Abuse Helpline for support. This is a UK wide scheme run by the charity Hestia.

34. Discussions are ongoing with Home Office officials around a new scheme that would enable victims of domestic abuse to seek help from pharmacies and supermarkets using a code word, where they are in need of immediate police attention. Further work is to be undertaken around promotion and monitoring uptake locally.

35. I trust this information is helpful to the Committee. Officials are, as always, content to further update Members or address any queries that they may have relating, either to, this update paper or the evidence that has been provided as part of the Committee stage.

A handwritten signature in blue ink that reads "Tim Logan".

**TIM LOGAN  
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**Enc. Appendix A**

## Appendix A

### Review of the Law on Strangulation

#### Overview

1. The offence of choking, suffocation or strangulation is found in the Offences Against the Person Act 1861. It can only be tried in the Crown Court and carries a maximum penalty of a life sentence.
2. A component part of the offence is that the offender also intended to commit a further indictable offence. Without evidence of this further element, the offence cannot be prosecuted. The impact of this requirement is that most strangulation cases are progressed under alternative charges.
3. In its June 2019 inspection report on domestic abuse CJINI recommended that:  
*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.*
4. Based on preliminary scoping work the Minister for Justice has agreed:
  - (i) a review of the legislation, including a public consultation, to assess the effectiveness of the current law and to identify improvements where appropriate; and
  - (ii) awareness-raising and training measures within relevant justice agencies should continue to be developed.

#### Detail

##### *Statistics*

5. From 2002 to the end of 2019 there were:
  - 502 suspects charged by PSNI with choking/strangulation;
  - 20 prosecutions for choking/strangulation;
  - 206 no prosecution decisions; and
  - 259 prosecutions for alternative offences.

##### *Prosecution difficulties*

6. As highlighted above, the offence can only be prosecuted when intention to commit a further indictable offence can be proved. Obtaining evidence to prove such an intention is rarely possible: such an intention may not exist; or where it does, often the offence occurs in the context of domestic abuse where the injured party is too frightened to give evidence.
7. As is borne out by the statistics above, this leads to disproportionately small numbers of prosecutions for the offence of strangulation or choking; and a significant proportion of suspects are ultimately charged with an alternative offence, for example assault, grievous bodily harm (GBH) or even false imprisonment.
8. As an indictable only offence, strangulation cannot be charged in the magistrates' courts. This means that, in cases not considered serious enough to go to the Crown Court, an alternative offence must be charged. Concerns have been raised that, while lesser charges may involve an element of choking, the magistrates' courts sentencing powers are not sufficient to reflect the serious nature of such offences.<sup>1</sup>

#### *Nature of injuries*

9. The assessment of seriousness of each offence is also problematic: Traditionally the system relies on the existence of physical marks or injury to give an indication of seriousness. Where strangulation has occurred there may be no outward signs, or these may be so discrete as to be missed. Yet the injury sustained may be significant and in the most serious cases, fatal. The nature of strangulation injury needs to be recognised by all of those involved in the prosecution.

#### *Indicator of further offending*

10. A further issue makes strangulation worthy of special consideration: international research shows that strangulation in the domestic abuse context is a strong indicator of future increasingly serious offending; with a history of such behaviour featuring prominently in a high proportion of domestic homicides. Where strangulation has been committed but is not charged as strangulation, no record

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<sup>1</sup> The magistrates' courts' normal sentencing powers allow a maximum sentence of 6 months' imprisonment for summary offences (e.g. common assault). This rises to a maximum of 12 months for any of the specified list of indictable offences which can be prosecuted in the magistrates' courts with consent of the defendant (these include the more serious assault occasioning actual bodily harm, but not strangulation).

of the nature of the offence can be kept. This is an issue predicting offending patterns and also in the management of offenders in terms of providing appropriate rehabilitation programmes to help preventing future offending.

#### *Position in other jurisdictions*

11. Jurisdictions across the world are becoming more alert to the significance of this type of offending. In New Zealand and the USA new legislation is being developed and introduced to simplify the elements of the offence and allow higher sentences than those available for common assault.
12. The legislative positions in England and Wales and in Ireland are identical to that in this jurisdiction. In Scotland there is no offence of choking. Instead the common law offence of assault is used, carrying a maximum possible sentence of life imprisonment. No legislative changes in this area are currently planned in any of our neighbouring jurisdictions.

#### *Recent Developments*

13. District Judge McElholme has raised concerns about the offence and the limitations of his sentencing powers. His interest is mainly in the context of domestic abuse cases where the offence is most commonly committed. He has publicly stated that health professionals and those involved in the prosecution of offences need to be better educated about the seriousness of the offence; and that the law needs to be updated to deal with these cases effectively.
14. PSNI and the Public Prosecution Service both share DJ McElholme's concerns and are already working to raise awareness and to address evidential difficulties. Similarly, the Judicial Studies Board ran a training session in summer 2019, with a 'strangulation toolkit' now available on the judicial studies website.
15. In the voluntary sector Women's Aid continues to campaign to raise awareness with its annual conference this year focussing on strangulation.
16. Most recently, the Court of Appeal issued judgment in a strangulation case on 5 May 2020. The Court took the opportunity to comment on the nature of the offence, highlighting its severity. It stated that it considered strangulation to be a substantial aggravating feature to be taken into account by courts when imposing

sentence. The Court also considered that the use of body force to strangle is no less heinous than the use of a weapon and emphasised the need to give consideration to that feature when forming a view as to future risks.

17. It is anticipated that this judgment will significantly raise the profile of sentencing for strangulation across the judiciary, criminal justice agencies and the legal profession, and training materials will be updated to take account of it.
18. Further administrative initiatives are under consideration, including:
  - specific training for prosecutors and PSNI, including subtlety of visible injury, difficulty in obtaining complaints from the injured party, and the fact that strangulation may be a precursor to more serious offending;
  - gathering of evidence from PSNI body-worn cameras; and
  - provision of information flyers for victims of domestic violence.

### **Departmental Review**

19. In light of the issues outlined above, the Minister has agreed that DoJ should review the law as it stands with a view to continuing to develop and expand administrative measures, consulting on improvements, and bringing appropriate legislative change as soon as is practicable.
20. The Department has prepared draft Terms of Reference, and commenced work on the review. These will shortly be considered by an expert reference group and a Review Board is being set up to oversee and steer the work of the review.



## **Next Steps**

21. The Department aims to consult on the findings of the review over autumn/winter with a view to completing all preparatory work for any legislative change by the end of the current mandate.
22. No definite commitment to legislating on this issue can be made in advance of the review.
23. In the meantime, the non-legislative approaches already being taken and under consideration are helpful and will continue to be developed.