



House of Lords  
House of Commons

Joint Committee on the Draft  
Domestic Abuse Bill

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# Draft Domestic Abuse Bill

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**First Report of Session 2017–19**

*Report, together with formal minutes relating  
to the report*

*Ordered by the House of Lords to be  
printed 11 June 2019*

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## Joint Committee on the Draft Domestic Abuse Bill

A Joint Committee has been appointed to consider the Draft Domestic Abuse Bill. The Committee has to report by 14 June 2019.

### Membership

#### House of Lords

[Baroness Armstrong of Hill Top](#) (*Labour*)

[Baroness Bertin](#) (*Conservative*)

[Lord Blair of Boughton](#) (*Crossbench*)

[Baroness Burt of Solihull](#) (*Liberal Democrat*)

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#### House of Commons

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[Liz Saville Roberts MP](#) (*Plaid Cymru, Dwyfor Meirionnydd*)

[Helen Whately MP](#) (*Conservative, Faversham and Mid Kent*)

### Powers

The Committee had the power to send for persons, papers and records; to sit notwithstanding any adjournment of the House; to report from time to time; to appoint specialist advisers; and to adjourn from place to place within the United Kingdom.

### Publications

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The Committee report was published on the [Committee's website](#) and in print by Order of the House. Evidence relating to this report was published on the Committee's website.

### Committee staff

Christopher Clarke (Lords Clerk), Elizabeth Flood (Commons Clerk), Judy Goodall (Committee Specialist), Ian Hook (Senior Executive Officer), Samantha Colebrook (Committee Assistant), Susan Ramsay (Committee Assistant) and Hannah Stewart (Assistant Counsel)

### Contacts

All correspondence should be addressed to the Clerk of the Joint Committee on the Draft Domestic Abuse Bill, House of Commons, London SW1A 0AA. The Committee's email address is [jcdab@parliament.uk](mailto:jcdab@parliament.uk).

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## Summary

The Government's draft bill on Domestic Abuse has been widely welcomed by organisations representing survivors of Domestic Abuse and those providing support services. The Bill is the culmination of many months of work and consultation and has been said by the sector to be a 'once in a generation opportunity to address domestic violence' and having 'the potential to create a step change in the national response'.

We welcome that during our deliberations the Government announced that the Bill will also introduce a statutory requirement for local authorities to provide accommodation for survivors of domestic abuse. We believe this is a profoundly important measure that will help ensure the Bill is the groundbreaking change that all sides wish it to be.

There is a temptation that this Bill be used to address a range of other issues that are linked to Domestic Abuse. This is a temptation that the committee has tried to resist to help ensure this vital legislation has the best opportunity possible of making it onto the statute books. In particular the committee felt strongly that this Bill should not be used to change the law on abortion in Northern Ireland and this view was reflected in the evidence that we received.

During our deliberations we became conscious of the need for Ministers to involve a wide variety of Government Departments and other public sector organisations to deliver successfully and have come to the conclusion that a Cabinet Office Minister lead on implementing the Government strategy to combat domestic abuse would help break free from any residual silo thinking. A case in point is the need to do more to promote prevention and early intervention to tackle the root causes of domestic abuse. It should be noted that there is much to be learnt from the experience in Wales in terms of guidance, training and multi-agency working and we urge Ministers to work cooperatively cross border with devolved administrations.

The committee has made detailed and wide-ranging recommendations that affect many aspects of the Bill, drawing from the excellent evidence we have received including oral evidence from those who have survived domestic abuse themselves. Specific recommendations include the need to recognize the gendered nature of domestic abuse in the Bill's definition to help ensure services are correctly procured and a complete review of how the role of Commissioners should be established to ensure their future credibility and usefulness.

Whilst there is much that is good in the draft bill the Committee feels very strongly that it is currently also a missed opportunity to address the needs of migrant women who have no recourse to public funds. We acknowledge the potential for abuse of any such support by individuals simply seeking to stay in the UK but this cannot be allowed to stop action to help this most vulnerable group of individuals and we recommend the Government consult on the most effective criteria to ensure such a measure reaches the victims it is designed to support.

The other issue on which the Bill is silent is the plight of children who are victims of domestic abuse. The committee has made important recommendations which would ensure the needs of children are better recognised in law.

We welcome that the Government views this draft bill as a way in which they can ratify the Istanbul Convention and urge Ministers to take up our recommendations that are focused on achieving that aim.

Throughout our deliberations we have been increasingly aware of the need for the implementation of this Bill to be integrated into policies on violence against women and girls to reflect the realities of the experiences of victims. This we believe strongly has to be achieved without excluding men, boys, trans and non-binary people from the protection of domestic abuse legislation and services for survivors.

# Introduction

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1. On 21 January 2019, the Government published its draft Domestic Abuse Bill and Explanatory Notes to the Bill,<sup>1</sup> alongside an extensive package of measures not included in the legislation.<sup>2</sup> The Government's Bill has been seen as providing the potential to create a step change in tackling domestic abuse. The introduction of the Bill followed a major programme of work including, in March 2018, a consultation paper, *Transforming the Response to Domestic Abuse*, to which it received over 3,200 responses from across the UK. During the consultation period, the Government also held a number of events across England and Wales, engaging over 1,000 people including victims, charities, local authorities and professionals from other organisations.

2. The draft Bill contains nine measures which require primary legislation to implement. These are:

- a statutory definition of domestic abuse;
- establishing the office of Domestic Abuse Commissioner and setting out the Commissioner's functions and powers;
- providing for a new Domestic Abuse Protection Notice and Domestic Abuse Protection Order;
- prohibiting perpetrators of domestic and other forms of abuse from cross-examining their victims in person in the family courts (and preventing victims from having to cross-examine their abusers) and giving the court discretion to prevent cross-examination in person where it would diminish the quality of the witness's evidence or cause the witness significant distress;
- creating a statutory presumption that complainants of an offence involving behaviour that amounts to domestic abuse are eligible for special measures in the criminal courts;
- enabling domestic abuse offenders to be subject to polygraph testing as a condition of their licence following their release from custody;
- placing the guidance supporting the Domestic Violence Disclosure Scheme on a statutory footing;
- ensuring that, where a local authority, for reasons connected with domestic abuse, grants a new secure tenancy to a social tenant who had or has a secure lifetime or assured tenancy (other than an assured shorthold tenancy), this must be a secure lifetime tenancy; and
- extending the extra-territorial jurisdiction of the criminal courts in England and Wales to further violent and sexual offences. This is required to ensure that the UK is compliant with the Council of Europe Convention on preventing and combating violence against women and girls ('the Istanbul Convention').

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1 Home Office, [Transforming the Response to Domestic Abuse Consultation Response and Draft Bill](#) (January 2019)

2 Information about which is at Annex C of the Government's response.

3. The Joint Committee was appointed by the House of Commons on 27 February 2019 and by the House of Lords on 6 March 2019 to conduct pre-legislative scrutiny of the draft Domestic Abuse Bill. We received 539 written submissions in response to our call for evidence. We took oral evidence from 36 witnesses, representing organisations providing services to survivors of domestic abuse (including those providing specialist services to BAME survivors, migrant women, children, LGBT+ survivors and people with disabilities); NGOs working in the area of human rights; organisations providing programmes for perpetrators; lawyers and magistrates; the Equality and Human Rights Commission; the Office of the Children’s Commissioner for England; HM Chief Inspector of Probation; the police; the former Independent Anti-Slavery Commissioner; the Welsh Government Adviser on Violence against Women; and Ministers from the Home Office, Ministry of Justice, Ministry of Housing, Communities and Local Government and the Department of Health and Social Care. We held informal meetings with children and adults who had experienced domestic abuse. We are very grateful to them and to all who gave written and oral evidence to us. We would also like to thank our two specialist advisers, Professor Shazia Choudhry and Mrs Usha Sood, for their assistance.

4. Ours is not the only parliamentary inquiry into the proposed legislation and the Government’s wider domestic abuse strategy. In 2018 the Home Affairs Committee held a short inquiry into the Government’s proposed strategy, in order to identify the issues which it considered the Government needed to address in the draft bill and in its future policies. The Committee’s report was published in October 2018.<sup>3</sup> The Joint Committee on Human Rights published a call for evidence on 29 January 2019 asking for views on whether the draft Domestic Abuse Bill adequately protects the rights of victims and perpetrators.<sup>4</sup> The Committee subsequently sent a letter to the Government expressing its views on the draft Bill,<sup>5</sup> to which it received a response.<sup>6</sup>

## Multi-agency working

5. The primary focus of the Bill is on the areas of policing and criminal justice, but there are many other issues that have to be tackled in order to combat domestic abuse. Many do not require legislation and need to sit alongside this draft Bill. Survivors of domestic abuse have multiple needs. Women experiencing multiple disadvantage do not typically present at specialist domestic and sexual violence services. Many have to leave their homes to escape the abuse and require safe accommodation. They may also have to change doctors and children may have to move to another school. As a result of their experiences, they may require access to mental health services. Some need advice on their immigration status or help in claiming benefits. They may need support through legal processes, such as applications in family courts or as witnesses in criminal trials.

**6. The Government’s strategy is clear about the need for a multi-agency approach to combating domestic abuse, but a number of our witnesses believed the scope of**

3 Home Affairs Committee, Ninth Report of Session 2017–19, *Domestic Abuse*, HC 1015

4 Joint Committee on Human Rights, ‘[Is the Draft Domestic Abuse Bill adequate?: Send us your views](#)’, accessed 11 June 2019

5 [Letter from the Chair of the JCHR to Victoria Atkins MP, Parliamentary Under Secretary of State for Crime, Safeguarding and Vulnerability and Minister for Women, Home Office and Edward Argar MP, Parliamentary Under Secretary of State, Ministry of Justice](#) (dated 10 April 2019)

6 [Letter from Victoria Atkins MP, Parliamentary Under Secretary of State for Crime, Safeguarding and Vulnerability and Minister for Women, Home Office and Edward Argar MP, Parliamentary Under Secretary of State, Ministry of Justice to the Chair of the JCHR](#) (dated 20 May 2019)



the draft Bill could have been broader. Their detailed suggestions are addressed later in this report. We are firmly of the view that the aims of this Bill can be achieved only if there are changes in both policy and legislation relating to other areas of government activity, especially the provision of services to survivors (housing, health, financial support), the role of healthcare professionals and teachers in prevention and early intervention and a greater public awareness of the many forms that abuse can take. Throughout our report, we urge more active participation from all relevant government departments and a far more vigorous multi-agency response from those providing frontline public services.

7. A particular issue brought to our attention was the difficulty to those suffering from domestic abuse presented by the way in which Universal Credit is assessed and paid. The Rt Hon Frank Field, Chair of the Work and Pensions Committee of the House of Commons, wrote to us on 3 May about his Committee’s July 2018 report on Universal Credit. He said that the Committee had concluded that single household payments enabled some perpetrators of domestic abuse to “take charge of potentially the entire household budget, leaving survivors and their children dependent on the abusive partner for all of their basic needs.” Frank Field explained that the Committee had recommended that the Department of Work and Pensions (DWP) should use the Scottish Government’s intention to introduce split payments by default as an opportunity to “test and learn” the different possible approaches to splitting payments, and whether these helped survivors of abuse.<sup>7</sup>

8. *We are encouraged that JCP has put in place training for its staff to identify victims of domestic abuse and to make advance payments in case of financial hardship. Ministers need to consider whether those payments should be converted into grants that are not repayable.*

9. *We agree with the Work and Pensions Committee that Universal Credit should not exacerbate financial abuse. We are encouraged that DWP are considering alternative means of ensuring that the benefit system does not force people suffering from domestic abuse to continue to live with their abuser, but more has to be done to ensure this. We recommend that the Government reviews the impact of its welfare reform programme on victims of domestic abuse. Specifically, this review should examine how different approaches to splitting the Universal Credit single household payment might mitigate against the effects of domestic abuse.*

## The Violence against Women and Girls strategy

10. Another overarching theme of our inquiry has been whether domestic abuse should be addressed separately or as part of the wider issue of violence against women and girls. One witness said: “you cannot untangle [domestic abuse] completely from other forms of violence against women and girls; for example, 45% of rapes happen in marriage or in an intimate relationship.”<sup>8</sup> Another stated that police were missing the opportunity to detect

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7 Letter to the Chair from Rt Hon. Frank Field MP, Chair of the Work and Pensions Committee ([DAB0534](#))

8 [Q148](#) (Donna Covey)

patterns of behaviour by failing to link instances of possible abuse to other types of violent offence.<sup>9</sup> As we discuss later in this report, the approach in Wales has been to address both domestic abuse and violence against women and girls together.<sup>10</sup>

**11. We believe that there should be greater integration of policies on domestic abuse and violence against women and girls to reflect the realities of the experience of victims. This has to be achieved without excluding men, boys and non-binary people from the protection of domestic abuse legislation and services for survivors. The legislation and practice in Wales provide useful lessons in this area.**

## Territorial extent

12. As touched on above, further complications arise from the devolution settlements within the UK. As far as the Bill itself is concerned, Clause 60 states succinctly: “This Act extends to England and Wales.” However, the proposed role of the Domestic Abuse Commissioner covers some areas that are devolved matters in Wales, for example in relation to health services. The Violence against Women, Domestic Abuse and Sexual Violence (Wales) Act aims to improve the public sector response in Wales to such abuse and violence, and created the role of a National Adviser to advise Ministers and improve joint working amongst public bodies. In general, the matters covered by the UK Government’s consultation on domestic abuse are devolved to Scotland and Northern Ireland. Scotland has the Domestic Abuse (Scotland) Act 2018, which provides for a statutory offence of domestic abuse against a partner or ex-partner, and also for some changes to criminal procedure, evidence and sentencing in domestic abuse cases. The Northern Ireland Executive published its Stopping Domestic and Sexual Violence and Abuse in Northern Ireland Strategy in July 2016. No further progress has been made with legislation there in the absence of a functioning Northern Ireland Government.

13. A number of witnesses listed concerns about the legal position in Northern Ireland,<sup>11</sup> with one stating:

Northern Ireland does not have a statutory definition of domestic abuse;

There is no prohibition on the cross-examination of victims by alleged perpetrators in Northern Ireland;

There are inadequate protections for victims of stalking and harassment in Northern Ireland;

There is no specific offence to capture coercive and controlling behaviour in Northern Ireland;

Northern Ireland would be excluded from the remit of the Domestic Abuse Commissioner

9 [Q192](#) (Kate Ellis)

10 See paragraphs 260–262 below.

11 See, for example, [DAB0003](#), [DAB0066](#), [DAB0236](#), [DAB0317](#), [DAB0349](#), [DAB0409](#), [DAB0445](#)

Domestic Abuse Protection Orders (DAPOs) and Domestic Abuse Protection Notices (DAPN) [...] will apply in Northern Ireland but will not be available to victims of Domestic Abuse who have an address in Northern Ireland.<sup>12</sup>

**14. We received a large number of written submissions on the issue of the law on abortion in Northern Ireland, the majority of which argued that the Bill should not be used as a means to change the law. The draft Bill makes no such provision, and we have not considered that it is part of our remit to consider this issue.**

15. Ratification of the Istanbul Convention—which is one of the Government’s aims in introducing this Bill—requires compliance with its measures throughout the territories of the UK. The absence of legislation relating to Northern Ireland for some key aspects of the Bill has therefore become a significant issue in discussion of the extent to which measures in this Bill alone would make the UK compliant with the Convention.

16. The Minister recognised that Article 34 of the Istanbul Convention requires controlling or coercive behaviour to be an offence under domestic abuse legislation, and she accepted that it currently was not an offence in Northern Ireland.<sup>13</sup> The Minister assured us that the Home Office was in talks with the Department of Justice in Northern Ireland about this matter.

***17. We consider it unacceptable that the people of Northern Ireland are denied the same level of protection in relation to domestic abuse as those elsewhere in the United Kingdom because of the lack of a Northern Ireland Executive and Assembly. We understand and respect the devolution settlement, but in the absence of an executive we recommend that the provisions of the draft Bill be extended to Northern Ireland unless and until Northern Ireland enacts its own legislation in this area. The draft Bill should be amended to include a ‘sunset clause’ to this effect.***

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<sup>12</sup> London-Irish Abortion Rights Campaign ([DAB0238](#))

<sup>13</sup> [Q263](#). See also Women’s Aid Federation Northern Ireland ([DAB0348](#)).

# 1 Statutory definition

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18. The draft Domestic Abuse Bill contains the first statutory definition of domestic abuse for England.<sup>14</sup> The Government’s aim in publishing a statutory definition is to “ensure that all domestic abuse is properly understood, considered unacceptable and actively challenged across statutory agencies and in public attitudes.”<sup>15</sup>

19. The new definition provides that domestic abuse occurs between two people if they are both over 16,<sup>16</sup> “personally connected”<sup>17</sup> and the behaviour is defined as abusive under clause 1(3).<sup>18</sup> Clause 1(3) reads:

Behaviour is “abusive” if it consists of any of the following—

- (a) physical or sexual abuse;
- (b) violent or threatening behaviour;
- (c) controlling or coercive behaviour;
- (d) economic abuse;
- (e) psychological, emotional or other abuse.<sup>19</sup>

20. The draft Bill further defines economic abuse as “any behaviour that has a substantial adverse effect” on the victim’s ability to “acquire, use or maintain money or other property, or ... obtain goods or services.”<sup>20</sup> The definition also provides that behaviour may be domestic abuse where a third party, such as the victim’s child, is ostensibly the target of the abuse.<sup>21</sup>

21. Overall, the Bill’s role in establishing a definition of domestic abuse was welcomed, although there were criticisms particularly of its non-gendered nature. We will consider the specific criticisms made of the statutory definition before considering the role gender should take in defining domestic abuse.

## Definition of abusive behaviours

22. The inclusion in the statutory definition of broad categories of abusive behaviour rather than specific instances of it was generally well-received by our witnesses. Andrea Simon, of End Violence Against Women, singled out the inclusion of economic abuse as particularly welcome.<sup>22</sup> Economic abuse is a broader concept than financial abuse which is focused on money, and would include denying a victim resources so they could get to work. Age UK also welcomed the Government’s decision to widen the definition in this

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14 Wales introduced a statutory definition of domestic abuse in 2015 and Scotland in 2018.

15 Home Office, *Transforming the Response to Domestic Abuse: Government Consultation*, 8 March 2018, p11

16 Draft Bill, [cl 1\(2\)\(a\)](#)

17 Draft Bill, [cl 1\(2\)\(a\)](#)

18 Draft Bill, [cl 1\(2\)\(b\)](#)

19 Draft Bill, [cl 1\(3\)](#)

20 Draft Bill, [cl 1\(4\)](#)

21 Draft Bill, [cl 1\(5\)](#)

22 [Q2](#)

way, stating that they hoped the change would promote a “more robust consideration” of issues of potential coercion and control in enquiries relating to the potential financial abuse of older people and family members.<sup>23</sup>

23. Elspeth Thompson of Resolution (a national organisation of family lawyers) told us the Government had the definition broadly correct, although she noted that coercive control was not defined in the Bill but in guidance.<sup>24</sup> Ms Thompson also raised a concern about the drafting of the abusive behaviour clause:

the consultation included in the definition “not limited to” and gave examples, but in the Bill, it appears to be an exhaustive list. I am not sure what the thinking behind that was. In particular, the list in the draft Bill does not include some cultural-specific domestic abuse, such as stranding, matrimonial abandonment and that sort of thing. It might help to future-proof the Bill if it had a “not limited to” part, rather than making it a fixed list.<sup>25</sup>

24. Victoria Atkins, Minister for the Home Office, explained the Government had sought to future-proof the statutory definition by setting out broad categories of abusive behaviour:

we cannot seek to define every which way in which a perpetrator will seek to abuse. You will have heard evidence not just from stakeholders, but from victims, as to the huge array of ways in which a determined perpetrator can abuse their so-called loved ones. What we have sought to do is to say, “These are the categories of behaviour but, within that, as the statutory guidance will make clear, it can take many forms.”

I know, for example, people are very concerned that forced marriage and so-called honour-based violence, FGM and so on, should be included or be capable of being included in the definition. To my mind, there are several of the broad categories that those behaviours would fall into. It would be open to courts or whichever forum is looking at it to interpret those broad categories accordingly.<sup>26</sup>

25. The primary concern expressed by some from whom we heard was the continued lack of understanding of how domestic abuse manifests itself, particularly forms of domestic abuse which disproportionately affect BME and migrant women.<sup>27</sup> Nazir Afzal, Welsh Government Adviser on Domestic Abuse, told us that some specific type of abuses need to be included in the definition on the face of the Bill:

[the definition] should include honour-based violence, forced marriage and spousal abandonment, which are the kinds of things on which we are failing around the country because there is such a lack of understanding. Unless those are in the definition, I am afraid that they will be missed in the way that they are currently.<sup>28</sup>

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23 [Age UK \(DAB0318\)](#)

24 [Q95](#)

25 [Q95](#)

26 [Q269](#)

27 [Q209](#)

28 [Q188](#)

26. Several of our witnesses agreed with Mr Afzal, including Karla McLaren of Amnesty who expressed concern that the absence of forms of domestic abuse that disproportionately affect BME people would be a missed opportunity in raising awareness “in terms of the policy and programme-making... in terms of commissioning services and policies, it is important that women and men and others are able to access services that reflect the nature of the type of abuse they face.”<sup>29</sup> Zehrah Hasan, of Liberty, agreed that there was a danger the definition as drafted could inadvertently be discriminatory by not recognising coercive control related to immigration status where perpetrators use:

the threat of deportation to prevent survivors from reporting violence and in many cases by confiscating survivors’ vital paperwork and immigration documentation. Inevitably, that leaves migrant survivors of domestic abuse in an impossible situation where they are forced to choose between the risk of destitution, detention or deportation, or staying in a situation of violence.<sup>30</sup>

27. Ms Hasan also raised a concern that the definition as drafted was not in line with the definition of domestic abuse used in the family courts under Practice Direction 12J.<sup>31</sup> Practice Direction 12J states that domestic abuse specifically includes forced marriage, honour-based violence, dowry-related abuse and transnational marriage abandonment, where a husband strands his wife abroad without papers or, usually, money to prevent her exercising her residence or matrimonial rights in England and Wales.<sup>32</sup>

**28. We have heard compelling evidence that certain forms of abusive behaviour are not being recognised by public bodies as domestic abuse. This is usually because they are disproportionately experienced by BME people, or relate to an individual’s immigration status, even though such abuse is almost invariably perpetrated by a member of the victim’s household or extended family. We recommend that the Bill is amended to provide that the following types of abuse are always treated as domestic abuse: Female Genital Mutilation; forced marriage; honour-based crimes; coercive control related to immigration status; and modern slavery and exploitation. This amendment must make it clear that specifying these types of abuse does not limit the definition of domestic abuse, it simply clarifies that they fall within the statutory definition, and the victims and perpetrators should be treated accordingly.**

**29. We endorse the Government’s approach to defining domestic abuse by the inclusion of broad categories of behaviour in order to future-proof the statutory definition, subject to our recommendation in paragraph 28 on specific abusive behaviours that must be treated as falling within the definition of domestic abuse.**

30. The Magistrates Association was concerned that the drafting of the definition of abusive behaviours did not make it clear whether or not a one-off occurrence could amount to domestic abuse, as under the current cross-government definition.<sup>33</sup> The

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29 [Q35](#)

30 [Q209](#)

31 Family Procedure Rules, [PD12J](#)—Child Arrangements & Contact Orders: Domestic Abuse and Harm, Family Procedure Rules (8 December 2017)

32 Family Procedure Rules, [PD12J](#)

33 In contrast, the criminal offence of coercive control requires a course of behaviour: Serious Crime Act 2015 Act, [s 76](#).

current proposal uses only the more generic term ‘behaviour’. The Magistrates Association favoured the statutory definition explicitly applying to all instances of domestic abuse, including those that were seemingly a stand-alone event.<sup>34</sup>

31. *We recommend that the statutory definition should be redrafted to make it clear that single occurrences may constitute domestic abuse, and it is not necessary to prove a “course of behaviour”. In making this recommendation we specifically have in mind abusive acts such as abandonment, where a wife or partner is deserted abroad without papers to prevent them from exercising their matrimonial or residence rights in England and Wales. It would not be in the spirit of the Government’s stated ambitions for the Bill if such behaviour could arguably be excluded from the definition because it can be characterised as a stand-alone event.*

## Age limit

32. The statutory definition applies to abusive behaviour perpetrated by someone over 16 on a person who is over 16.<sup>35</sup> We heard arguments both for raising and lowering the age limit. Emily Frith, of the Office of the Children’s Commissioner for England, argued the age limit should be removed “so that we don’t exclude under-16s experiencing abuse in intimate partner relationships.”<sup>36</sup> We heard moving personal testimony from young people themselves, particularly on the need for under 16 year-olds who had suffered domestic abuse in a peer relationship to see that there were consequences for the perpetrator—essentially, that justice was available to them regardless of their age.

33. Ms Frith told us that an NSPCC study from 2009 found that 21% of girls aged 13 who were in relationships experienced physical abuse, while Safe Lives had found that 16- and 17-year olds who reported abuse within a relationship took on average a year and a half to seek help.<sup>37</sup> Safe Lives supported the suggestion that the minimum age at which someone could be deemed a victim or perpetrator of domestic abuse could be lowered below 16, “with appropriate safeguards to ensure this does not detract from child safeguarding, unduly criminalise children or inadvertently criminalise parents who are also victims.”<sup>38</sup>

34. The Children’s Society told us that:

including all teenagers who experience violence or abuse in romantic relationships within the definition of domestic and relationship abuse would allow for early response to prevent abuse escalating, particularly where a young person is not making a disclosure of sexual abuse but there are other signs that the relationships are abusive. We have suggested that this is from the age of 13 years old.<sup>39</sup>

35. Eleanor Briggs, of Action for Children, in contrast supported the retention of the proposed age limit “to ensure that abuse of under-16s is always recognised as child abuse.”<sup>40</sup> Ms Briggs also expressed concern that a reduction in the age limit could lead to

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34 The Magistrates Association ([DAB0526](#))

35 Draft Bill, [cl 1\(2\)\(a\)](#)

36 [Q65](#)

37 [Q65](#)

38 SafeLives ([DAB0458](#))

39 The Children’s Society ([DAB0533](#))

40 [Q65](#)



the criminalisation of child perpetrators: “our view is that they need support, so we can try to change trends at that age.”<sup>41</sup> Debbie Moss, of Barnardos, agreed that criminalisation of perpetrators under 16 should be avoided. The Children’s Society said these arguments for not lowering the age limit below 16 were “unacceptable”; they thought the same safeguarding concerns should apply to 16- and 17-year olds as to younger people because they are children under the UN Convention on the Rights of the Child.<sup>42</sup>

36. All four witnesses called for the improvement of support services for child victims, both those in relationships and those suffering harm from domestic abuse between adults in their household, and for child perpetrators.<sup>43</sup> Joint evidence from several organisations including Action for Children, Barnardo’s, the NSPCC, and The Children’s Society among others said age-appropriate support for victims of domestic abuse who were under the age the age of 16 was vital:

The Government needs to give greater consideration to young people who are victims of domestic abuse in their intimate relationships when they are younger than 16. They must be entitled to support services for victims and survivors of domestic abuse, regardless of their age.<sup>44</sup>

37. The submission quoted a young survivor of domestic abuse Holly, who attended a domestic abuse support service designed for adults, and who said: “I didn’t think this was helpful to me at all, it was all older women. Most of them had been referred there from social workers and had children so I felt like my problems weren’t as bad as theirs. I also couldn’t speak much and didn’t want everyone knowing in the group.”<sup>45</sup> Sadly, we heard that this was not an uncommon problem.

38. Victoria Atkins, Minister for the Home Office, said that the age limit had been reduced from 18 to 16 in the cross-government definition of domestic abuse as the result of a consultation in 2012. She told us that the Government had looked at the issue again in preparing the draft Bill and:

There was strong support in the consultation responses for maintaining the age of 16. In the wider context of abusive behaviour, if a victim is under the age of 16, that will be deemed to be child abuse, with all of the extra support in terms of social services. That is why there is a judgment and we have kept it at the age of 16.<sup>46</sup>

39. The Minister added that they had also taken into account concerns over criminalising children.<sup>47</sup>

**40. We welcome that the Government has legislated to make relationship and sex education mandatory for all school age children and that it will tackle the issue of what healthy relationships look like with children from the age of five in an age appropriate way. We were disturbed to hear from young people themselves that they felt violent abuse in relationships between those under the age of 16 was not taken seriously.**

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41 [Q66](#)

42 [The Children’s Society \(DAB0533\)](#)

43 [Qq65–66](#)

44 [DAB0524](#)

45 [DAB0524](#)

46 [Q268](#)

47 [Q268](#)



41. We have found it difficult to decide on the age limit that should apply to the definition of domestic abuse but, on balance, agree the age-limit of 16 in the proposed statutory definition of domestic abuse is the right one. We recognise the concerns of witnesses that abuse suffered, and perpetrated, by under 16s in intimate relationships is not captured by the definition but believe the danger of lowering the age-limit would be the inevitable criminalisation of under 16-year-old perpetrators. This does not mean that it would always be inappropriate for perpetrators under 16 to face the criminal courts. The police need to review their guidance in this area. The priority must be to develop consequences that ensure young perpetrators stop their abusive behaviour, for their own sake as well as the children they abuse. It is equally vital that children who have suffered abuse in a peer to peer relationship receive specialist support.

42. We recommend that the Government conduct a specific review on how to address domestic abuse in relationships between under-16 year olds, including age-appropriate consequences for perpetrators. We note the inadequacy of the criminal justice system in dealing with these cases and recommend the review consider how to remedy this, including for cases that are not destined to come before the court, therefore ensuring victims' need for justice is met. While the adult model is not the right one for children, the harm caused to all concerned is very high and this Bill will not be the landmark legislation it is intended to be if it does not tackle this difficult area.

43. We also agree that abuse of children by adults must always be treated as child abuse and reducing the age limit for victims runs the risk of confusing the approach of public authorities and denying the young victims of such abuse access to specialist services.

44. Action for Children told us that the impact of domestic abuse on children should be recognised in the statutory definition: “The definition has the potential to drive the much-needed shift away from seeing children as passive witnesses to violence in the home, towards their recognition as direct victims and survivors in their own right”.<sup>48</sup> Action for Children explained that the specific duties imposed on local authorities in relation to children in need and children suffering, or likely to suffer, significant harm were lacking, because the relevant definition of ‘harm’ in the Children Act 1989 does not protect children affected by coercive control within their household, despite research showing the adverse impact this can have.<sup>49</sup>

45. The Minister told us that the Government was very clear that children living in abusive households were victims of domestic abuse, and that it was trying “to put that into the Bill in a way that meets the other obligations in relation to child abuse”. She said that Clause 1(5) in the Bill, which points directly to a child being used by a perpetrator as part of the abuse, indicated the Government’s emphasis on children.<sup>50</sup>

*46. We are concerned over the absence from the definition of children as victims of abuse perpetrated by adults upon adults and the evidence we have heard that this has a negative impact on services for children who have suffered such trauma. We recommend the Bill be amended so the status of children as victims of domestic abuse that occurs in their household is recognised and welcome the assurance from the Home Office Minister*

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48 Action for Children ([DAB0450](#))

49 Action for Children ([DAB0450](#))

50 [Q269](#)

*that the Government seeks to include the harm caused to children in abusive households in the definition. This would also ensure compliance with the Istanbul Convention which makes it clear that children may be the victims of domestic abuse by witnessing it rather than being the subjects of it.*

47. *We recommend the Government consider amending the relevant Children Act definition of harm to explicitly include the trauma caused to children by witnessing coercive control between adults in the household.*

## Personally connected

48. Clause 2 of the draft Bill sets out the relationships between victim and perpetrator that come under the definition of domestic abuse.<sup>51</sup> The relationships listed are similar to those which constitute “associated persons” in the Family Law Act 1996. The key difference, pointed out to us by Resolution, is that the draft Bill does not include “they live or have lived in the same household, otherwise than merely by reason of one of them being the other’s employee, tenant, lodger or boarder”.<sup>52</sup> Resolution asked that we bear in mind this aspect of the definition from the Family Law Act, which is also in the definition of “personally connected” in the VAWDASV (Wales) Act 2015.<sup>53</sup>

49. It is not clear why the Government did not include the “same household” criterion in the definition of “personally connected” in the draft Bill. There does not seem to us to be an obvious downside to its inclusion. The courts have constructed the “same household” criterion broadly, ruling that the introduction of non-molestation orders was “intended to provide a swift and effective remedy to the victims of domestic violence—and [the courts] should not decline jurisdiction unless the facts of the case were plainly incapable of being brought within the statute.”<sup>54</sup> Conversely, there may be a danger that abusive behaviour the definition is intended to cover may be missed if it is not included. *We recommend the Government reconsider including the “same household” criterion in its definition of relationships within which domestic abuse can occur. This landmark Bill must ensure that no victim of domestic abuse will be denied protection simply because they lack the necessary relationship to a perpetrator with whom they live.*

50. Ruth Bashall, giving evidence on behalf of Stay Safe East and Disabled Survivors, expressed concern that the definition of “personally-connected” did not reflect that many disabled people:

...have emotionally intimate relationships with the people who, in very large inverted commas, “care” for us, and the experience of abuse by those people is exactly the same as domestic abuse: the coercive control, the violence, the financial abuse and so on.<sup>55</sup>

51. *We recognise that abuse of disabled people by their “carers” often mirrors that seen in the other relationships covered by the Bill. We conclude that abuse by any carer towards this particularly vulnerable group should be included in the statutory definition. We share the concerns of our witnesses, however, that, even with the “same household”*

51 Draft Bill, [cl 2](#)

52 Family Law Act 1996, [s 63\(1\)](#)

53 Resolution (supplementary evidence) ([DAB0521](#))

54 *G v F (Non-molestation order)*, *Times* 24 May 2000, Wall J

55 [Q142](#)

*critera included in the definition of “personally connected”, paid carers, and some unpaid ones, will be excluded from the definition of domestic abuse. We recommend the Government review the “personally connected” clause with the intention of amending it to include a clause which will cover all disabled people and their carers, paid or unpaid in recognition of the fact this type of abuse occurs in a domestic situation.*

## A gendered understanding of domestic abuse

52. The Government’s ambitions for its domestic abuse legislation are for nothing less than a cultural transformation in our attitudes to domestic abuse and violence. In the Foreword to the draft Bill, the Home Secretary, the Rt Hon Sajid Javid, and the Rt Hon David Gauke, Lord Chancellor and Secretary of State for Justice, said the Domestic Abuse Bill would “provide a once-in-a-generation opportunity to transform the response to this terrible crime.”<sup>56</sup>

53. While domestic abuse can affect anyone, it is most often perpetrated by men against women. The Crime Survey for England and Wales figures for the year ending March 2018 showed that around twice as many women reported partner abuse as men.<sup>57</sup>

54. The raw figures do not show the differences in how and why women and men experience domestic abuse. A gendered understanding of the data which provides insight into how and why domestic abuse occurs allows for the tailoring of specific policies and specialist services not only to try and repair the harm caused by domestic abuse but potentially to show ways in which it may be prevented. Properly understood, a gendered approach to domestic abuse does not place one gender at a disadvantage compared to the other. A gender-neutral approach that fails to take account of the differences between men and women and assumes one size fits all can fail to meet the needs of any person suffering from domestic abuse because domestic abuse is experienced differently depending on many factors, including gender. To say that domestic abuse is gender-based is simply to recognise that the socially attributed norms, roles and expectations of masculinity and femininity which affect intimate relationships and family structures are integral to the use and experience of violence and abuse, whether perpetrated or suffered by men or by women.

## A gendered statutory definition

55. Many of our witnesses were broadly supportive of a gendered definition of domestic abuse. Andrea Simon, of End Violence Against Women (EVAW) told us it was a “key concern” to her that “despite the international framework and our UK domestic policy framework comprehensively being based on well evidenced understanding that this is a crime that disproportionately affects women, the Bill itself is not on the face of it gendered.”<sup>58</sup> Lucy Hadley, of Women’s Aid, emphasised that a gendered definition did not

56 Home Office, [Transforming the Response to Domestic Abuse Consultation Response and Draft Bill](#) (January 2019)

57 6.3% and 2.7% respectively. The figures were equal for family abuse. Office for National Statistics, ‘[Domestic abuse in England and Wales: year ending March 2018](#)’, accessed 11 June 2019

58 [Q2](#)

mean excluding men from it but that the definition recognised that, while anyone may suffer from domestic abuse, gender is key to understanding why and how an individual experiences abuse.<sup>59</sup>

56. Ms Simon further explained the case for a gendered definition, saying it was important that:

the definition centres coercion and control and those dynamics within an intimate partner relationship, because they very much speak to some powerful cultural ideas about male and female roles and how men are entitled to treat women, and the justifications and stereotypes for abuse and controlling behaviour. That is all central to how frontline services can identify abuse, and it is also important for commissioners of services to understand, so [I] feel the gendered nature of that is really important to emphasise.<sup>60</sup>

57. Lucy Hadley of Women’s Aid made a similar point when she told us: “Getting the definition right is crucial for guiding not only policies and strategies, but priorities and funding at local level and in public sector agencies, and getting that understanding of domestic abuse across all areas of the public sector that survivors might turn to for help.”<sup>61</sup> She told us that taking account of the gender of the victim, whether male or female, was central to the creation of good support services for sufferers of domestic abuse.<sup>62</sup> Representatives of other frontline services such as Nicole Jacobs, of Standing Together Against Domestic Abuse and Suzanne Jacob of Safe Lives agreed.<sup>63</sup>

58. We also heard from witnesses that a gendered definition of domestic abuse would assist the UK in meeting its obligations under the Istanbul Convention, and that a sensitive, gendered approach was not discriminatory. Jane Gordon, of Sisters for Change, said:

The convention recognises that state parties may wish to take special measures to prevent and protect women from gender-based and domestic violence, and it explicitly states that such measures will not constitute discrimination. It recognises that this form of violence—domestic abuse—disproportionally impacts women, and states specifically that if special measures are taken to recognise that form of abuse, that will not constitute discrimination. That is in the Istanbul convention, and it is in compliance with the case law of the European Court of Human Rights.<sup>64</sup>

59. Other witnesses expressed concern that a gendered definition of domestic abuse would potentially be misunderstood and exclude men from the protections of the draft Bill. The ManKind Initiative told us:

We believe that domestic abuse is not a gendered crime which is the Government position. It is a crime that affects both women and men including those in same-sex relationships and they can be both victims and

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59 [Q8](#)

60 [Q3](#)

61 [Q3](#)

62 [Q7](#)

63 [Q91](#), [Q161](#)

64 [Q211](#)

perpetrators of domestic abuse... We have a concern on how the belief that domestic abuse is a gendered crime will be translated into actual statutory or policy guidance.<sup>65</sup>

60. Amanda Barron, Westminster Magistrate, was concerned that a gendered definition would prevent the courts from dealing with all the types of domestic abuse they had to address:

I wouldn't want to see it being a gender-specific definition, because although the majority of cases we see are male against female, we also have quite a few same-sex cases that come to court. We also have quite a lot of interfamilial crimes that occur between children and parents, or brother on brother, so I would want to keep the definition open.<sup>66</sup>

61. Ms Barron went on to say:

I understand that once someone has been convicted, there should be certain different pathways, different support and different sorts of perpetrator programmes ... We need more perpetrator programmes for different sorts and types of domestic abuse offences ... [i]t would be good to see many more programmes available through the court and having that wide definition allows us to do that.<sup>67</sup>

62. Another witness, Nicole Jacobs of Standing Together Against Domestic Abuse, said:

I think it is partly just that we are thinking of it in different contexts, to be fair. In the court context, obviously you don't want to prejudice any case that could be going through the criminal justice system. I was referring to the idea that we use this definition in a wider context when we are talking about the commissioning of local services and training. In that context, just the reference to the gendered nature would be helpful, because it would be accurate. But I would not necessarily disagree with your argument in the criminal justice context.<sup>68</sup>

63. Victoria Atkins, the Home Office Minister, told us the Government had considered "very carefully whether to make the definition reflect the fact that the majority of victims are female."<sup>69</sup> It had concluded:

Of the 2 million victims of domestic abuse in England and Wales last year, 695,000 were male. We came to the conclusion that we wanted the definition to reflect that men can be victims of domestic abuse as well, albeit that it is still a gendered crime. We will make that very clear in our statutory guidance, which we will publish alongside the introduction of the Bill.<sup>70</sup>

64. Clause 57 of the draft Bill provides that such statutory guidance "may" be published in due course. We received a letter from the Chair of the House of Commons Home

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65 The ManKind Initiative ([DAB0382](#))

66 [Q91](#)

67 [Q93](#)

68 [Q94](#)

69 [Q266](#)

70 [Q266](#)

Affairs Committee, the Rt Hon Yvette Cooper, expressing concern over this provision. She noted that the Modern Slavery Act 2015 required the Home Secretary to publish statutory guidance in relation to that Act, but despite this: “On 8 November 2018, a High Court Judge drew attention to the failure of the Home Secretary, more than three years after the passing of the Modern Slavery Act, to comply with his obligations to provide guidance under s. 49 of that Act. Although the Judge noted that the Home Secretary had ‘an absolute duty immediately to issue the guidance that Parliament required of him’ and that ‘any further delay would be completely unacceptable.’”<sup>71</sup> We consider a similar delay with the statutory guidance referred to by the Minister to be particularly undesirable.

**65. We recommend that the Secretary of State publish draft statutory guidance in time for the Second Reading of the Bill, and Clause 57 be amended to require the final guidance to be published within six months of the Bill’s enactment.**

66. Ms Atkins also told us that the problem with the commissioning of generic services and policies for domestic abuse would be tackled by the Domestic Abuse Commissioner and was currently subject to a national statement of expectations.<sup>72</sup>

## A gendered approach to abuse in statute

67. The challenge in drafting a gendered definition of domestic abuse is incorporating the gendered aspect without excluding any victim from the protections of the legislation. We considered a number of ways of approaching this challenge. In this context, we bore in mind the following recommendation of the House of Commons Home Affairs Committee in its recent report on domestic abuse:

We recommend that the bill explicitly recognises the gender inequality underlying domestic abuse, and the need to reflect this inequality in education programmes, funding, service provision, criminal justice and other statutory responses to domestic abuse. The Equality and Human Rights Commission has recommended that the new statutory definition of domestic abuse should apply to both sexes, but that the disproportionate impact of domestic abuse on women and girls is explicitly highlighted in the text of the bill and the statutory guidance. We support this recommendation.<sup>73</sup>

68. In 2015, the Welsh Assembly passed the Violence against Women, Domestic Abuse and Sexual Violence (Wales) Act.<sup>74</sup> The 2015 Act defines ‘abuse’ as “physical, sexual, psychological, emotional or financial abuse”<sup>75</sup> and defines ‘domestic abuse’ as “abuse where the victim of it is or has been associated with the abuser.”<sup>76</sup> Section 2 of the 2015 Act provides:

(1)A person exercising relevant functions must have regard (along with all other relevant matters) to the need to remove or minimise any factors which-

71 [DAB0535](#)

72 [Q267](#)

73 Home Affairs Select Committee, Ninth Report of Session 2017–19, *Domestic Abuse*, HC 1015

74 [Violence against Women, Domestic Abuse and Sexual Violence \(Wales\) Act 2015](#)

75 Violence against Women, Domestic Abuse and Sexual Violence (Wales) Act 2015, [s 24\(1\)](#)

76 Violence against Women, Domestic Abuse and Sexual Violence (Wales) Act 2015, [s 24\(1\)](#)



- (a) increase the risk of violence against women and girls, or
- (b) exacerbate the impact of such violence on victims.<sup>77</sup>

69. The Act then defines the ‘relevant functions’ as powers contained in the legislation to publish a national strategy on domestic abuse and violence against women and girls; similar local strategies and guidance to educational establishments.<sup>78</sup>

70. The 2015 Act definition of domestic abuse does not, therefore, exclude anyone from its protection on the basis of gender but seeks to ensure approaches to domestic abuse and violence against women and girls acknowledge the realities of the gender context in which domestic abuse occurs.

**71. The Government has described this Bill as a once-in-generation opportunity to transform the response to the terrible crime of domestic abuse. Given the landmark nature of the proposed legislation, we believe it is crucial that the gendered context of domestic abuse is recognised on the face of the Bill. Without this recognition the Bill cannot begin to fulfil the Government’s ambitions for it and achieve the transformative response required to combat the scourge of domestic abuse.**

**72. We believe many of the objections to a gendered definition of domestic abuse come from concerns that it could exclude men from the protection of the Act. We recognise this concern but our evidence shows it is based on a misunderstanding of what a gendered definition means in practice. A gendered definition of abuse does not exclude men. Anyone can, sadly, suffer from domestic abuse just as anyone, regardless of gender, can perpetrate it. In recommending a gendered definition of domestic abuse we want to embed a nuanced approach to the most effective response to domestic abuse for all individuals who suffer such violence, and to ensure that public authorities understand the root causes of this complex crime. We also believe our recommendation on how a gendered definition should be drafted allows the courts to continue to judge the raft of cases they currently hear without any fear of perpetuating discrimination towards men and boys. Incorporating a gendered definition of domestic abuse ensures compliance with the requirements of the Istanbul Convention in demonstrating a gendered understanding of violence against women and domestic abuse as a basis for all measures to protect and support victims.**

*73. We recommend the Government introduce a new clause into the draft Domestic Abuse Bill in the following, or very similar, terms: When applying Section 1 and 2 of this Act public authorities providing services must have regard to the gendered nature of abuse and the intersectionality of other protected characteristics of service users in the provision of services, as required under existing equalities legislation.*

*74. We recommend that the statutory guidance the Government is committed to issuing on the operation of the statutory definition of domestic abuse should require public authorities to acknowledge the disproportionate impact of domestic abuse on women and girls when developing strategies and policies in this area. We believe this will make the Bill the landmark legislation the Government intends and transform the way we as*

77 Violence against Women, Domestic Abuse and Sexual Violence (Wales) Act 2015, [s 2](#)

78 Violence against Women, Domestic Abuse and Sexual Violence (Wales) Act 2015, [s 2\(2\)](#)

*a country respond to the scourge of domestic abuse. We recommend draft guidance on the Bill be published at Second Reading and that all final guidance be published within six months of the day the Act comes into force.*



## 2 Policing

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### Domestic Abuse Protection Notices and Domestic Abuse Protection Orders

75. Clauses 18 to 49 of the draft Domestic Abuse Bill set out a proposed new civil order to replace the Domestic Violence Protection Order which was rolled out nationally in 2014. The new order, and the notice that would precede the granting of an order, would be known respectively as a Domestic Abuse Protection Order (DAPO) and Domestic Abuse Protection Notice (DAPN).

76. The new order enters a complex legal landscape of protective measures. These include restraining orders,<sup>79</sup> which are available in the criminal courts; non-molestation and occupation orders,<sup>80</sup> handed down by the family and some civil courts; bail conditions, both pre-charge and post-charge;<sup>81</sup> and undertakings, which can be given in civil courts in appropriate circumstances.<sup>82</sup> In the response to its consultation published with the draft Bill, the Government said its aim in introducing DAPNs and DAPOs was to “combine the strongest elements of the various existing orders and provide a flexible pathway for victims and practitioners.”<sup>83</sup> Victoria Atkins, the Home Office Minister, told us the Government intended DAPOs to become the “go to” protective order for cases of domestic abuse.<sup>84</sup>

77. Our witnesses were, unsurprisingly, supportive of any tool that would give the police and courts greater powers to protect victims of abusive relationships.<sup>85</sup> Some aspects of the new orders, such as requiring “abusive” rather than “violent” behaviour as a precondition of the orders and introducing criminal sanctions with the power of arrest for a breach of the order, were welcomed. Overall, however, the response was negative. Particular concerns were that the proposed new notices and orders did not ‘cure’ the difficulties seen in the operation of the current Domestic Violence Protection Notices and Orders and the practical workings of the DAPO scheme had not been considered, or funded, sufficiently.

### Domestic Violence Protection Notices and Orders

78. Domestic Violence Protection Notices (DVPNs) and Domestic Violence Protection Orders (DVPOs) were introduced by the Crime and Security Act 2010.<sup>86</sup> In its guidance on the use of the orders the Government said their purpose was to fill a “gap” in providing protection to victims of domestic abuse “by enabling the police and magistrates’ courts to put in place protective measures in the immediate aftermath of a domestic violence incident where there is insufficient evidence to charge a perpetrator and provide protection to a victim via bail conditions.”<sup>87</sup>

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79 See the Protection from Harassment Act 1997, s5

80 Family Law Act 1996, ss42–43 and ss30–41 respectively

81 See below

82 Family Law Act 1996, s46(1)

83 Home Office, *Transforming the Response to Domestic Abuse Consultation Response and Draft Bill* (January 2019)

84 [Q282](#)

85 See for example Safe Lives ([DAB0458](#)) and Women’s Aid ([DAB0404](#))

86 Ss 24–33

87 Domestic Violence Protection Notices (DVPNs) and Domestic Violence Protection Orders (DVPOs) Guidance (December 2016) Home Office

79. A review of the use of DVPNs and DVPOs by police forces across England and Wales a year after they were rolled-out nationally, found use was patchy.<sup>88</sup> Numbers ranged from three DVPNs and three DVPOs in Cambridgeshire to 229 DVPNs and 199 DVPOs in Essex, the majority of forces submitting figures between 10 and 100.<sup>89</sup> A review of the police response to domestic abuse by HM Inspectorate of Constabulary, Fire and Rescue Services in 2017 found:

Many forces are still not using DVPOs as widely as they could, and opportunities to use them are continuing to be missed. Over half of the forces that were able to provide data on the use of DVPOs reported a decrease in the number of DVPOs granted per 100 domestic abuse related offences in the 12 months to 30 June 2016 compared to the 12 months to 31 March 2015.<sup>90</sup>

80. The limited use made of DVPNs and DVPOs has been the subject of a super-complaint to HM Inspectorate of Constabulary by the Centre for Women’s Justice.<sup>91</sup> The reason for the low number of notices and orders and their inconsistent use across different police forces was, the Centre thought, primarily police training.<sup>92</sup>

### **Abuse not violence—a strength of the proposed order**

81. The Home Office review of the use of DVPNs and DVPOs found that there was some confusion in police forces over the types of abusive behaviour covered by the orders because the statute stated that a necessary precondition of issuing a DVPN was that the perpetrator had “been violent towards, or has threatened violence towards” the person for whose protection the notice was issued.<sup>93</sup> Witnesses, including Olive Craig of Rights of Women and Dame Vera Baird, the then Policing and Crime Commissioner for Northumbria, identified this as a problem for both the police and the judiciary. Dame Vera told us that “some judges are reluctant to authorise a DVPO where there is no evidence of physical violence”;<sup>94</sup> while Ms Craig identified the move from requiring “violence” to “abuse” as “one of the positives”<sup>95</sup> of the proposed scheme. The DVPN scheme requires that the behaviour of the perpetrator be “abusive” rather than “violent”<sup>96</sup> which seems to us to be in line with the purpose of the draft Bill, and to go some way towards resolving the problem with interpretation identified by our witnesses.

**82. Given the Crime and Security Act 2010 states that violence or the threat of violence is required before a notice can be issued or an order granted, we can understand why both the police and the courts have found it difficult to decide whether certain types of**

88 [Domestic Violence Protection orders- One year on Home Office Assessment of national roll out, Home Office, August 2016](#)

89 Greater Manchester Police was a pilot region for the scheme and its figures of 1339 and 1283 for DVPNs and DVPOs respectively were significant outliers.

90 Her Majesty’s Inspectorate of Constabulary and Fire & Rescue Services, [A progress report on the police response to domestic abuse](#) (November 2017)

91 Centre for Women’s Justice, [Super complaint: Police failure to use protective measures in cases involving violence against women and girls](#) (March 2019)

92 Centre for Women’s Justice, [Super complaint: Police failure to use protective measures in cases involving violence against women and girls](#) (March 2019)

93 Crime and Security Act 2010, [s 24\(2\)\(a\)](#)

94 Northumbria PCC ([DAB0500](#))

95 [Q41](#)

96 Draft Bill, [cl 18\(2\)](#)

**abusive behaviour qualified the perpetrator for a Domestic Violence Protection Order or Notice. We welcome the explicit inclusion of abuse other than violence or the threat of violence and believe this removes a key weakness of the previous scheme.**

### ***Applications for DAPOs***

83. An application for a DAPO would not require the victim’s consent, mirroring a key element of the DVPO procedure.<sup>97</sup> Furthermore, an application for a DAPO can be made not only by the police but also by the victim, specialist agencies and other third parties at the discretion of the court.<sup>98</sup>

84. Applications may be made to the family court<sup>99</sup> or in other relevant civil or family proceedings<sup>100</sup> if made by the victim, specialist agency or third party but must be made to the magistrates’ court if being made by a senior police officer.<sup>101</sup> The standard of proof required for a DAPO is the civil standard (balance of probabilities) which means a DAPO may be made in criminal proceedings even if the perpetrator has been acquitted.<sup>102</sup>

85. Our witnesses were generally supportive of the provision that orders may be made without the victim’s consent. Kate Ellis, of the Centre for Women’s Justice, welcomed the move telling us that it “took some of the onus off victims”<sup>103</sup> which was particularly important for migrant women who were particularly vulnerable.<sup>104</sup> Nazir Afzal said that one of the key weaknesses of other protective orders such as a non-molestation orders was:

they all rest entirely on the victim’s shoulders. She—invariably she—has to pursue them, support them and pay for them, if she is not legally aided in any way, shape or form. If they are breached, she has to come forward. We don’t do that for some other things.<sup>105</sup>

86. Olive Craig, of Rights of Women, told us they had heard some concerns over the inclusion of third parties as potential applicants for DAPOs: “We have some concerns about possible abuse, in terms of family members being able to apply for them, and about there being unknown third parties; the suggestion is that it will be probation or the local authority, although that is not in the actual Bill.”<sup>106</sup>

**87. Domestic Abuse Protection Orders may be applied for without the victim’s consent by the police, specialist agencies and third parties with the consent of the court. We believe it is a key strength of the proposed orders that they can be made by the police without the victim’s consent: the nature of domestic abuse is such that pressure not to take action against the perpetrator will often be overwhelming and it would significantly weaken the protective effect of the orders if only victims were able to apply for them. We note the concerns about third parties being able to apply**

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97 [Crime and Security Act 2010, s 28\(5\)](#)

98 [Draft Bill, cl 25\(2\)](#)

99 [Draft Bill, cl 25\(5\)](#)

100 [Draft Bill, cl 25\(7\)](#)

101 [Draft Bill, cl 25\(6\)](#)

102 [Draft Bill, cl 27\(5\)](#)

103 [Q203](#)

104 [Q203](#)

105 [Q204](#)

106 [Q38](#)

**for orders and this potentially been subject to abuse by family members or others. We believe the fact that any such application is at the discretion of the court will prevent instances of abuse.**

## Alternatives to DAPOs

### *Time limits*

88. Many of the concerns we heard around the proposed new orders related to the significant changes made to the nature of Domestic Violence Prevention Orders. The DVPO scheme was, in part, a response to the relatively narrow approach taken by the courts to the granting of occupation orders under the Family Law Act 1996. Occupation orders allow the victim of domestic violence to occupy the property alone, in some cases indefinitely.<sup>107</sup> Courts must grant an occupation order to an entitled applicant where “significant harm” would be caused to the other party, or a child, if the order was not made to evict the perpetrator and that harm is greater than the harm that would be caused to the perpetrator by the eviction, the so-called ‘balance of harm’ test.<sup>108</sup> Otherwise, the judge has a discretion to grant the order, having considered all the circumstances.<sup>109</sup> This would also be the case where the applicant cannot demonstrate entitlement to the property within the terms of the Family Law Act 1996.

89. In *Chalmers v Johns* [1999] Fam Law 16, the Court of Appeal held that occupation orders were “draconian” because they override “proprietary rights” and so were “only justified in exceptional circumstances.”<sup>110</sup> The courts have also described them as “a last resort in an intolerable situation.”<sup>111</sup> DVPOs were intended as emergency orders that give victims of abuse a breathing space, overcoming the high bar placed on their issue by the courts by being limited to between 14 and 28 days, a limited interference with the perpetrator’s property rights.<sup>112</sup> DAPOs, in contrast, do not appear to be subject to a statutory time-limit, although their duration must be specified in the order.<sup>113</sup> The relevant clause goes on to specify that electronic monitoring under an order must be reviewed every 12 months,<sup>114</sup> which implies the Government intends that DAPOs will be imposed for a significantly longer period than the 14–28 days available under DVPOs.

**90. We are concerned that the potentially indefinite nature of Domestic Abuse Protection Orders will result in the courts’ granting them less often than they grant time-limited Domestic Violence Protection Orders, meaning protection for victims will overall be reduced.**

91. End Violence Against Women (EVAW) told the Joint Committee on Human Rights in their inquiry into the draft Bill that: “We anticipate that criminal courts and civil courts will make these orders differently and that family court judges may view them as overly draconian where there is no criminal conviction.”<sup>115</sup>

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107 Family Law Act 1996

108 Family Law Act 1996, s 33(7); *Chalmers v Johns* [1999] Fam Law 16

109 Family Law Act 1996, s 33(6)

110 *Per Thorpe LJ Chalmers v Johns* [1999] Fam Law

111 *Re Y (Children) (Occupation Order)* [2000] 2 FCR 470 (CA)

112 DVPOs are granted for between 14 and 28 days: Crime and Security Act 2010, s 28(10)

113 Draft Bill, cl 34(3)

114 Draft Bill, cl 34(5)

115 End Violence Against Women Coalition written evidence to the Joint Committee on Human Rights [DVB0045](#)

### **Positive requirements**

92. DAPOs can have “any requirements that the court considers necessary to protect the person for whose protection the order is made”<sup>116</sup> including positive requirements, such as electronic monitoring.<sup>117</sup> Positive requirements were not available under the DVPO scheme. This innovation received a mixed response from our witnesses who identified legal and practical difficulties with the new approach.

93. Liberty and Rights of Women expressed concerns that attaching positive requirements, specifically electronic monitoring, to protective civil orders may breach the right to liberty and the right to privacy of the subject of the order. These concerns were heightened by the fact that legal aid will not be available in DAPO cases. We note that the Joint Committee on Human Rights did not raise concerns on this issue in its letter to us on the rights implications of the Bill.<sup>118</sup>

94. Edward Argar, the Justice Minister, agreed that:

It is not a simple area of law. You are absolutely right to highlight it. There is always an opportunity for challenge. We believe that we have struck an appropriate balance, which will keep us in line with the ECHR requirements. However, as I have discovered in my year in this post, there are often ways that very smart lawyers can challenge, under ECHR, particular decisions. There is always a balance on these things, and we believe that we have struck the right balance that keeps on the right side of our ECHR obligations to individuals, particularly around the right to privacy.<sup>119</sup>

95. In its response to the Government’s consultation on domestic abuse, Rights of Women was unconvinced that positive requirements would significantly enhance the protection given to individuals by DAPOs. It noted that both family and criminal courts can already add positive requirements to currently available orders to protect victims of domestic abuse. The organisation was particularly concerned that positive requirements “change the nature” of protective orders. Currently, non-molestation orders can be obtained in two hearings and give long-term protection from an abuser: “If there are no other legal issues, the victim should be able to move on, free from the perpetrator.” An order with positive requirements may mean the victim has to remain involved with the operation of the order.<sup>120</sup>

96. The Bill requires that the court must specify the person responsible for monitoring compliance with a positive requirement.<sup>121</sup> When we asked Dame Glenys Stacey, Chief Inspector of Probation, who would be responsible for monitoring compliance with

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116 Draft Bill, [cl 31\(1\)](#)

117 Draft Bill, [cl 31\(6\)](#)

118 [Letter from the Chair of the JCHR to Victoria Atkins MP, Parliamentary Under Secretary of State for Crime, Safeguarding and Vulnerability and Minister for Women, Home Office and Edward Argar MP, Parliamentary Under Secretary of State, Ministry of Justice](#) (dated 10 April 2019)

119 [Q288](#)

120 Home Office, [Transforming the Response to Domestic Abuse Consultation Response and Draft Bill](#) (January 2019)

121 Draft Bill, [cl 32\(2\)](#)

positive requirements she responded “we were hoping to ask you that question, actually.”<sup>122</sup> Suzanne Jacobs, of SafeLives, observed that monitoring compliance with positive requirements would be about multi-agency working:

This is not about the surveillance state; this is about ensuring that where somebody is perpetrating really damaging abuse against another individual, we fetter their behaviour and close down their space for action. That is what victim/survivors should expect from the state. It might have its challenges, but let’s not just give up before we begin. We absolutely must create the infrastructure for that to happen. If we can do that for terrorist suspects and organised crime nominals, we should certainly be doing it for people who kill 100 women every year.<sup>123</sup>

97. London Councils agreed, telling us: “Robust and coordinated multi-agency approaches should be integral to implementing the DAPO on a local level, including local authorities who have an important role in wider risk management around perpetrators.”<sup>124</sup> Dame Vera disagreed, and called for a single agency to oversee compliance:

To be effective, notices and orders must be monitored by one agency which ensures any breaches are acted upon and any positive requirements/prohibitive conditions monitored. This is crucial if orders can be applied for by various people in various courts. Failing this, victims will have a false sense of security and these protection tools will be redundant... This one agency with responsibility for overseeing DAPN/Os must have sufficient funding, resources and training.<sup>125</sup>

98. Other witnesses, including EAW and Women’s Aid, noted that breaches of non-molestation orders were currently not always treated sufficiently seriously by the police, which they saw as having implications for the new order.<sup>126</sup> The failure for the police to act consistently on breaches of non-molestation orders was part of the super-complaint by the Centre for Women’s Justice.<sup>127</sup>

99. London Councils also welcomed the Government’s commitment to trialling the new orders, including the electronic monitoring requirement: “Lessons learned from this pilot should inform any wider implementation, so there can be assurances that these elements of the DAPO are safe and effective before being rolled out further.”<sup>128</sup>

100. Rights of Women was less positive about the potential for positive requirements to enhance the protection given to survivors by orders. They were particularly concerned that the practical realities of electronic monitoring would not meet expectations:

The current system of electronic monitoring does not function particularly well. Breaches are reported while perpetrators are at home because of faulty equipment or a perpetrator going into their garden. We are aware that the

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122 [Q169](#)

123 [Q170](#)

124 London Councils ([DAB0486](#))

125 Northumbria PCC ([DAB0500](#))

126 Women’s Aid Federation of England ([DAB0404](#)), End Violence Against Women Coalition ([DAB0490](#))

127 Centre for Women’s Justice, *Super complaint: Police failure to use protective measures in cases involving violence against women and girls* (March 2019)

128 London Councils ([DAB0486](#))



police often do not have the capacity to pursue breaches and they are a low priority for them. We believe the requirement for electronic monitoring could give survivors a false sense of protection and, therefore, increase the risk to them.<sup>129</sup>

101. EAW agreed, saying “Electronic tagging could, when breaches of current orders are so poorly enforced, risk the safety of victims who are lulled into a false sense of security.”<sup>130</sup>

**102. We believe attaching positive requirements to Domestic Abuse Protection Orders has the potential to enhance the protection given to victims. The practicalities of the scheme, however, do not appear to have been thought through. Without funding for training or an infrastructure for monitoring compliance, use of positive requirements will be very limited or run the risk of making things worse as victims are forced to try and monitor their abusers’ compliance with the order themselves. The simple question which the draft Bill does not address is which organisation or organisations are to be responsible for the monitoring of positive requirements. Without this clarity, the provisions relating to this proposal may fail. The use of positive requirements also has legal implications for the utility of the order which we consider below.**

### ***Criminal sanctions***

103. In contrast to Domestic Violence Protection Orders, breach of a Domestic Abuse Protection Order may lead to arrest and criminal sanctions.<sup>131</sup> Many of our witnesses, including Women’s Aid and Safe Lives welcomed the change. Amanda Barron observed that introducing criminal sanctions for DAPOs made them part of a “graduated system” of protective measures, which range from undertakings by the perpetrator where a breach will be punished as a contempt of court to restraining orders under section 5 of the Protection from Harassment Act, which have criminal sanctions but are available only after the resolution of criminal proceedings.<sup>132</sup>

104. Concerns about criminal sanctions centred on the potential for injustice to perpetrators and the potential for the threat of criminal sanctions to deter victims from reporting abuse. Liberty told us:

These measures circumvent the criminal justice system as a person may end up incarcerated based on facts determined by a legal process that falls far below the standard of fair process necessary to justify a criminal conviction. Where a criminal sanction results from breach of a civil order, this in effect creates a personal criminal code that a person must abide by—a code set by the conditions of the DAPO, rather than the individual being measured against a general legislative criminal standard. This is a clear threat to fair process, the rule of law and engages the accused’s rights under Article 6 ECHR.<sup>133</sup>

Liberty said their concerns were supported by Rights of Women and Sisters for Change.

129 Rights of Women response to Home Office consultation, quoted in [Transforming the Response to Domestic Abuse Consultation Response and Draft Bill](#) (January 2019)

130 End Violence Against Women Coalition ([DAB0490](#))

131 Draft Bill, cll [22](#), [36](#), [39](#) etc.

132 [Q108](#)

133 Liberty ([DAB0216](#))

105. Other witnesses were concerned that the prospect of criminal sanctions might deter victims who did not want to see their abuser criminalised. Elspeth Thomson of Resolution said “ I think it is important that the victim has a choice of how it is enforced, either as a criminal offence or as a contempt of court. A lot of victims do not want to see the person being criminalised.”<sup>134</sup> The Law Society of England and Wales concurred, noting: “the complex relational dynamics of domestic abuse and the difficulty and conflict that victims experience in reporting partners or other associated persons to the police.”<sup>135</sup>

106. Victoria Atkins, Home Office Minister, told us that the aim behind the introduction of criminal sanctions for breach of the orders was to put pressure on the perpetrator to comply with the order: “We hope that will help in situations where a victim is very concerned that the perpetrator will break the terms of the order. We believe that having that as the ultimate penalty for breaching the order will make the perpetrator take it seriously.”<sup>136</sup>

## Ensuring consistency in the imposition of orders

107. Domestic Abuse Protection Orders can be imposed by both the civil and criminal courts. The standard of proof required for a DAPO is the civil standard (balance of probabilities) which means a DAPO may be made in criminal proceedings whether the perpetrator has been convicted or acquitted.<sup>137</sup> We heard concerns from some witnesses that this may lead to a difference of approach, particularly given the civil courts do not have access to probation assessments for the imposition of positive requirements. Andrea Simon, of EAW, highlighted the potential danger of “different courts—family courts and criminal courts—applying the orders in different ways, and we would not like to see different levels of protection offered to women in different jurisdictions.”<sup>138</sup>

108. ***We are concerned at the potential for inconsistent approaches between the civil and criminal courts to applications for Domestic Abuse Protection Orders. We recommend that detailed guidance for applicants, defendants and the judiciary be introduced on the circumstances in which such protective orders are granted, with particular consideration given to the evidence required and the assessment of risk posed by the respondent to the applicant for the order.***

## Cost

109. An application for a DVPO costs the police £205 and a contested hearing costs £515.<sup>139</sup> Rights of Women told us that the police will seek a costs order against the respondent, which will only be granted when the application is successful. It is unclear how many costs orders are made following applications for DVPOs, and, most pertinently, how much money is actually recovered from respondents when costs orders are made. A National Audit Office report from the summer of 2011 concluded that as much as £1.3bn was owed in court fines, prosecutor costs and other payments arising from court proceedings.<sup>140</sup>

134 [Q110](#)

135 The Law Society of England and Wales ([DAB0482](#))

136 [Q282](#)

137 Draft Bill, [cl 27\(5\)](#)

138 [Q13](#)

139 Rights for Women ([DAB0004](#))

140 Report of the Comptroller and Auditor General, *Ministry of Justice: Financial Management Report HC(2010–11) 187*, para 2.17



110. We understand that police forces did not receive any additional funding when DVPOs were rolled out nationwide. Olive Craig, Legal Officer at Rights of Women, among others, said the organisation had been told by police officers, victims, and frontline domestic violence support staff that one of the reasons they did not use these orders was because they were seen as “too expensive.”<sup>141</sup> Ms Craig observed of the proposed scheme:

The additional problems that we think they will create is that some of the provisions of the orders are more draconian in nature, so courts may be less likely to grant them in the first place. We think that they are certainly more likely to be defended, which will then increase those cost concerns in the police’s mind, because they will become more expensive to apply for.<sup>142</sup>

111. The Impact Assessment for the draft Bill did not allow for any additional costs to the police.<sup>143</sup> Victoria Atkins, Home Office Minister, told us that police would, however, continue to pay for DAPO applications at a fee determined in regulations. Ms Atkins told us the Government would be making the case to the police for spending resources on DAPOs:

The argument that we will deploy is that if you have a serial perpetrator, there are significant advantages—economic and moral, and for health and emotional wellbeing—to the police in intervening at a much earlier stage, before the threshold for prosecution is met. Fees still have to be decided, but we will argue very strongly that the orders should be viewed as preventive measures.<sup>144</sup>

112. Significantly for the success of the new order, Ms Atkins told us that victims would not have to pay fees.<sup>145</sup>

**113. The Government’s insistence that the police pay a court fee to make an application for a Domestic Abuse Prevention Order, while victims do not, will undermine the entire scheme and end any chance of the orders becoming the ‘go-to’ order to protect victims of domestic abuse. Police officers will be put in the invidious position of having to choose to use scarce resources to make an application or persuading the victim to make the application themselves. This effectively removes a key strength of the order, that an application may be made without the victim’s involvement, or even consent. We strongly recommend that applications for Domestic Abuse Protection Orders be free to the police, with appropriate funding to HM Court and Tribunal Service.**

**114. We welcome the Government’s ambition to improve the protection available to victims of domestic abuse. Strengths of the proposed scheme include explicitly broadening qualifying abusive behaviour beyond physical violence; not requiring the victim’s consent to the issuing of an application for an order but providing safeguards on who can make such applications; and, with significant caveats, the introduction of positive requirements.**

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141 Rights for Women ([DAB0004](#))

142 [Q38](#)

143 Home Office and Ministry of Justice, [Impact Assessment](#) (January 2019)

144 [Q284](#)

145 [Q283](#)

115. We accept the Government’s assurance that the proposed new order is compliant with our human rights obligations. We are very concerned, however, that the introduction of indefinite time limits, positive requirements and criminal sanctions combine to create such a burden on the perpetrator that the courts will be reluctant to impose the orders in all but the most exceptional of circumstances, meaning the draft Bill runs the danger of reducing the protection available to victims rather than increasing it. We note the limited use of occupation orders by the courts as a lesson the Government needs to consider before going forward with these proposals. Without learning such lessons DAPOs will not be able to fulfil the Government’s intention that they will be the ‘go to’ order in cases of domestic abuse.

116. *We recommend the Government carry out a thorough review of the protective measures currently available before going ahead with its proposals for the Domestic Abuse Protection Order. Following that review, we anticipate the Government will amend the current scheme both to tackle the flaws seen in the Domestic Violence Protection Order process and to ensure that the courts are not obliged to take a restrictive approach to imposing the new order.*

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

## Bail in cases of domestic abuse and sexual assault

118. Pre-charge bail is the release of an individual by the police pending further inquiries. The person released is required to return to the police station to be re-interviewed or charged, and is subject to arrest if he or she fails to do so.<sup>146</sup> The power to impose additional conditions, such as prohibiting contact with witnesses or the surrender of a passport to prevent absconding were introduced in 2003.<sup>147</sup>

119. In 2017, the Policing and Crime Act 2017 restricted the length of pre-charge bail to 28 days in most circumstances.<sup>148</sup> Extensions could be authorised by senior police officers but only if the officer authorising the extension had reasonable grounds for believing the investigation was being made “diligently and expeditiously.”<sup>149</sup> This was a response to cases such as that of the radio broadcaster Paul Gambaccini who was repeatedly released on bail for a year while being investigated over historic sex abuse allegations, before being cleared of all charges. Mr Gambaccini had been suspended by the BBC without pay throughout the time he was on bail.<sup>150</sup>

120. In March 2019, the Centre for Women’s Justice (CWJ) made a ‘super-complaint’ to HM Inspectorate of Constabulary concerning the alleged limited and inconsistent use of police powers to protect women suffering domestic abuse.<sup>151</sup>

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146 Police and Criminal Evidence Act 1984, [s 30A](#)

147 Criminal Justice Act 2003, [s 13](#) amending the [Bail Act 1976](#). Previously such conditions could only be imposed by a court: [Bail Act 1976, s 3\(6\)](#).

148 Policing and Crime Act 2017, [s 63v](#)

149 Police and Criminal Evidence Act 1984, [s 47ZC](#) as amended by Policing and Crime Act 2017, [s 63](#)

150 See Home Affairs Select Committee, Seventeenth Report of Session 2014–2015, [Police Bail](#), HC 962

151 Centre for Women’s Justice, [Super complaint: Police failure to use protective measures in cases involving violence against women and girls](#) (March 2019)

121. Lucy Hadley, of Women’s Aid, told us the changes to the bail regime had led to the police “drastically” reducing the use of bail for men accused of “rape and domestic violence” which is “having the effect of putting women at risk” because the alleged offender is being released without conditions.<sup>152</sup> Her concerns were echoed by other frontline organisations, including EAW. DCC Louisa Rolfe, of the National Police Chiefs’ Council, agreed that the reduction in pre-charge bail in domestic abuse cases had been significant, and told us that it could be difficult to convince a judge of the need for bail when a case progressed to court if he or she had not been on police bail.<sup>153</sup>

122. Kate Ellis, of the Centre for Women’s Justice told us that “resources, training and understanding” were all part of the problem with the new bail regime but the biggest challenge seemed to be resources in the context of a 28 day initial grant of bail combined with a stringent test for an extension:

In the course of criminal investigations, 28 days is not a long time, especially when you have stretched police forces, but in general anyway. What is happening is the police are either applying and being rejected or looking at what they have got and saying, “We haven’t yet done forensics,” or “We haven’t yet got to this stage. Therefore, there is no point applying.”

In some instances, police were not even arresting suspects, with suspects being invited to voluntary interview, because it removes all the bureaucracy and allows police to arrange interviews with suspects by appointment, which was seen as much less resource-intensive. Of course, in a voluntary interview, you do not have the power to impose bail, which again I think is one of the incentives, because it removes the bureaucracy of even having to think about whether bail is necessary and proportionate. That was a problem.

Where that was not happening, sometimes suspects were being arrested and then released under investigation, and extensions were not being applied for after 28 days, either because it was thought not to be necessary, or because, in the majority of cases, the investigation had not been able to progress that far. That was the data.<sup>154</sup>

123. From the police perspective, Deb Smith, of the Police Superintendents Association, agreed that the stringency of the test applied to the extension of bail beyond 28 days at a time of reduced resources presented significant problems in domestic abuse cases:

To get a charge on a domestic abuse case, there clearly has to be a significant amount of evidence gathered. That is almost always going to be nigh-on impossible in the first 28 days, even if somebody is released on bail. Then obviously we go to superintendent’s extension for the three months, and even that is a challenging timeframe in which to get all the evidence required to satisfy a charge—third-party material, mobile phone records and so on.<sup>155</sup>

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152 [Q13](#)

153 [Q195](#)

154 [Q197](#)

155 [Q196](#)

124. The Centre for Women’s Justice told us that the risk to the victim of the suspect being released without bail was not part of the test for an extension of bail after the initial 28 days:

Whilst speeding up investigations is an admirable aim, in reality, especially with very stretched resources and increases in reporting of domestic abuse and sexual offences, the criteria to extend bail may not be met because investigations have not been progressed swiftly enough. This is a windfall for suspects and leaves victims exposed through no fault of their own. Even in a case which is clearly high risk and there is no question that bail conditions are required, under the current legislation if the investigation is not progressed properly there will be no bail after an initial 28-day period. This cannot be acceptable and achieves a wholly improper balance between the rights of suspects and victims.

The 2017 Act is built around a framework of protections for suspects: as a further example, the Act requires that before bail is extended the suspect or his legal representative must be informed and any representations made by them considered, without any requirement to consult victims ... The reforms were initially motivated by a need to address far longer periods on bail than those specified by the 2017 Act, of over a year, sometimes several years.<sup>156</sup>

125. The Centre for Women’s Justice noted the negative consequences of the reduction in bail use included victims being in fear; suspects contacting victims leading to some withdrawing their support for prosecution and the failure to arrest suspects inhibiting police powers of investigation, such as the power to seize the suspect’s mobile phone.<sup>157</sup>

126. We also heard that the consultation prior to the 2017 bail reforms did not hear from any women’s organisations, or victims’ groups, and that only policing bodies, organisations representing suspects and defence lawyers participated.<sup>158</sup>

127. Victoria Atkins, the Home Office Minister, told us the Government was “very aware”<sup>159</sup> of concerns over the 2017 bail regime and had worked with the National Police Chiefs’ Council to issue guidance to officers on the use of bail. She observed: “Pre-charge bail is still available. It is almost as though the pendulum has swung the other way, and we need to get it back in the middle by ensuring that for cases where it is appropriate to go beyond 28 days, people are being released on pre-charge bail with conditions as necessary and proportionate.”<sup>160</sup>

**128. *The changes to the bail regime in the Policing and Crime Act 2017 were well-meaning. Unfortunately, the result has been that pre-charge bail is no longer an effective protective measure in domestic abuse cases. While there may be an issue with police training and guidance on the operation of the reforms, 28 days bail combined with a rigid test for any extension does not take into account the need to protect victims from***

156 Centre for Women’s Justice ([DAB0323](#))

157 Centre for Women’s Justice, [Super complaint: Police failure to use protective measures in cases involving violence against women and girls](#) (March 2019)

158 Centre for Women’s Justice ([DAB0323](#))

159 [Q290](#)

160 [Q290](#)

*perpetrators and allow the police time to do their job within the resources available. We recommend that the Government urgently bring forward legislation to increase the length of time suspects can be released on pre-charge bail in domestic abuse cases. We also recommend a rebalancing of the test for allowing extensions to pre-charge bail to give full weight to the protection of the victim from the risk of adverse behaviour by the suspect, thereby balancing the rights of the victim with those of the suspect.*

129. We suggested to DCC Rolfe that there should be a presumption that individuals under investigation for domestic abuse only be released on bail. Ms Rolfe said:

I think a presumption of bail would be appropriate in domestic abuse cases. Although domestic abuse covers a vast range of incidents, often when we make an arrest, those are the cases we are concerned about. It may not be appropriate in every case. In some cases, where out-of-court disposals and rehabilitative, preventive work with other agencies is appropriate, bail may not be appropriate. Certainly, we should build some gatekeeping into those decisions, and ensure that bail is the presumption in cases of domestic abuse where we have made an arrest.<sup>161</sup>

130. Deb Smith agreed with her colleague and suggested any such presumption should include “ any crime where there is a significant safeguarding issue, such as child abuse or exploitation.”<sup>162</sup>

***131. We recommend the Government amend the Policing and Crime Act 2017 to create a presumption that suspects under investigation for domestic abuse, sexual assault or other significant safeguarding issues only be released from police custody on bail, unless it is clearly not necessary for the protection of the victim. We consider this vital not only to protect victims but to give them confidence that their complaint is been taken seriously and that the criminal justice system will have regard to their welfare throughout any proceedings arising from their complaint.***

## Domestic Violence Disclosure Scheme

132. The Domestic Violence Disclosure Scheme allows an individual to ask the police if someone with whom they are in a relationship has a record of violent or abusive behaviour (the ‘right to ask’) It also allows the police to proactively share information with an individual in order to protect a potential victim (the ‘right to know’). The scheme is based on the common law power of the police to share information where there is a “pressing need” to do so in order to protect the public.<sup>163</sup> The scheme is also known as ‘Clare’s Law’ after Clare Wood, who was murdered by her violent ex-boyfriend in 2009.<sup>164</sup>

133. The draft Bill puts the Home Office guidance issued to the police on the operation of the DVDS into statute.<sup>165</sup> In the consultation on the draft Domestic Abuse Bill, the Government said putting the current guidance into statute:

161 [Q196](#)

162 [Q198](#)

163 Home Office, [Domestic Violence Disclosure Scheme \(DVDS\) Guidance](#) (December 2016), para 3

164 Home Office, [Domestic Violence Disclosure Scheme \(DVDS\) Guidance](#) (December 2016), para 2

165 Draft Bill, [cl 53](#)

... will place a duty on the police to have regard to the guidance and strengthen the visibility and use of the scheme. We think that this will result in more people being warned of the dangers posed by their partners (or ex-partners) and help keep victims safer.<sup>166</sup>

134. Our witnesses broadly welcomed the move. Lucy Hadley, of Women’s Aid, hoped it would also improve consistency across police forces in the use of the DVDS. She told us, however, that the DVDS was not a “silver bullet” because “most survivors will not bring criminal convictions or criminal proceedings, therefore their perpetrator will not be known to the police, so that perpetrator will never show up on the disclosure scheme.”<sup>167</sup> In this context, Ellie Butt, of Refuge highlighted that the Government’s Impact Assessment estimated only a 5–10% increase in applications under the DVDS.<sup>168</sup> Andrea Simon though the legislation “should raise awareness of the scheme, which should help to ensure that it is embedded into best practice across police forces.”<sup>169</sup> Ms Simon cautioned:

there is a need also to ensure the immediate availability of support and advice services for those who are vulnerable to experiencing abuse or who are already in abusive situations [...] There is this core response to domestic abuse, but it cannot work on its own—in isolation—to keep women safe.<sup>170</sup>

135. Professor Sandra Walklake, of Liverpool and Monash Universities, and Dr Kate Fitz-Gibbon of Monash University (Victoria, Australia), in evidence to the Joint Committee on Human Rights, disagreed with the Government’s proposals to increase the use of the DVDS on the grounds that “there is no evidence to date that DVDS acts as a preventive strategy or an effective intervention.”<sup>171</sup> They noted that the average time taken for disclosure was 39 days which “mitigates any preventive potential of the Scheme and heightens victim’s risks.”<sup>172</sup>

136. SafeLives identified further risks in the use of the DVDS, including the importance for an applicant for disclosure to understand that even if the police had no information to disclose this did not mean their partner did not have a history of abuse; and potential for the recipient of a disclosure under the ‘right to know’ to be resistant to the offer of information if it was made at the wrong time or in the wrong place for that individual. SafeLives told us that it was crucial to the success of the DVDS that the police understood that “it will always be more suitable for the state to disclose knowledge to people at risk so they can make safe choices, rather than members of the public having to hunt out that information from one or more agencies proactively.” SafeLives highlighted the importance of training for the police if the DVDS were to operate successfully.<sup>173</sup>

137. The DVDS has had limited use since its creation in 2014—the latest figures revealed that there were 4,655 “right to ask” applications resulting in 2055 disclosures in the year

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166 Home Office, [Transforming the Response to Domestic Abuse: Consultation Response and Draft Bill](#), (January 2019)

167 [Q13](#)

168 [Q13](#)

169 [Q13](#)

170 [Q13](#)

171 Written evidence to JCHR ([DVB0012](#))

172 Written evidence to JCHR ([DVB0012](#))

173 SafeLives ([DAB0458](#))



ending March 2018.<sup>174</sup> There were also 6,313 “right to know” applications resulting in 3,594 disclosures in the same period.<sup>175</sup> This compares with the 1,198,094 domestic abuse-related incidents and crimes recorded by the police in England and Wales in the same year.<sup>176</sup>

138. The reasons for the low number of ‘right to ask’ applications seems obvious to us—as one witness put it “when you are at the start of a relationship it is not really in your mind to go and ask the police for disclosure ... of your new partner’s criminal past,”<sup>177</sup> a point acknowledged by the Minister.<sup>178</sup> The low numbers of ‘right to know’ applications are more difficult to explain, but police concerns around data protection and the right to privacy of the potential subject of an application probably contribute. As noted above, witnesses also told us there was “patchy”<sup>179</sup> use of the powers across different police forces which should be improved by the reforms in the draft Bill. Other witnesses suggested that the police should be placed under a significantly higher duty to share information with a potential victim of domestic abuse by keeping a repeat domestic abusers register, modelled on the current Violent and Sex Offenders Register.<sup>180</sup>

139. Sophie Linden, Deputy London Mayor for Policing and Crime, and Claire Waxman, Victims’ Commissioner for London told us they were “disappointed that the Bill does not include the setting up a register of serial perpetrators that would address offending and protect victims.”<sup>181</sup> The London Assembly agreed, arguing that a register could:

vastly improve the way police forces are able to proactively track and manage the risk presented by the most dangerous perpetrators of domestic abuse. A Domestic Abusers Register would encourage proactive risk management: it would place the onus on the most dangerous domestic abuse offenders to register with the police, and keep up to date, details such as address and relationship status; and allow police forces to assess the threat posed by offenders in their communities and put in place the required level of proactive policing or a lower level of monitoring through existing partnership arrangements ...<sup>182</sup>

140. The London Assembly suggested that any register could be operated through the current multi-agency management of offenders. It highlighted the conclusion of a study by the Association of Police and Crime Commissioners (now the National Police Chiefs Council) that “found a Domestic Abusers Register would be cost neutral if just 357 cases of domestic violence were prevented over a three-year period.”<sup>183</sup>

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174 2055, or 44%, of the requests were granted and resulted in the disclosure of information. Results were based on returns from 41 of the 43 police forces in England and Wales. Office for National Statistics, ‘[Domestic abuse in England and Wales: year ending March 2018](#)’, accessed 11 June 2019

175 57% of ‘right to know’ applications resulted in disclosures. Office for National Statistics, ‘[Domestic abuse in England and Wales: year ending March 2018](#)’, accessed 11 June 2019.

176 Around half of those incidents were subsequently not recorded as crimes. Office for National Statistics, ‘[Domestic abuse in England and Wales: year ending March 2018](#)’, accessed 11 June 2019

177 Q56 [Craig]

178 Q291

179 Q13

180 The Violent and Sex Offenders Register was created under the [Sexual Offences Act 2003](#)v. It was preceded by an earlier notification regime which began in September 1997.

181 Sophie Linden, Deputy Mayor for Policing and Crime, and Claire Waxman, Victims Commissioner for London ([DAB0520](#))

182 The London Assembly ([DAB0002](#))

183 The London Assembly ([DAB0002](#))

141. Penelope Gibbs, of Transform Justice, told us “I am opposed to a register; I feel that Clare’s law gives people who might suspect their intimate partners or somebody else of domestic abuse the ability to ask the police and get that information... I still failed to understand exactly what need this register fulfils and what harm is avoided by having it.”<sup>184</sup> Dame Glenys Stacey, Chief Inspector of Probation, also sounded a note of caution: “It is really about the definition of a domestic abuser, how long you are on the register and the impact of that registration on other aspects of your life ... The bare notion of a register concerns me, for basic libertarian reasons.”<sup>185</sup> Suzanne Jacob, of Safe Lives, noted that a register could overcome gaps in knowledge created by the use of different databases but suggested that “really strengthened use of PND/PNC in existing systems, both inside the police and ... between different agencies” could have a similar effect.<sup>186</sup> Louisa Rolfe, of the National Police Chiefs’ Council, was very supportive of improved multi-agency working.<sup>187</sup>

**142. We endorse the Government’s decision to place the guidance to the police on the Domestic Violence Disclosure Scheme (DVDS), also known as Clare’s law, on a statutory footing. We believe this will increase awareness of the DVDS among the general public and so those who could benefit from it. We acknowledge that the DVDS is only ever likely to be used by a small number of people, and there may be some risks involved for an individual making a ‘right to ask’ application, but we believe these can be reduced by a situation-sensitive approach by the police. Ultimately, the DVDS is only one small part of the wider state response to the challenge of tackling domestic violence.**

**143. We note the criticisms of the police’s limited use of the ‘right to know’ powers they possess under the Domestic Violence Disclosure Scheme (DVDS). We believe this will improve with the reforms to the guidance contained in the draft Bill. We also believe that it would increase with improved multi-agency working and we recommend further work is done in this area. We have taken evidence both in favour and against a register of offenders committing repeat domestic abuse offences, and propose this is an area which the Government should keep under review.**

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184 [Q170](#)

185 [Q170](#)

186 [Q167](#)

187 [Q194](#)



## 3 Justice system

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### Special measures in courts

144. The process of appearing and giving evidence in court can cause considerable trauma to victims of domestic abuse. A court appearance may bring them into direct contact with the abuser, depending on the physical layout of the court buildings and the way the proceedings are conducted. Although in recent years there has been considerable progress in providing security and reassurance to witnesses in criminal proceedings, there is still inconsistency in their application; and the safeguards are much less frequently available in family and other civil courts.

145. It is welcome that the draft Bill (clause 51) extends the availability of assistance (known as ‘special measures’) when giving evidence in criminal proceedings to any complainant where the offence amounts to domestic abuse. The court would not have to be satisfied (as it does now) that the quality of the complainant’s evidence would be affected by fear or distress.<sup>188</sup> The measures available include giving evidence from behind a screen, or by live link (not necessarily from within the courthouse). It would still be for the judge to decide which (if any) measures would maximise the quality of the evidence,<sup>189</sup> but Amanda Barron told us that in her experience of the “Specialist Domestic Abuse Court” at magistrates’ courts in central London, “almost all of our cases will be granted special measures, because of the nature of the domestic abuse, as they are likely to give much better evidence”.<sup>190</sup>

146. Welcoming strengthening of the provision of special measures in criminal courts, our witnesses also called particularly for improved protection for victims of domestic abuse when involved in proceedings at family and other civil courts. Olive Craig, Rights of Women, said that it made no sense for the Government to propose a presumption of special measures in the criminal courts where they were already widely employed, but not where it was needed in the family courts.<sup>191</sup>

147. In 2017, the family courts introduced a new set of rules (Family Procedure Rules, Part 3A) regarding vulnerable people, and a new practice direction about domestic abuse in cases about children (Practice Direction 12J). As a result, arrangements similar to those in the criminal courts (but called “participation directions”) can be made to protect a vulnerable party or witness.<sup>192</sup> When considering whether a party or witness is vulnerable, any concerns relating to domestic abuse must be taken into account. Practice Direction 12J makes clear that if victims or children require special measures within the family court, appropriate arrangements, including separate waiting rooms and arrangements for entering and leaving the building, need to be made.<sup>193</sup> However, Resolution pointed out that despite these changes, “it is widely recognised that current special measures facilities in the family court hearings, such as video and audio link and screen facilities, are not satisfactory or on a par with those facilities available in the criminal courts”.<sup>194</sup>

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188 Youth Justice and Criminal Evidence Act 1999, [s 17](#)

189 Youth Justice and Criminal Evidence Act 1999, [s 19\(2\)](#)

190 [Q111](#)

191 [Q50](#)

192 Family Procedure Rules, [rr 3A.4–3A.5](#)

193 Family Procedure Rules, PD12J, [para 10](#)

194 Resolution (supplementary evidence) ([DAB0521](#))

This complaint was echoed by Stay Safe East, who told us that its local family court was equipped with video facilities in only one of 12 courtrooms, had poor physical facilities and inadequate provision of interpreters. They recommended “a national standard for access and special measures for all Family courts and domestic violence courts”.<sup>195</sup>

148. Lucy Hadley, Women’s Aid told us that the top priority for transforming the response to domestic abuse was improving the family court system, and she called for an “automatic assumption” that special measures will be provided to victims in family courts. She told us of research showing that 61% of the survivors had no access to any special protection measures in the family courts, and only 7% had different entrance and exit times from the perpetrator, a low-cost and easy measure to help keep victims safe.<sup>196</sup> The research report concluded that extending such measures would need to be “accompanied by training for court staff to ensure effective implementation and an enabling environment” if special measures were to be successfully used.<sup>197</sup>

149. In the civil courts, there is little specific provision. The court has an overriding objective to deal with cases fairly and to manage cases actively.<sup>198</sup> The court can control how evidence is put before the court,<sup>199</sup> and can allow witnesses to give evidence by “video link or other means”.<sup>200</sup> But, as the Inns of Court College of Advocacy pointed out in 2015:

there is no focussed practice direction in civil proceedings on the issue of vulnerability, no accepted procedure for advocates, representatives or judges to identify vulnerable people in civil proceedings, no specific special measures and no requirements on judges to manage cases in relation to vulnerable witnesses or parties, including where the case involves litigants in person.<sup>201</sup>

Women’s Aid pressed for “equal access to special measures for victims across the family, criminal and civil courts”,<sup>202</sup> a call echoed by Dame Vera Baird QC.<sup>203</sup>

150. The Minister told us that special measures were already available in both family and civil proceedings. He said Practice Direction 3AA places a duty on the court to consider whether a party’s application in the proceedings is likely to be diminished by reason of vulnerability, including if they are a victim of domestic abuse, and to consider whether any in-court protections are needed, which can then be ordered by the judge. He added that there were similar arrangements in the Civil Procedure Rules and that the Government had not seen any evidence to suggest that there was an issue with special measures and their effectiveness in the civil court.<sup>204</sup>

151. The Minister accepted that providing special measures would be challenging because of the physical layout of some courts and variations in the availability of facilities to pre-

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195 Stay Safe East ([DAB0541](#))

196 [Q13](#)

197 Women’s Aid and Queen Mary University of London School of Law, *“What about my right not to be abused?” Domestic abuse, human rights and the family courts* (2018)

198 Civil Procedure Rules (CPR) [rr 1.1](#) and [1.4](#)

199 CPR [r 32.1\(1\)\(c\)](#)

200 CPR [r 32.3](#)

201 The Inns of Court College of Advocacy, *The Advocate’s Gateway: Vulnerable witnesses and parties in the civil courts, Toolkit 17* (July 2015)

202 Women’s Aid Federation of England ([DAB0404](#))

203 Northumbria PCC ([DAB0500](#))

204 [Q295](#)

record and provide video links—but he said that this was something that the Government was addressing by investing in the court reform programme. The Government’s intention was to take those needs into account when constructing new court buildings, or undertaking renovations, so that facilities such as separate waiting areas could be provided.<sup>205</sup>

**152. We welcome the proposal that complainants in criminal proceedings for an offence involving behaviour that amounts to domestic abuse will be automatically eligible for special measures.**

**153. We recommend that this provision be extended to victims of domestic abuse appearing in family and other civil courts. We note the Government’s comment that this is already possible under family court rules but, given the persuasive evidence about poor implementation, we recommend that the provision for special measures in the family court’s rules and practice directions is put on a statutory basis, and that a single consistent approach is taken across all criminal and civil jurisdictions. This is particularly important given the Government’s plans for a reduced but improved court estate, which may provide an additional barrier to participation for vulnerable victims.**

## Polygraph testing

154. A key part of the Government’s strategy is to strengthen perpetrator interventions to reduce re-offending. This includes tools for community-based staff working with people who have been released from prison or who are serving community sentences. Clause 52 of the draft Bill enables domestic abuse offenders to be subject to polygraph testing as a condition of their licence following their release from custody. This provision is intended to enable the National Probation Service to pilot polygraph testing with high risk domestic abuse perpetrators to monitor compliance with licence conditions in the community. The Government states that polygraph examinations are already successfully used in the management of offenders released on licence while serving a prison sentence for specified sex offences (under the Offender Management Act 2007).<sup>206</sup> The evaluation of a 2009–2012 pilot of polygraph testing under the 2007 Act concluded:

Polygraph testing has increased the chances that a sexual offender under supervision in the community will reveal information relevant to their management, supervision, treatment, or risk assessment. It has also increased the likelihood of preventative actions being taken by offender managers to protect the public from harm.<sup>207</sup>

155. Statements made by the offender during the test, or interview in connection with a test, and their physiological reactions during the test, may not be used in criminal proceedings in England and Wales.<sup>208</sup> It may, however, form the basis of licence revocation and recall to prison.<sup>209</sup> The results of polygraph testing have been ruled inadmissible in

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205 [Q296](#)

206 Home Office, [Transforming the Response to Domestic Abuse: Consultation Response and Draft Bill](#) (January 2019), p 75

207 Ministry of Justice, [The evaluation of the mandatory polygraph pilot](#) (July 2012)

208 Offender Management Act 2007, [s 30](#)

209 [Explanatory Notes](#)

the Canadian and New Zealand courts, common law jurisdictions similar to the UK.<sup>210</sup> The Privy Council<sup>211</sup> has considered the admissibility of polygraph testing. It noted that “the arguments against the admission of such evidence are very formidable” but did not need to decide whether the courts may accept it in some form in exceptional cases.<sup>212</sup>

156. Liberty suggested that “the use of polygraph testing risks infringing upon the offender’s rights under Article 5 (right to liberty), Article 6 (right to a fair trial) and Article 8 (right to privacy) [of the European Convention on Human Rights], particularly if their conditions become more restrictive and their monitoring becomes more intrusive as a result of the test.” It also raised concerns that the probation officer may “defer to the machine” rather than make their own, informed decision on managing the offender’s risk.<sup>213</sup>

157. Dame Glenys Stacey, HM Chief Inspector of Probation, reported that “a good number of probation professionals” would welcome the pilot and emphasised that during her tenure she had not found that such staff preferred anything to be “mechanistic”:

I would be very surprised indeed if there was a lazy resort to that. What they want is assistance to challenge legitimately what they are being told by a skilled liar.<sup>214</sup>

158. Rights of Women told us they were concerned that polygraph testing might create a false sense of security leading the probation service to over-rely on it for risk assessment and management.<sup>215</sup> Respect suggested the money would be better spent on tagging.<sup>216</sup>

**159. Polygraph tests are considered to have assisted probation in monitoring the behaviour of sex offenders and the Government proposes to pilot their use with domestic abuse offenders. It must be absolutely clear that no statements or data from a polygraph test can be used in the criminal courts. This appears to be the effect of the draft Bill but care must be taken to ensure the results of testing are not used in court, and that testing does not become a substitute for careful risk analysis or for other evidence-based interventions with perpetrators.**

## Cross-examination in family courts

160. Following the Legal Aid, Sentencing and Punishing of Offenders Act 2012 (LASPO), legal aid has generally been available to parties in the family court (at least in ‘private law’ cases concerning children) only in “exceptional cases”, unless the party was the *victim* of domestic abuse.<sup>217</sup> The limited availability of legal aid means that parties are often unrepresented in family cases: the reduction in numbers of represented litigants in private law cases after LASPO has been described as “drastic”.<sup>218</sup> If a family case (which need not

210 Canada: [R v Béland](#) 1987 CanLII 27 (SCC); New Zealand: “... polygraph testing has not received wide support from New Zealand Courts and provide no substitute for the well established rules of evidence...” [Kim v Police](#) [2015] NZHC 2543

211 The highest court of appeal for UK overseas territories and Crown dependencies and some Commonwealth countries.

212 [Bernal and Another v R](#) [1997] UKPC 18 at [39]

213 Liberty ([DAB0216](#))

214 [Q174](#)

215 [Q51](#)

216 [Q151](#)

217 Legal Aid, Sentencing and Punishment of Offenders Act, ss 9–10 and Sched 1, [para 12](#); The Civil Legal Aid (Procedure) Regulations 2012 (SI 2012 No 3098), [reg 33](#);

218 Sir James Munby, then President of the Family Division, in [Q v Q](#) [2014] EWFC 31, at [11]

itself be about domestic abuse) involves the victim of abuse giving evidence against an unrepresented perpetrator, the perpetrator will be entitled to cross-examine the victim. In contrast, since 2000 defendants have been barred from personally cross-examining the alleged victim of a sexual offence in criminal courts.<sup>219</sup>

161. The situation in the family courts has long been decried, with judicial calls as long ago as 2006 for the statutory provision of an advocate to conduct the cross-examination.<sup>220</sup> Expressions of judicial dissatisfaction intensified after LASPO.<sup>221</sup> Sir James Munby, the then President of the Family Division of the High Court, suggested that publicly-funded representation might have to be provided (rejected in other proceedings by the Court of Appeal),<sup>222</sup> and in 2016 issued this statement:

I have been raising since 2014 the pressing need to reform the way in which vulnerable people give evidence in family proceedings. I have made clear my view that the family justice system lags woefully behind the criminal justice system.

I have expressed particular concern about the fact that alleged perpetrators are able to cross-examine their alleged victims, something that, as family judges have been pointing out for many years, would not be permitted in a criminal court. Reform is required as a matter of priority. I would welcome a bar. But the judiciary cannot provide this, because it requires primary legislation and would involve public expenditure. It is therefore a matter for ministers. I am disappointed by how slow the response to these issues has been and welcome the continuing efforts by Women's Aid to bring these important matters to wider public attention.<sup>223</sup>

162. Even more starkly, in a 2017 High Court judgment, Mr Justice Hayden said:

It is a stain on the reputation of our Family Justice system that a Judge can still not prevent a victim being cross examined by an alleged perpetrator. [...] the process is inherently and profoundly unfair. I would go further it is, in itself, abusive. For my part, I am simply not prepared to hear a case in this way again. I cannot regard it as consistent with my judicial oath and my responsibility to ensure fairness between the parties.<sup>224</sup>

163. Clause 50 of the draft Bill is the Government's response. It prohibits a perpetrator from personally cross-examining a victim, and vice versa, where the perpetrator has been convicted of, cautioned for, or charged with, a specified offence (including, the Government intends, domestic abuse offences) against the victim; or the victim is protected by an injunction. Where this absolute prohibition does not apply, the court is given a discretion to prohibit in person cross-examination where it appears to the court that it would diminish the "completeness, coherence and accuracy" of the witness's evidence

219 Youth Justice and Criminal Evidence Act 1999, s 34

220 *H v L and R* [2006] EWHC 3099 (Fam)

221 See, eg, *D v K and B* [2014] EWHC 700 (Fam)

222 *Q v Q* [2014] EWFC 31, at [82] and [88]; *Re K and H (Children)* [2015] EWCA Civ 543, where the Court of Appeal held that a publicly-funded advocate could not be appointed but urged that "consideration should be given to the enactment of a statutory provision" (at [62]).

223 [Statement from the President of the Family Division, Sir James Munby: Cross-examination of vulnerable people \(December 2016\)](#)

224 *Re A (a minor) (fact finding; unrepresented party)* [2017] EWHC 1195 (Fam), at [60]

(the “quality condition”), or cause “significant distress” to that witness (the “significant distress condition”). The court is given power to appoint an advocate to cross-examine for anyone barred from doing so personally, to ensure their right to a fair trial. The advocate could be paid from public funds under regulations the Lord Chancellor is given power to make.

164. The Law Society of England and Wales told us that cross-examination measures in the Bill are very welcome but identified some problems with their implementation. It suggested judicial practice on prohibiting cross-examination might be inconsistent and that this would require “adequate training and education for the judiciary, in order to avoid relying on gendered or stereotyped interpretations of the party’s behaviour in determining whether cross-examination will indeed cause stress”. The Law Society said that the ban should apply to cross-examination in all circumstances where there was a history of domestic abuse. It also questioned whether advocates appointed by the court would have the capacity to prepare a witness statement for the victim. The Law Society also recommended that the prohibition should extend to cover questioning of witnesses called by the alleged abusive party themselves: for example, where they called a child of the relationship to give evidence.<sup>225</sup>

165. Rights of Women welcomed the Government’s intention to prohibit cross-examination in person in certain cases but said that the current proposals provided inadequate protection for victims of domestic abuse. It said that “cross-examination of victims by the perpetrator of abuse is well recognised as a way in which perpetrators can continue their abuse” and that “research has shown that around a quarter of victims of domestic abuse in child contact proceedings are still being cross-examined directly by the perpetrator”.<sup>226</sup>

166. Rights of Women told us that the majority of the women that face family law proceedings against the perpetrator of domestic abuse would fall into the discretionary category because the perpetrator would not have been convicted, cautioned, charged or have a protective injunction against them. It suggested that it would be difficult for judges to conduct the time-consuming enquiry necessary to properly determine whether the “significant distress” or “quality” conditions are met, particularly in cases of controlling or coercive behaviour where there was a pattern of behaviours which may appear innocuous but were powerful enough to silence the victim.<sup>227</sup> Rights of Women recommended that the draft Bill be amended so that the prohibition is mandatory where there are allegations of domestic abuse, not just when there has been a conviction.<sup>228</sup> The Family Justice Council agreed that the proposed provisions provided too much scope for discretion, adding that this was “to the potential detriment of the efficient administration of justice.”<sup>229</sup>

167. Practice Direction 12J requires family courts to consider at an early stage whether a hearing is needed to make a “finding of fact” about whether alleged domestic abuse did occur.<sup>230</sup> Resolution said that it had anecdotal evidence from its members of an inconsistent understanding and application of Practice Direction 12J, ranging from some cases in which a low level allegation of abuse resulted in the case not progressing, through

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225 The Law Society of England and Wales ([DAB0482](#))

226 Written submission to JCHR [DVB0050](#)

227 Written submission to JCHR [DVB0050](#)

228 [Qq46–48](#)

229 Family Justice Council ([DAB0417](#))

230 [Family Practice Direction 12J](#), para 16



to more serious cases being “nodded through” without evidence being heard or findings of fact made. Some of its members had suggested that first hearings should be before specialist domestic abuse judges, perhaps supported by a specialist CAFCASS team.<sup>231</sup>

168. Elspeth Thomson, a member of the national committee of Resolution, told us that the conditions for the proposed ban on cross-examination failed to cover a number of situations in which somebody’s evidence would be compromised by their experiences. She suggested that it should be mandatory to prohibit cross-examination in family proceedings where there had been a finding of fact, for example in the family court, of domestic abuse.<sup>232</sup> She also said that a lot of detail needed to be addressed and it would not be enough to transpose the system in criminal courts, where victims are always represented. In the family courts, the victim would often not have a legal representative because they did not meet the legal aid means test. This could result in an inequality of arms if the perpetrator was represented. Resolution suggested that legal aid for representation of both victims and perpetrators might address the family justice problem more effectively than the current proposals and could guard against inconsistency in the court’s application of discretion to prevent cross examination. Resolution also raised other wider issues in the family justice system, including perpetrators using repeat applications, dragging the process out.<sup>233</sup>

169. The Magistrates Association welcomed the proposals to prohibit cross-examination by alleged perpetrators in family courts, but pointed out that the structure of family proceedings differed significantly from that of criminal proceedings:

For example in criminal proceedings a complainant and defendant will only come together once (ie at the trial itself), but during the course of family proceedings the parties are likely to be in attendance for several hearings. It is not currently clear as to whether advocacy will be provided for the duration of proceedings, or only for specific hearings where requirements under the ‘quality’ or ‘distress’ conditions are most pronounced, or where oral evidence will be heard.<sup>234</sup>

170. The Minister, Edward Argar, told us that the Government expected the new power to prohibit cross-examination would be “widely used” and that “every victim of domestic abuse should benefit from the provisions against cross-examination in person”. He said that the Government would be producing statutory guidance to sit alongside the Bill, in which it would clearly set out how that power should be exercised in practice, and would work very closely with the judiciary to ensure it was being used properly. He explained:

... we did consider the option in this context of extending the automatic ban on cross-examination in person to cover all instances where there are allegations of domestic abuse. However, given the wide definition of domestic abuse being introduced in this Bill, we felt that a blanket, automatic prohibition against cross-examination in person where domestic abuse is alleged could risk extending the provision further than where it is necessary. We are, of course, open to reflecting on any comments from the Committee in this respect.<sup>235</sup>

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231 Resolution (supplementary evidence) ([DAB0521](#))

232 [Q113](#)

233 Resolution (supplementary evidence) ([DAB0521](#))

234 The Magistrates Association ([DAB0526](#))

235 [Q292](#)



171. With reference to wider issues in the family justice system, the Minister also told us that the Government had announced the establishment of an expert panel to gather evidence on outcomes for children and parent victims in contact cases and other private law children’s proceedings. This would look in particular at any harm caused during or following such proceedings where there were allegations or other evidence of domestic abuse or related crimes.<sup>236</sup>

**172. The proposal to prevent the perpetrators of domestic abuse themselves from cross-examining victims in the family courts is a welcome measure and warmly supported across the board. We are pleased that it is accompanied by publicly-funded representation for perpetrators of abuse where necessary in the interests of justice.**

**173. However, we are concerned at the potential for inconsistency in application because too many victims of domestic abuse will be protected only at the discretion of the court. We recommend that the mandatory ban is extended so that it applies where there are other forms of evidence of domestic abuse, as in the legal aid regime threshold.**

## Hearing the voice of the child in court proceedings

174. We heard evidence from a number of witnesses regarding the need to ensure that the voice of children in private law proceedings under the Children Act 1989 is being heard, particularly when children are saying that they are too scared to have contact with a parent and/or do not want it. A joint submission from a number of organisations in the violence against women and children’s sectors told us that the “welfare and wishes” of a child must be considered in line with the Practice Direction on domestic abuse,<sup>237</sup> and that Serious Case Reviews have revealed that, tragically, “children have died or been seriously injured during unsafe contact arrangements with an abuser.”<sup>238</sup>

**175. *Representing the voice of children and ensuring that decisions are made in their best interests is the primary responsibility of CAFCASS when providing reports to the Family Court under s.7 of the Children Act 1989. However, we are aware from evidence submitted to us together with wider research that there are ongoing and significant concerns that CAFCASS is not sufficiently representing the voices of children who do not wish to have contact with their parents where domestic abuse is a factor. We therefore consider that it is time for the Government to conduct a thorough review of how CAFCASS can improve its obligations in this regard.***

**176. We have also heard that judges and magistrates are increasingly meeting children who are involved in cases face to face. We very much welcome this development and would like to encourage all those hearing cases about children’s welfare to consider hearing from children directly.**

## Other justice issues

177. We received evidence from the Rt Hon Harriet Harman MP and Mark Garnier MP about defendants in domestic homicide cases claiming that the victim had consented to the

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236 [Q292](#)

237 [Practice Direction 12J](#)

238 [DAB0524](#)

violence that led to their death. In those circumstances, the charge would be manslaughter rather than murder. Such a case occurred in 2016 when Natalie Connolly was killed by her partner who said that her injuries were inflicted due to consensual “rough sex”. He received a prison sentence of three years eight months. There are concerns that, because of the difficulty in obtaining convictions in domestic abuse cases, especially when the victim has died, prosecutors may pursue the lesser charge in order to obtain a conviction.

**178. Given the weight of case law that people cannot consent to violence against them that causes Grievous Bodily Harm, let alone death, we are surprised that prosecutors opted for the lesser charge in the case cited. We consider that the case does not and should not provide a precedent, and we therefore do not recommend any changes to the Bill.**

179. The Prison Reform Trust proposed that a new clause should be added to the draft Bill creating a statutory defence for women whose offending is driven by their experience of domestic abuse. Its proposal for the new clause is supported by the Criminal Bar Association. The Prison Trust explained that women in prison in England and Wales have often been victims of more serious offences than those they are accused of committing, and that their experience of abuse and trauma is too often disregarded in decisions by criminal justice agencies.<sup>239</sup>

**180. *We recommend that the Government considers the proposal that a new clause be added to the Bill to create a statutory defence for women whose offending is driven by their experience of domestic abuse.***

## **Perpetrator interventions**

181. A key aspect of the Government’s domestic abuse strategy is to stop the re-offending of perpetrators, including repeat and serial perpetrators. The Government recognises that domestic abuse often occurs as a repeated pattern of behaviours, with some perpetrators abusing multiple partners over a number of years. Some perpetrator interventions are currently provided by Her Majesty’s Prison and Probation Service for those who have been convicted of offences and are assessed as at risk of re-offending. There are also some programmes for perpetrators who have not been convicted of an offence, which can be delivered or commissioned by the police, local authorities, or by CAF/CASS.<sup>240</sup>

**182. The Government recognises that domestic abuse often occurs as a repeated pattern of behaviours, with some perpetrators abusing multiple partners over a number of years. As part of its non-legislative measures accompanying the Bill, it has set out ways in which it aims to improve and increase the use of perpetrator programmes to help stop reoffending. We decided to take evidence on this issue in order to examine whether there was also a need for legislative measures to support this provision.**

## ***Probation service***

183. The probation service is responsible for accrediting any perpetrator programmes used as part of a criminal sentence. Dame Glenys Stacey, HM Chief Inspector of Probation, told

239 Prison Reform Trust ([DAB0429](#))

240 Home Office, *Transforming the Response to Domestic Abuse: Consultation Response and Draft Bill* (January 2019), [pp 71–72](#)

us that around half of those under probation were domestic abusers, and emphasised the potential benefit of undertaking good quality, evidence-based work with those individuals. A recent thematic inspection report from HM Inspectorate of Probation noted that probation services could play an important role in reducing domestic abuse but expressed “grave concern” about some of the probation work intended to protect victims of domestic abuse, and especially children. In terms of the quality and effectiveness of perpetrator interventions, the HMI Probation report stated that:

In the cases we looked at, we found that very little meaningful work had been completed in custody. In the community, domestic abusers were not making enough progress, and many had completed little work to help them improve their relationships and behaviour. While a range of domestic abuse interventions were being offered, I am not assured that these were all evidence-based, evaluated or delivered effectively. Too few individuals were either starting or completing Building Better Relationships, the only accredited domestic abuse programme that the court can impose as part of a community sentence.<sup>241</sup>

184. Dame Glenys told us that the numbers starting on the Building Better Relationships programme had reduced by 13% in the last eight years, and by 7% in the last year.<sup>242</sup> She estimated that just under 5,000 people a year were ordered to go through the programme, in contrast to the much more common court order of a rehabilitation activity requirement (a general provision to undertake rehabilitative activities with the probation company) which was given to around 82,000 people a year.<sup>243</sup> She pointed to a number of possible reasons. One problem was that when courts wanted to sentence on the day, for speedy justice, there was insufficient time to check with relevant agencies whether the person was suitable for a programme, and even where the order was recommended, it was not always ordered by courts.<sup>244</sup> Another issue was that current probation contract arrangements required Community Rehabilitation Companies<sup>245</sup> to offer the Building Better Relationships programme and deliver it only when a court ordered it, and they would therefore not be paid in cases where the programme would suit the individual but the court had not ordered it. She said that since the current probation arrangements had been in place, the numbers on accredited programmes had reduced by about a half.<sup>246</sup>

185. Dame Glenys said that there was also an estimated 12% decrease last year in the number of perpetrators finishing programmes. This was sometimes for reasons beyond the participants’ control—because of delays in starting the programme, insufficient time

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241 HM Inspectorate of Probation, [Domestic abuse: the work undertaken by Community Rehabilitation Companies \(CRCs\)](#) (September 2018)

242 [Q177](#)

243 [Q183](#)

244 Delivering Simple, Speedy, Summary Justice was a government initiative introduced in 2006. One of its objectives was that cases that require a court process will be dealt with as quickly as possible consistent with the needs of justice.

245 Since June 2014, probation services have been delivered by two distinct sectors: a public National Probation Service (NPS) and Community Rehabilitation Companies (CRCs), which are independent organisations, owned by private companies, on contract and held accountable by the Ministry of Justice (MoJ). In May 2019, the Government announced that the supervision of all offenders on probation in England and Wales was being put back in the public sector.

246 [Q178](#)

before the end of the supervision period to complete the programme, or lack of trainers to deliver the programme. She added that there was also a need for a range of other respected interventions for people with different needs, such as women perpetrators.<sup>247</sup>

186. To address these problems, Dame Glenys said that first, the National Probation Service would need to be allowed sufficient time to do the right checks before a sentence was given to see whether the individual perpetrator was suitable for a particular programme, and that this might sometimes mean an adjournment of a hearing. Secondly, NPS staff giving advice to a court on the sentence needed to adhere to existing NPS guidance which made it entirely clear that they should order a rehabilitation activity requirement only when no accredited programme or solution was suitable. Thirdly, there was a need to look at the contractual arrangement for probation companies which meant that they were only paid to deliver an order made by the court and that they received no payment for putting someone through one of those programmes of their own volition, even if that was the right thing to do in the individual circumstance. Finally, there was a need for a range of other interventions from accredited programmes to meet the profile of different perpetrators.<sup>248</sup> Dame Glenys also agreed that even though Building Better Relationships and other accredited programmes were built on a sound evidence base, it was right that there should be an evaluation to see whether they were actually working, although that process would not be straightforward.<sup>249</sup>

### ***Other perpetrator programmes***

187. The Lloyds Bank Foundation for England and Wales supports individual local charities tackling domestic abuse and also has a strategic national programme to help the domestic abuse sector develop new approaches and respond to the challenges facing it. Since 2015, the Foundation has been the main independent funder supporting Drive, a pilot approach to working with domestic abuse perpetrators that is led by Respect, SafeLives and Social Finance.<sup>250</sup>

188. The Drive approach focuses on serial perpetrators to prevent abuse and challenge behaviour, and typically works with cases where the victim has been assessed as at high risk of serious harm or fatality.<sup>251</sup> Duncan Shrubsole said that evaluation of the Drive project by the University of Bristol had indicated a reduction in physical abuse by two thirds, sexual abuse by three quarters, and controlling behaviour, harassment and stalking by over half. He called for funding and national infrastructure to support more such programmes, and infrastructure around standards and quality to ensure that safe standards were met.<sup>252</sup> Drive called for specialist interventions for the full spectrum of perpetrators, including, for example, LGBT+ relationships, honour-based violence and other situations in which there were multiple perpetrators, or in which the couple had not separated.<sup>253</sup> Galop told us that currently there were no specific National Offender Management Service-accredited or other programmes for people who perpetrate abuse in same-sex relationships.<sup>254</sup> Duncan Shrubsole, of the Lloyds Bank Foundation, said that

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247 [Q179](#)

248 [Q184](#)

249 [Q180](#)

250 Lloyds Bank Foundation for England & Wales ([DAB0476](#))

251 Drive Partnership ([DAB0480](#))

252 [Q135](#)

253 Drive Partnership ([DAB0480](#))

254 [Q142](#)

there had been some history of the prison and probation service “doing things on the cheap with perpetrators” and argued that a bad programme was worse than none at all.<sup>255</sup> He said that all interventions should be Respect-accredited to ensure that provision was safe.

189. The Magistrates Association also supported the call for accreditation of perpetrator programmes, saying that it was aware that in some parts of the country there was a requirement for any domestic abuse perpetrator programme to be accredited by Respect before it could be ordered by family court. It added that this accreditation provided a certain level of confidence for the bench, as it meant any programme must use interventions with a proven evidence base, the standard of intervention provision was regularly monitored, and there must be support provided to victims alongside interventions for the perpetrator.<sup>256</sup>

190. In terms of accreditation, Jo Todd said that Respect had a set of standards and a system of accreditation that was supported by the Government and the Home Office, and that those standards should be embedded in commissioning frameworks. This would help to remove any current bad practice such as short weekend courses with men and women in the same perpetrator group. She called for better accountability of programmes in the prison and probation services:

We have more accountability in the voluntary sector for what happens with our accredited programmes than there is in the current probation service and the Prison Service. They accredit a programme and then it is left to the CRCs or the prison to run it as they wish. It is only picked up if there is a thematic domestic abuse inspection that will scrutinise how it is being delivered. We scrutinise the delivery as well as the programme that is being used. It is absolutely crucial that there is synchronicity across the system or coherence across the different areas where perpetrator programmes are being run, so that they are all delivered to that high standard. The Domestic Abuse Commissioner is key.<sup>257</sup>

191. The Government has agreed that perpetrator interventions can prevent the escalation of offences, or any instances of further abuse and states that its aim in working with perpetrators is to prevent reoffending in order to protect victims and their children, and to give victims the space and security to rebuild their lives.<sup>258</sup> It has recognised that “the criminal justice response to perpetrators needs to be improved through better multiagency working with other statutory partners, better use of risk assessment to identify perpetrators, and clearer pathways for managing, monitoring and mitigating the risk that perpetrators pose”<sup>259</sup> and stated that it is committed to “transforming our response to perpetrators of domestic abuse at all points in the criminal justice system, from pre-conviction to custody and through to post-conviction in the community”. On

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255 [Q134](#)

256 Magistrates Association (supplementary evidence) ([DAB0530](#))

257 [Q149](#)

258 Home Office, *Transforming the Response to Domestic Abuse: Consultation Response and Draft Bill* (January 2019), [p 73](#)

259 Home Office, *Transforming the Response to Domestic Abuse: Consultation Response and Draft Bill* (January 2019), [pp 71–72](#)

16 May, the Government announced that responsibility for the supervision of all offenders on probation in England and Wales was being returned to the public sector after a series of failings with the system.<sup>260</sup>

192. The Minister told us that the Government's aim was to ensure that people received the right intervention at the right time. He accepted the need for accredited perpetrator programmes, and agreed that no programme was better than a bad programme. He said that there were a number of non-legislative commitments in the overall package sitting with the draft Bill. Key elements included courts' awareness of, and ability to access programmes, and also the ability of the probation service effectively to deliver and monitor them. As part of the reforms to the probation service that were recently set out by the Secretary of State, the Government was committed to improving the assessment and identification of people convicted of a domestic abuse offence who were eligible for the Building Better Relationships accredited programme. In terms of providing a wider range of programmes to meet different types of perpetrator, he said that it was the Government's intention to ensure that accredited interventions were available that would meet the most frequently occurring needs across the country within the probation case load.<sup>261</sup>

**193. In recent years, the number of individuals given a court order to attend a perpetrator programme has been reducing and fewer perpetrators are successfully completing those programmes. There is also currently no incentive for the probation service to provide perpetrator programmes to offenders who do not receive a court order but might still benefit from the programme. HM Chief Inspector of Probation told us that this was because of systemic problems in the criminal justice system and in the delivery of probation services.**

**194. Perpetrator interventions which succeed in bringing about significant changes in abusive behaviour must be tailored to the particular type of perpetrator if they are to achieve results, and can be expensive and time consuming. Increasing attendance on unsuitable programmes will not reduce the prevalence of domestic abuse. We heard that there is a need for a wider range of programmes, and for all programmes to be properly accredited and evaluated.**

**195. The Government has responded to concerns about the probation service's performance, and its delivery model. It must now ensure that those reforms support its ambition to increase the number of offenders successfully completing good quality perpetrator intervention programmes. In her evidence to us, HM Chief Inspector of Probation identified several factors which were contributing to the reducing number of perpetrators attending and completing suitable programmes. We recommend that the Government sets out how it plans to address those specific concerns.**

**196. The Government must also ensure that there is sufficient provision of quality assured specialist interventions for the full spectrum of perpetrators, across all risk levels. This will require an adequate level of funding and cooperation with expert providers. We did not identify a need for additional legislation to support perpetrator programme measures.**

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260 ["Justice Secretary announces new model for probation"](#), Ministry of Justice, National Probation Service and HM Prison and Probation Service, 16 May 2019

261 [Q299](#)



## 4 Refuges and support services

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### Housing and support services

197. As previously noted, the draft Domestic Abuse Bill is only part of a package of proposals intended to strengthen the response across government to domestic abuse. It is welcome that the Government has recognised the need to improve the provision of refuge services to meet the ambition behind its domestic abuse strategy.<sup>262</sup> Its announcement on 13 May 2019 set out the Government’s plans to place a legal duty on local authorities to deliver support to survivors of domestic abuse in accommodation-based services in England, backed by funding to place services on a sustainable footing. The proposals will form part of the Domestic Abuse Bill, when it is introduced.

198. Several Articles of the Istanbul Convention—which the Government has declared it intends to ratify—place obligations on signatories to provide a wide-ranging package of protection and support to victims, including access to specialist support services and refuges. Article 23 of the Convention says: “Parties shall take the necessary legislative or other measures to provide for the setting-up of appropriate, easily accessible shelters in sufficient numbers to provide safe accommodation for and to reach out pro-actively to victims, especially women and their children.” In this area, we urge the Government to take into consideration the additional information on the provision of refuges in the Explanatory Report to the Convention. Article 8 requires parties to allocate appropriate financial and human resources for the work carried out by non-governmental organisations, and Article 9 requires them to recognise, support and establish effective cooperation with them.<sup>263</sup>

199. The draft Bill contains one clause relating to housing (Clause 54), which deals with the granting of secure tenancies in cases of domestic abuse. This would require local housing authorities to grant a secure tenancy to victims being rehoused as a result of domestic abuse who previously held a secure or an assured tenancy (other than a shorthold tenancy) with a private registered provider of social housing or a housing trust. We were told that this change was likely to affect 1,000 people per year.<sup>264</sup> This provision elicited very few comments from our witnesses. What mainly exercised them was the overall provision of accommodation for survivors of abuse.

200. A variety of accommodation is provided for those who have to leave their homes because of domestic abuse, including move-on, properties with Sanctuary Schemes or other enhanced security measures, and emergency accommodation, but our witnesses focused in particular on the availability of refuge places. Emergency refuges provide temporary safe houses for women and children fleeing domestic abuse and can also offer them support with a range of other needs including longer-term housing, education, accessing benefits, employment, immigration or health and wellbeing. Local authorities are responsible for commissioning refuges and other safe accommodation in their area and are also subject to the duty to provide accommodation for victims of domestic abuse facing homelessness.

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262 Home Office, *Transforming the Response to Domestic Abuse: Consultation Response and Draft Bill* (January 2019), [p 21](#)

263 [Council of Europe Convention on preventing and combating violence against women and domestic violence 2011](#)

264 [Q312](#)



201. In 2015, the Ministry of Housing, Communities and Local Government (MHCLG) commissioned Women’s Aid to provide additional support to women facing difficulties accessing a refuge space and to conduct a detailed study of their needs. Women’s Aid set up the No Woman Turned Away (NwTA) project to deliver this work. The most recent NwTA project report was published in June 2018 and concluded that some survivors of domestic abuse and their children were being forced to sleep rough because some local authority housing teams were failing in their statutory duty to assist those in priority need who are vulnerable due to fleeing domestic abuse.<sup>265</sup>

202. Many of our witnesses argued that the existing level of provision was unlikely to be compliant with the requirements of the Istanbul Convention.<sup>266</sup> Women’s Aid said that in 2018 there was a shortfall of 1,715 bed spaces in refuges in England, far short of the recommended one family space per 10,000 head of population.<sup>267</sup> We were told that on one day 94 women and 90 children were turned away from refuges as a result of lack of spaces.<sup>268</sup>

203. Currently, refuges are primarily financed through two key funding streams. The rent and related service charges are funded through housing benefit, which makes up about half of a refuge’s income, and the support costs funding which is usually commissioned at local authority level and supplemented by trusts and foundations and other statutory funding sources, as a result of fundraising efforts by a refuge in its local community.<sup>269</sup> In evidence to the Home Affairs Committee in 2018, Councillor Simon Blackburn pointed to the benefits that could be delivered through locally commissioned services and strongly endorsed a funding model based on localism, but said that any legislative changes in the Bill must be matched with adequate resources and funding, given that local government was facing “unprecedented levels of demand, with an overall funding gap of £7.8 billion by 2025”.<sup>270</sup>

204. Lucy Hadley of Women’s Aid told us that the existing fully devolved model of funding for refuges and support services was not working. She pointed out that 21,000 referrals to refuges were declined in 2017–18 and added that the Government had not conducted an assessment of the impact of the Bill on demand for specialist services, even though this number was likely to increase because of the Government’s domestic abuse strategy.<sup>271</sup>

205. Refuge stated that, without a secure funding model to underpin the specialist services, including refuges, needed by survivors, the provisions in the Bill would be undermined by the “increasingly precarious financial position” of the specialist domestic abuse sector. It explained that:

Specialist services are the lynchpin of an effective response to domestic abuse. They not only provide quality services to keep survivors safe and help them recover and rebuild their lives, but are also essential for

265 Women’s Aid, ‘[Nowhere to Turn 2018](#)’, accessed 4 June 2019

266 See, for example. Joint written submission submitted by Amnesty International, End Violence Against Women, Imkaan, Latin American Women’s Rights Service, Liberty and Sisters for Change ([DAB0522](#)).

267 Women’s Aid Federation of England ([DAB0404](#)). The recommendation of one space per 10,000 head derives from a resolution of the European Parliament in 1986: European Parliament, Resolution on violence against women, Doc A2–44/86, [OJ C 176, 14 July 1986, p 77](#), para 26(a)

268 [Q69](#)

269 Women’s Aid, [Funding a national network of refuges](#) (2018)

270 Home Affairs Select Committee, Ninth Report of Session 2017–19, [Domestic Abuse](#), HC 1015

271 [Q20](#)

prevention and early intervention work through their role in multi-agency partnerships and challenging the structures and attitudes which underpin gender-based violence. As such, it is vital that the Domestic Abuse Bill is accompanied by a serious long-term commitment to funding the specialist services survivors need. This should include specialist Independent Domestic Violence Advocates (IDVAs), Independent Sexual Violence Advisers, outreach services, refuges, psychological support and a range of similar services for children.<sup>272</sup>

206. The Government's recent proposals would place a new, statutory duty on Tier 1 local authorities to convene a Local Partnership Board for domestic abuse accommodation and support services, including representation from various stakeholders. The Board would be required to assess need for domestic abuse services, develop and publish domestic abuse strategies, decide what support services are required and commission these accordingly and report progress back to MHCLG. Tier 2 authorities would be subject to a statutory duty to cooperate with the Local Partnership Board. National oversight would be provided through a National Steering Group chaired by an MHCLG Minister, and composed of representatives from various interested organisations, including the Domestic Abuse Commissioner. The proposals cover the funding of support services only, on the basis that the costs of rent and eligible services charges would continue to be met through welfare benefits.<sup>273</sup>

207. The Government has estimated that around £90 million would be required to support the new duty. The final figure would be informed by the consultation and included in the Spending Review, to ensure the right level of support.<sup>274</sup>

208. Providers of refuge services welcomed the Government's announcement but pointed to some issues which would need to be resolved. Women's Aid said that the new legal framework was a significant step in the right direction which should help to ensure consistent refuge provision across the country and end the postcode lottery that survivors currently faced when seeking safety. However, more work was required on safeguards to ensure: local provision of refuge services, not generic 'accommodation-based' provision; an effective national network of refuges that would operate without imposing local connection restrictions; and specific protection for the highly specialised services, including those led by and for black and minority ethnic women, disabled women and LGBT survivors.<sup>275</sup> It is also recognised that for women with complex needs, such as severe mental health issues, substance abuse, homelessness, refuge accommodation is often not available or indeed suitable.<sup>276</sup> Other locally supported housing provision such as 'Housing First' needs to be a priority.

209. Ellie Butt of Refuge expressed some concerns about how demand would be managed if there were a statutory duty for local authorities to commission accommodation. She explained that:

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272 Refuge ([DAB0453](#))

273 MHCLG, *Domestic Abuse Services: Future Delivery of Support to Victims and their Children in Accommodation-Based Domestic Abuse Services* (May 2019), para 20

274 HC Deb, 13 May 2019, [col 37](#) [Commons Chamber]

275 Women's Aid, 'Women's Aid responds to the prime minister's announcement on future funding for refuges', accessed 4 June 2019

276 AVA (Against Violence and Abuse) ([DAB0437](#))

We are worried that if we had a statutory duty, access might be rationed by a “high risk” assessment, as it is with multi-agency support at the moment. ... Also, in the current system, where this is not adequately resourced to meet current demand, you could have a race to the bottom in terms of services and service quality. We strongly believe that holistic, gender-specific services that are also independent from the state is often really important to the women we support. There could therefore be an unintended consequence of a statutory duty, encouraging local authorities to bring services in house, deliver them cheaply and require survivors to disclose to local authorities in order to access support.<sup>277</sup>

210. Councillor Blackburn said that placing a duty only on local authorities was potentially problematic given that they would have to work with many different partners from the police, the health services, the housing agencies and others to achieve the best possible outcomes.<sup>278</sup>

211. Hannah Gousy of Crisis pointed out that the new legal duty would not require local authorities to provide a safe and settled home for people who were fleeing domestic abuse. She said that in England only 2% of people accorded priority need for settled housing in 2017 were fleeing domestic abuse, compared to 11% in Wales. She thought the difference was because those fleeing domestic abuse in Wales were automatically entitled to settled housing. She recommended that there should be equivalent legislation for England.<sup>279</sup> Councillor Blackburn said that many local authorities just did not have sufficient accommodation in which to house those in need.<sup>280</sup>

212. Heather Wheeler, Parliamentary Under-Secretary of State in the Ministry of Housing, Communities and Local Government, confirmed that the new duty would apply to a range of safe accommodation, that it would require local authorities to base their local strategies on robust needs assessments for all victims, and that local authorities would be appropriately funded to deliver the requirements of the duty.<sup>281</sup>

**213. Currently there are too few places in refuges or supported housing and access to specialist services is limited. We welcome the Government’s announcement that it plans to introduce a statutory requirement in the Bill for accommodation support services in England to be provided for survivors of domestic abuse, and its commitment to provide an adequate level of additional funding to local authorities to enable them to comply with the new duty.**

**214. Further work is required to clarify the precise details of this duty, but this welcome step will make a significant difference to the support received by survivors of domestic abuse across the country. We encourage the Government to work closely with refuge providers, local authorities and other stakeholders to ensure that future service provision meets anticipated needs including the inter-relationships between local accommodation-based systems, so that they form a national network. This will assist in ensuring full compatibility with the requirements of the Istanbul Convention in this regard.**

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277 [Q19](#)  
 278 [Q257](#)  
 279 [Q258](#)  
 280 [Q259](#)  
 281 [Q308](#)

## Specialist support services

215. The MHCLG funding proposal takes a broad definition of accommodation-based domestic abuse services which goes beyond refuges and includes other forms of accommodation, but it does not cover all of the services needed by victims and their children, including community-based services such as advocacy, IDVA and outreach services; dedicated children’s services; and open access services offering one-off advice and information, counselling and helplines.

216. Witnesses said there was a need for specific safeguards to protect and fund these other services, especially the highly specialised ones which had lost out most under localism. These services deliver tailored support to victims of abuse who face multiple forms of discrimination. Some of these services operate on a national basis, supporting victims from many different local authority areas. Liberty recommended that the Bill should “provide meaningful long-term and sustainable funding to domestic abuse services, which meet the basic needs of all survivors and grounded in minimum human rights standards—particularly for migrant women, BME women, LGBT+, disabled and older victims of abuse”.<sup>282</sup>

217. We heard evidence from witnesses about some of the more specialist types of support required by victims of abuse which would not necessarily be commissioned at a local level.

### *BME and migrant women*

218. Women’s Aid argued that dedicated ‘by and for’ BME women’s services were vital for meeting BME women’s needs, including language specialism and expertise on immigration, discrimination, racism and culturally-specific forms of abuse. However, it said these services faced severe challenges within the current devolved funding model, and in 2018 there were just 30 refuge services run specifically for BME women.<sup>283</sup> Jane Gordon, of Sisters for Change, explained:

there have been massive local authority budget cuts, which has led to a drive towards generic lower-cost service provision for domestic abuse and violence against women services generally. Those are often delivered through larger consortia or housing organisations that do not have any specialist knowledge. Both of those core impacts have resulted in discrimination against smaller, specialist BME-violence-against service providers. The statistics, certainly in our report and in Imkaan’s report of December 2018, mirror that. While in 2014 perhaps around 30% of local authority funding went to BME specialist buy-in for organisations, by 2016 that was close to zero per cent. At the moment, the Big Lottery Fund is effectively providing the support for the BME specialist sector. That is not sustainable, because it is in a three-year funding cycle.<sup>284</sup>

219. Southall Black Sisters drew attention to the problem of funding for specialist services to support migrant women with No Recourse to Public Funds (NRPF) status who were experiencing domestic abuse. It argued that the Government’s proposal to provide

282 Liberty ([DAB0216](#))

283 Women’s Aid Federation of England ([DAB0404](#))

284 [Q226](#)

£500,000 for crisis support for migrant women and £300,000 to build the capacity of and strengthen specialist BME organisations did not meet the needs of migrant women with NRPF. It called for the development of a comprehensive strategy that focused on protection for all abused migrant women similar to the Violence Against Women and Girls strategy.<sup>285</sup>

## Children

220. We heard evidence of the devastating impact that domestic abuse can have on children and young people, resulting in emotional, social, psychological and behavioural difficulties with short and long-term implications. Lyndsey Dearlove, of Hestia, said that recent research indicated that children who experience domestic abuse are 50% more likely to go on to endure domestic abuse in their own intimate partner relationships, and that, if the right sort of tailored support were not provided now to those children in need, another cycle of domestic abuse would be created.<sup>286</sup> A number of leading children's charities told us that the current proposals were too narrow in scope to adequately safeguard and respond to children experiencing domestic abuse. Witnesses highlighted in particular the lack of tailored, specialist services for children and young people.

221. Emily Frith, Office of the Children's Commissioner for England, said that research indicated that 1.62 million children lived in a household with an adult who had experienced domestic abuse. Not all these children would be in receipt of children-in-need plans or child protection plans, and so wider support was needed for them. However, there was currently a wide variation across the country in terms of the support available.<sup>287</sup> Eleanor Briggs, Action for Children, said that there had been a reduction in the services for children which can decrease the impact of domestic abuse and improve child safety and health outcomes.<sup>288</sup>

222. Moving to emergency accommodation can be particularly difficult for children. They may have to uproot and change school more than once, as they are moved from one place of refuge or temporary accommodation to another. Children may find it difficult to integrate into a new community, especially if they have to move several times or become in need of a new school place outside the normal school admissions cycle.<sup>289</sup> Lyndsey Dearlove of Hestia said that one of the key factors in breaking the cycle of repeated abuse was ensuring that children had access to the specialist support they needed.<sup>290</sup> Practical measures that could benefit children who had experienced domestic abuse included protected status on NHS waiting lists, to ensure that they had timely access to the mental and physical health services that they needed, and measures to ensure that children had access to school places when they moved to refuges or other temporary accommodation. Children who experience domestic abuse move on average between three and four times in the first year of fleeing, which disrupts their education. She suggested that children should be in a new school within 20 working days, as in the model for looked-after children.<sup>291</sup>

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285 Southall Black Sisters ([DAB0508](#))

286 [Q124](#)

287 [Q72](#)

288 [Q69](#)

289 [Q119](#)

290 [Q123](#)

291 [Qq119](#), [123](#)

223. The Minister emphasised the Government’s commitment to protecting children.<sup>292</sup> She suggested that it would be for the Domestic Abuse Commissioner to help local commissioners to understand the impact that domestic abuse had on children and she summarised the ways in which the Government was seeking through non-legislative measures to support children who had experienced domestic abuse.<sup>293</sup>

### **LGBT**

224. Dr Jasna Magić, from Galop, the LGBT+ anti-violence charity, said that relatively low numbers of LGBT cases were recorded within the criminal justice system, and that many LGBT survivors would never come into contact with the police or courts. She also pointed out that the criminal justice system did not have sufficient mechanisms to record LGBT domestic abuse and that only one police force, Greater Manchester, had a specialist code to enable it to monitor LGBT experiences of domestic abuse.<sup>294</sup>

225. Dr Magić told us that specialist services for LGBT survivors of domestic abuse currently existed in only five cities across England and Wales; everywhere else, survivors would be referred to the generic domestic abuse service. Moreover, there were no LGBT-specific refuge services in England, and only two refuges provided specialist support to LGBT survivors.<sup>295</sup> She said that the specialist LGBT provision was inconsistent, patchy and often lacking in sustainability due to funding or short-term commissioning, at both local and national levels. She recommended that the Government consider how to encourage local authority areas to work together at the regional level to develop specialist LGBT provision.<sup>296</sup>

### **Disabled victims of abuse**

226. We heard evidence from Ruth Bashall, CEO of Stay Safe East, a London-based organisation run by disabled people which works with disabled victims of domestic abuse, about some of the barriers faced by their clients in accessing specialist support. These ranged from difficulties in paying for transport to courts, to not being believed because of having mental health issues and not having access to an intermediary or IDVA service, through to refuges turning disabled women away because they were considered to be a health and safety risk. However, she said that the real issue was a complete lack of sufficient knowledge and understanding to work with disabled victims of abuse. In addition, Government funding for specialist support services for disabled victims was very limited, and there was no adequate system for recording and monitoring incidents of abuse against disabled victims. She added that disabled mothers faced particular challenges, including the risk that they would be seen as unable to care for their children alone if they took action against the perpetrator of abuse.<sup>297</sup>

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292 [Q269](#)

293 [Q272](#)

294 [Q142](#)

295 [Qq142](#) and [154](#)

296 [Q154](#)

297 [Qq142](#), [150](#)



## Men

227. We heard evidence that men who are victims of domestic abuse face different problems and need separate, tailored types of support services to help them deal with that abuse. Jo Todd said that in her experience of running Respect’s Home Office-funded helpline for male victims of abuse, men tended to have different support needs from women. They were, for example, less likely to need crisis refuge provision, but they often had to deal with barriers in accessing support such as dealing with society’s expectations about male behaviours.<sup>298</sup> The ManKind Initiative, which provides a helpline for male victims of abuse, supported the current approach of commissioning services, suggesting that any change which placed “the sole or overwhelming focus on female victims” would lead to diminished access to professionally-led support services.<sup>299</sup>

228. The Government recognises that men and boys are also victims of domestic abuse and that they may face barriers when reporting these crimes and accessing appropriate support services. In March 2019 it published a Male Victims’ Position Statement to recognise the needs of male victims of domestic abuse, sexual violence and forced marriage, and to clarify the government’s position, and has stated that it will provide £500,000 of funding to improve support to male victims of domestic abuse.<sup>300</sup>

229. Victoria Atkins, the Home Office Minister, told us that she accepted that the current provision of support services was unsatisfactory, “particularly for cohorts of victims who have particular sensitivities ... for example, migrant women, male victims and LGBT victims”. She said that part of the reason for the MHCLG consultation was to look at how services were provided nationally, and that the Government wants “to ensure that there are specific, tailored, bespoke services for people and that they are not inadvertently facing difficulties because of their particular circumstances”.<sup>301</sup> She also said that Government had made it clear that local authorities should respond to the needs of all domestic abuse victims, including from isolated and marginalised communities, and that the MHCLG consultation would play an important part in considering how that should be achieved.<sup>302</sup> Mrs Wheeler said that for some specialist services such as those for BME and LGBT survivors, the Government “would be looking for cross-county, cross-city co-operation, and therefore cross-funding, to meet those needs”.<sup>303</sup>

**230. The Government needs to provide clarity on how non- accommodation based support services such as community-based advocacy and IDVA services and open access advice, helpline and counselling support services will be provided and funded under the new statutory duty proposed by MHCLG and what arrangements will be made for the national provision of highly specialist services. We recommend that the Government works closely with refuge providers, local authorities and other stakeholders to ensure that these essential services are included in future service commissioning plans in order to ensure full compliance with the Istanbul Convention in this regard.**

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298 [Q145](#)

299 [The ManKind Initiative \(DAB0382\)](#)

300 Home Office, *Transforming the Response to Domestic Abuse: Consultation Response and Draft Bill* (January 2019), [pp 46–47](#)

301 [Q306](#)

302 [Q302](#)

303 [Q309](#)



**231. We also note the key role in supporting survivors that other parts of the public service, especially in the areas of health and education, need to play. The Government must ensure that survivors of domestic abuse and their children have full access to health and other essential public services and do not suffer any detriment when they are forced to move to new accommodation in a different area. Finding school places and ensuring that survivors of domestic abuse experience no disadvantage in quickly accessing physical and mental health services are vital. Those leaving their homes and communities to escape abuse are sorely in need of such support and should be treated on a par with other vulnerable groups, such as looked after children.**

## 5 Migrant women

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232. Migrant women with uncertain immigration status are particularly vulnerable when they are victims of domestic abuse. Fear of being deported may make them less likely to seek help, and their immigration status may mean that they have no entitlement to welfare support, or to other forms of support such as a place in a refuge. Some perpetrators use this insecurity as a further means to coerce and control.

233. Witnesses told us that the Bill offered no additional protection for these women, and that this was not compliant with the requirements of the Istanbul Convention (“the Convention”). The Convention<sup>304</sup> sets international standards designed to prevent and combat violence against women and domestic violence. It came into force on 1 August 2014. The UK signed the Convention on 8 June 2012 and the Government stated in the response to its domestic abuse consultation that it was committed to ratifying it as soon as possible.<sup>305</sup> Until the UK ratifies, it is not bound by the Convention.<sup>306</sup> Article 4 of the Convention requires that parties take the necessary legislative and other measures to promote and protect the rights of everyone, particularly women, to live free from violence in both the public and private sphere. It also requires that these measures are provided without discrimination on (among others) the grounds of migrant or refugee status.<sup>307</sup>

**234. The Bill includes no specific provisions concerning migrant women, but we have considered this issue because of concerns that in practice some migrant women would not be protected by the proposed measures in the Bill.**

### *Problems faced by migrant women*

235. DCC Louisa Rolfe, NPCC lead on domestic abuse, told us that migrant women were sometimes unaware of the support that may be available to them and that manipulative perpetrators exploited that uncertainty.<sup>308</sup> Zehrah Hasan of Liberty said that women in these circumstances faced an impossible situation where they were forced to choose between the risk of destitution, detention or deportation, or staying in a situation of violence.<sup>309</sup>

236. Amnesty International argued that the UK was not compliant with Article 4, paragraph 3 of the Convention. It said that there was “a wealth of evidence” demonstrating that women with insecure immigration status were unable to secure protection when they experienced domestic abuse and were deterred from reporting to the police and other agencies because of the fear of facing immigration enforcement. It stated that the Bill contained no new provisions to increase protection or support for these victims of abuse.<sup>310</sup> Southall Black Sisters explained that:

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304 [Council of Europe Convention on preventing and combating violence against women and domestic violence 2011](#)

305 Home Office, *Transforming the Response to Domestic Abuse: Consultation Response and Draft Bill* (January 2019), [p 61](#)

306 [Art 75\(2\)](#)

307 [Council of Europe Convention on preventing and combating violence against women and domestic violence 2011](#)

308 [Q202](#)

309 [Q209](#)

310 Amnesty International UK ([DAB0336](#))

Abused migrant women are at risk of the most serious and prolonged forms of abuse, slavery and harm but cannot access justice or protection if they have unsettled immigration status; they are effectively excluded from the few protective measures contained in the Bill. The Bill does nothing to remove immigration and other barriers, including providing safe reporting measures to encourage abused migrant women to access necessary protection.<sup>311</sup>

237. Lucila Granada, of the Latin American Women’s Rights Service, explained that the women at risk included not only undocumented women (some of whom may have been forced to become undocumented by the perpetrator as a way of control), but also those with regular status but who were at risk of becoming undocumented, including EEA family members, asylum seekers, refugees, women on spousal visas and women with applications in process.<sup>312</sup> The AIRE Centre (Advice on Individual Rights in Europe) is a legal charity which provides advice to individuals and their representatives on free movement rights under EU law. It has a specialist project which provides these advice services to victims of domestic abuse. The AIRE Centre drew attention to the vulnerability of some spouses of EEA nationals who had sought refuge after fleeing domestic abuse and were unable to provide documentary evidence of the abuser’s exercise of treaty rights in the UK; and EEA national spouses of British nationals who did not hold leave to remain in the UK as a spouse or partner under the Immigration Rules.<sup>313</sup>

238. Galop pointed out that LGBT survivors with uncertain immigration status might be faced with deportation to countries which criminalised same-sex relations or imposed the death penalty for consensual same-sex relationships.<sup>314</sup> Stay Safe East said that disabled victims risked being returned to a country of origin where there were no services for disabled people or where they might be institutionalised.<sup>315</sup>

239. The Children’s Society provided evidence on issues for children within migrant families where there was domestic abuse. It questioned the Government’s position that “some victims are best served by returning to their country of origin”, saying that over half of the estimated 120,000 undocumented migrant children living in the UK were born here, and that “thousands of children in this cohort may have been born British or be eligible to register as British citizens and so cannot be expected to leave.”<sup>316</sup>

**240. Some women with insecure immigration status are faced with the choice of staying with a perpetrator of abuse or becoming homeless and destitute because they do not know how to get help or may not be entitled to support and may be at risk of detention and deportation. Because of this vulnerability, immigration status itself is used by perpetrators of domestic abuse as a means to coerce and control.**

**241. Witnesses told us that migrant women experiencing domestic abuse were effectively excluded from the few protective measures contained in the Bill and that**

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311 Southall Black Sisters ([DAB0508](#))

312 [Q220](#)

313 The AIRE Centre ([DAB0196](#))

314 [Q153](#)

315 [Q153](#)

316 The Children’s Society ([DAB0533](#))

**this was not compliant with the requirements of Article 4, paragraph 3 of the Istanbul Convention which requires protection to be provided without discrimination on any ground, including migrant and refugee status.**

### ***Safe reporting mechanisms and firewalls***

242. One particular issue is that victims of abuse may avoid contacting the police for help because of the risk that they will be referred to immigration authorities and then detained or deported to countries where they may face further harm.<sup>317</sup> Women’s Aid stated that “over half (27) of police forces in England and Wales confirmed that they share victims’ details with the Home Office for immigration control”.<sup>318</sup> Liberty and Southall Black Sisters have submitted a police super-complaint<sup>319</sup> regarding data sharing between the police and immigration forces, which details a number of cases in which survivors have been subject to arrest and detention instead of having crimes committed against them properly investigated.<sup>320</sup>

243. In its 2018 report on Domestic Abuse, the Home Affairs Committee recommended that the Government ensure that the police service complies with its stated aim of ensuring that all vulnerable migrants, including those in the UK illegally, receive the support and assistance they need regardless of their immigration status.<sup>321</sup> In December 2018, the NPCC announced that it had issued new national guidance regarding the sharing of information with Immigration Enforcement about victims of crime who were identified as being in the UK illegally. The NPCC stated that:

When someone reports a crime police will always, first and foremost, treat them as a victim. There are occasions when officers will need to carry out police database checks on people involved in reporting a crime. This can be for a number of reasons like informing officers on how best to protect a victim or to help progress an investigation. Police will never check a database only to establish a victim’s immigration status.

If an officer becomes aware that a victim of crime is suspected of being an illegal immigrant it is right that they should raise this with immigration enforcement officers and not take any immigration enforcement action themselves. Throughout the police should treat them as a victim of crime. The police priority is to protect victims and investigate crime, and we are extremely careful about doing anything to deter victims from reporting to us.<sup>322</sup>

244. The new NPCC guidance is challenged by Liberty and Southall Black Sisters in its police super-complaint:

The policy does state that the police will not take any enforcement action themselves. But of course by sharing the information with the Home Office,

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317 Southall Black Sisters ([DAB0508](#))

318 Women’s Aid Federation of England ([DAB0404](#))

319 Liberty and Southall Black Sisters, [Police data sharing for immigration purposes: a super-complaint](#) (December 2018)

320 Southall Black Sisters ([DAB0508](#))

321 Home Affairs Select Committee, Ninth Report of Session 2017–19, [Domestic Abuse](#), HC 1015, para 103

322 National Police Chiefs’ Council, [‘New guidance for officers on sharing information with Immigration Enforcement’](#), accessed 11 June 2019

which is likely to include contact data for the victim of crime, the Home Office is facilitated in taking enforcement action. It is clear, therefore, that the guidance does not improve the position for victims or witnesses of crimes; at best it merely changes which State body will act on the information gathered as a result of a victim reporting a crime, and may delay enforcement action for a brief period. Indeed, it still implicates the police in immigration enforcement practices against victims and witnesses of crimes.<sup>323</sup>

Liberty went so far as to suggest that public service providers giving information to the Home Office breached the obligation under Article 7 of the Convention to place victims “at the centre of all measures”.<sup>324</sup>

245. Some witnesses suggested that there should be a policy of a firewall between public services and immigration authorities. This would enable all survivors of domestic abuse and violence to safely report abuse to the police, social services, health professionals and others without fear of immigration enforcement. The Step Up Migrant Women campaign, led by the Latin American Women’s Rights Service, calls for secure, safe reporting mechanisms and recommends “the establishment of a firewall at the levels of policy and practice to separate reporting of crime and access to support services from immigration control”.<sup>325</sup>

246. Some witnesses argued that this firewall should be given statutory force through the Bill. The EHRC recommended that the Bill be amended to include a prohibition on police as well as providers of healthcare and other support services from sharing information about an individual’s immigration status for the purpose of immigration control.<sup>326</sup> The Chair of the Home Affairs Committee also suggested that the new NPCC guidance be given statutory force through an additional provision in the Bill prohibiting the automatic transmission of information from the police to immigration officials in such cases.<sup>327</sup>

247. However, DCC Louisa Rolfe expressed concerns that a complete firewall between the police and Immigration Enforcement could be counterproductive. She said that many officers already worked with Immigration Enforcement services to help resolve the victim’s uncertainty about their immigration status and so remove the perpetrator’s ability to control or manipulate them because of that status.<sup>328</sup> Government Ministers have stated that “the sharing of information is often the safest way to get [vulnerable migrants] the support they need, and the police are confident that current arrangements can do this”.<sup>329</sup> The Home Office Minister explained that:

We are committed to ensuring that all victims of domestic abuse or crime are treated first and foremost as victims, regardless of their immigration status, but immigration enforcement is engaged with the National Police Chiefs Council to ensure that the police and immigration work collaboratively to recognise victims quickly and to ensure that immigration status is not

323 Liberty and Southall Black Sisters, [Super-complaint](#), para 14

324 Liberty ([DAB0216](#))

325 Step Up Migrant Women, ‘[About](#)’, accessed 28 May 2019

326 Equality and Human Rights Commission ([DAB0477](#))

327 Letter to the Chair from Yvette Cooper MP, Chair of the Home Affairs Committee ([DAB0535](#))

328 [Q202](#)

329 [Letter from Ministers to JCHR](#) and copied to Chair of the Joint Committee on the draft Domestic Abuse Bill, 20 May 2019

used by perpetrators to coerce and control their victims. The police and the investigation inspectorate will share information and intelligence, but will not take enforcement action if the police are investigating a crime.<sup>330</sup>

**248. The police service has a critical role in providing a first line of response to victims of abuse, particularly when there is a crisis. We know from our informal meetings with survivors of abuse that many of them do not know where else to turn in an emergency other than the police, especially when they live in rural areas, or when they need help at night.**

**249. We are particularly concerned to hear evidence that some police forces share details of victims with the Home Office for the purposes of immigration control rather than helping the victim access appropriate support. We note that the NPCC updated its guidance in December 2018, to specify that when someone reports a crime, the police must always, first and foremost, treat them as a victim, and that police must never check a database only to establish a victim's immigration status. However, it is clear that this guidance is not sufficient to prevent immigration authorities from taking enforcement action at a time when there is a duty on statutory authorities to ensure that victims of domestic abuse are provided with protection and support.**

**250. We note the concerns that a statutory bar on sharing information could in some cases prevent the police from helping victims of abuse who are uncertain of their immigration status. We welcome the new NPCC guidance but doubt whether it will be sufficient to change long-standing bad practice.**

**251. We recommend that a more robust Home Office policy is developed to determine the actions which may be taken by the immigration authorities with respect to victims of crime who have approached public authorities for protection and support. We support the recommendation of the Step Up Migrant Women campaign to establish a firewall at the levels of policy and practice to separate reporting of crime and access to support services from immigration control.**

### ***Economic support***

252. Some residence permits that allow an individual to live in the UK may include the condition that they have no recourse to public funds (NRFP). This means that those individuals are not eligible to claim most benefits, tax credits or housing assistance that are paid by the state. Victims of domestic abuse who have NRPF status usually have been granted limited leave to enter the UK as a spouse or a fiancé of a person present and settled in the UK. Victims of domestic abuse with NRPF are at risk of homelessness and destitution because they cannot access mainstream housing, welfare benefits and employment, and support services can find it difficult to engage with NRPF clients because of the limited support options available to them. Many refugees are unable to provide places to victims of abuse with NRPF, because they cannot claim housing benefit to fund their place in the refuge.<sup>331</sup>

330 [Q303](#)

331 Women's Aid's '[No Woman Turned Away](#)' project found that during 2016/17, only 5.4 per cent of vacancies for refugees on Routes to Support would consider applications from women with NRPF, 2018, p 23.



253. The domestic violence rule (DVR) was introduced in 2002. This allows people who were admitted to the UK on a partner’s visa to apply for indefinite leave to remain, if they are able to provide evidence that the relationship broke down permanently before the end of their limited leave as a result of domestic violence.<sup>332</sup> The destitution domestic violence concession (DDVC)<sup>333</sup> was introduced in 2012 to allow intending DVR applicants access to limited state benefits and housing whilst their application is being considered. The concession provides leave to remain, with access to benefits, for three months. If a survivor applies for indefinite leave to remain during that period, leave continues while the application is considered.<sup>334</sup>

254. Women’s Aid called for urgent reforms to end the insurmountable barriers facing survivors with NRPF. It explained that over a quarter of the women refused access to a refuge space supported by its No Woman Turned Away project in 2017 had NRPF, and that “many had to sleep rough, sofa surf or even return to the perpetrator while they waited for help”. Women’s Aid said that the DVR and DDVC could provide a life-line to support for those who are eligible, but that two-thirds of the women with NRPF supported by its No Woman Turned Away project in one year were not eligible for DDVC because they were not on a spousal visa. Women’s Aid called for eligibility for the DDVC and DVR to be expanded to include all migrant women, not only those on spousal visas, and for an extension, or removal of, the three-month time limit for the DDVC. It also argued for revised guidance about the type of evidence of domestic abuse required to access the DDVC.<sup>335</sup>

255. Southall Black Sisters agreed with these recommendations. It pointed out that women on student, work or other types of visas may also face abuse and violence but are not entitled to the DDVC.<sup>336</sup> It stated that failure to provide adequate protections for abused migrant women was a violation of the UK’s obligations including under the European Convention on Human Rights, the Istanbul Convention and the UN Convention on the Elimination of all Forms of Discrimination Against Women.<sup>337</sup> Our witnesses were unable to give us an estimate of the number of women who might become eligible under the DDVC if it were no longer restricted to holders of spousal visas, Jane Gordon, Sisters for Change, said that it would be “very difficult” to provide such a statistic, not least because some victims of abuse with NRPF did not approach support services.<sup>338</sup>

256. Southall Black Sisters said that the existing three-month time limit for the DDVC was insufficient for several reasons. First, it could restrict access to accommodation because landlords were guaranteed funding for only three months. Secondly, DWP did not always recognise the ‘waiver’ granted by the Home Office to obtain the DDVC and it could take up to six weeks for a DDVC application to be processed. In addition, the process required benefit applicants to have a bank account but victims of abuse in temporary accommodation did not have the prescribed forms of address required by banks to open an account. Thirdly, three months was not long enough for migrant women to obtain legal advice and representation, or for a support service to help women gather the evidence

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332 Immigration Rules, Appendix FM, [section DVILR](#)

333 Home Office, [Destitute \[sic\] domestic violence \(DDV\) concession](#) (February 2018)

334 Home Office, [Leave extended by section 3C \(and leave extended by section 3D in transitional cases\)](#) (January 2019)

335 Women’s Aid Federation of England ([DAB0404](#))

336 Southall Black Sisters ([DAB0508](#))

337 [The Convention on the Elimination of All Forms of Discrimination against Women](#) (1979) (CEDAW)

338 [Q223](#)



to support their DVR applications and to navigate complex immigration rules.<sup>339</sup> In its response to the domestic abuse consultation, the Home Office said that it had considered changing the time limit from three to six months but had concluded that this was unnecessary because “the vast majority of applications for [indefinite leave to remain] on the basis of suffering domestic abuse are resolved quickly and well within three months”.<sup>340</sup>

257. The Home Office Minister told us that she accepted there are concerns about the lack of support for migrant women. She said that the Government was looking carefully at Article 4, paragraph 3 and would take the Istanbul Convention’s provisions into account. She added that the Government was continuing to consult with stakeholders and was open to further suggestions. With regard to the specific recommendations made by witnesses, she said that the Government was “conscious of the pressures of the three-month time limit”<sup>341</sup> and reiterated that it was “considering the argument for widening the cohort of individuals eligible under the concession”.<sup>342</sup>

**258. The provisions barring individuals from having recourse to public funds can prevent some victims of domestic abuse with uncertain immigration status from accessing refuges and other support services. We recommend that Government explores ways to extend the temporary concessions available under the DVR and DDVC to support migrant survivors of abuse, to ensure that all of these vulnerable victims of crime can access protection and support whilst their application for indefinite leave to remain is considered by the Government. We recommend that the Government consult on the most effective criteria to ensure such a measure reaches the victims it is designed to support and that it should extend the three-month time limit to six months for the DDVC in the light of the specific difficulties for victims highlighted by Southall Black Sisters. We note that the Home Office already publishes guidance on the evidence of domestic violence which is required to support applications under the DVR, and we would expect these protocols to continue to be applied.**

*259. We recommend the inclusion of an additional clause in the Bill, imposing on public authorities dealing with a victim or alleged victim of domestic abuse, or making decisions of a strategic nature about how to exercise functions, a duty to have due regard to the need to protect the rights of victims without discrimination on any of the grounds prohibited by Article 4, paragraph 3 of the Istanbul Convention.*

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339 Southall Black Sisters ([DAB0508](#))

340 Home Office, *Transforming the Response to Domestic Abuse: Consultation Response and Draft Bill* (January 2019), [pp 24–25](#)

341 [Q304](#)

342 [Q264](#)

## 6 Other issues

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### Wales

260. The Violence against Women, Domestic Abuse and Sexual Violence (Wales) Act 2015 (“the Wales Act”) was passed by the National Assembly for Wales on 10 March 2015 and received Royal Assent on 29 April 2015. The main aim of the legislation is to improve the public sector response in Wales to domestic abuse and violence against women. This Act created the role of a National Adviser to advise Ministers and improve joint working amongst public bodies. It also requires that progress made towards achieving the purpose of the Act is reported through reference to a set of national indicators, to be developed in consultation with the relevant organisations working in the sector.<sup>343</sup> It is expected that those National Indicators will be published shortly.<sup>344</sup>

261. The current draft Bill differs from the Wales Act in a number of respects. The Wales Act does not include any criminal justice elements.<sup>345</sup> The scope of the Wales Act includes all violence against women as well as domestic abuse, whereas the Bill focuses only on domestic abuse.<sup>346</sup> Witnesses said that there would be issues to be resolved in terms of the how the different pieces of legislation would interact. Tina Reece, of Welsh Women’s Aid, pointed to one example:

... The particular thing that we are looking at is on family courts and CAFCASS Cymru. CAFCASS Cymru is a devolved agency, whereas the family courts are a non-devolved area. There will be a really complicated interaction there between how these are going to work. I think it can be resolved by really close working between the Commissioner and the advisers, and by making sure that Wales is represented on advisory boards and scrutiny boards.<sup>347</sup>

262. Deb Smith raised concerns about divergence in legislation or policy and practice relating to policing, noting that although there were 43 police forces, training was centralised, through the College of Policing, and that police forces needed to work cross-border.<sup>348</sup>

**263. We note the existence of divergence in legislation between England and Wales, and also the different agencies that operate in the two countries. We urge greater close co-operation between the UK and Welsh governments.**

264. Under section 12 of the Wales Act, the Welsh Ministers must, in respect of each financial year, publish a report which addresses progress made towards achieving the objectives in the national strategy on violence against women, domestic abuse and sexual violence (2016–2021); progress made towards achieving the purpose of the Violence against Women, Domestic Abuse and Sexual Violence (Wales) Act 2015 in Wales (by reference to the national indicators); and predictions of likely future trends and any other analytical

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343 Welsh Government, *The Violence against Women, Domestic Abuse and Sexual Violence (Wales) Act 2015: Progress report for the period 29 April 2015 to 31 March 2017* (January 2018)

344 [Q192](#)

345 Eg Transform Justice ([DAB0038](#))

346 [Q192](#)

347 [Q239](#)

348 [Q194](#)

data (if published during the period of 12 months beginning with the date of a general election).<sup>349</sup> In terms of what had been achieved as a result of the Wales Act, Tina Reece said that whilst there had been progress it was slower than hoped for, largely because there had been insufficient resources allocated to meet the high ambitions of the legislation.<sup>350</sup>

265. Tina Reece said that in her view, the most important and useful provision in the Wales Act was the duty on public authorities to include prevention as part of their strategies and planning, which had been “a real driver for change”.<sup>351</sup> She said that Welsh Women’s Aid had helped the Welsh Government to draft a whole-school approach to addressing domestic abuse and violence against women, which had tried to incorporate messages about gender equality, domestic abuse and healthy relationships, as well as addressing with the wider community issues such as ideas of power and control and gender, and the reason why women and girls suffered disproportionately from these types of abuse.<sup>352</sup> Nazir Afzal pointed out that prevention work in Wales was also supported through the Well-being of Future Generations (Wales) Act 2015, which covered wider, long-term prevention measures.<sup>353</sup>

266. Tina Reece referred to the “Ask and Act” national programme of training in Wales which aims to help professionals to identify and support victims of abuse and to respond to a disclosure of abuse.<sup>354</sup> Nazir Afzal said that this training was currently being delivered to 135,000 professionals and practitioners in Wales.<sup>355</sup> Tina Reece added that another important part of the approach in Wales was the duty on authorities to prepare and publish a strategy for contributing to the purpose of the Act, which had incentivised close working with the specialist sector and the sharing of information and knowledge.<sup>356</sup> She said that because of this requirement to produce strategies, there were regular meetings across the country involving different public sector boards, the specialist sector, and representatives from survivor groups. DCC Louisa Rolfe pointed to the benefits of the multi-agency, integrated approach taken in Wales, commenting “I sometimes watch with envy when I see what is happening in Wales, because I can see that it is some way ahead on this”.<sup>357</sup>

267. The Lloyds Bank Foundation for England and Wales has produced toolkits for commissioners in England (Violence Against Women and Girls Commissioning Toolkit) and Wales (A Collaborative Commissioning Toolkit for VAWDASV Services in Wales) and recommended that, as has been introduced in Wales, statutory guidance should be developed in England which compels commissioners to meet the standards set out in these toolkits. It stated that any accompanying guidance to the Bill in England should place similar emphasis on specialist services and grant funding.<sup>358</sup>

**268. Wales has placed its response to domestic abuse firmly into the context of its violence against women strategy. Welsh legislation has also focused on promoting**

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349 Welsh Government, *The Violence against Women, Domestic Abuse and Sexual Violence (Wales) Act 2015: Progress report for the period 29 April 2015 to 31 March 2017* (January 2018)

350 Q252. See also Q194 (Nazir Afzal)

351 Q239

352 Q251

353 Q194

354 Q251

355 Q194

356 Q251

357 Q194

358 Lloyds Bank Foundation for England & Wales ([DAB0476](#))

**multi-agency work and encouraging prevention. As yet there is little evidence about the effectiveness of this approach, but those engaged in it seemed optimistic, despite their caveats about funding difficulties. We are persuaded that developments such as the training programmes for public sector workers and the emphasis on the role of schools in prevention are valuable, and lessons learned should be incorporated into the approach to domestic abuse in England. This approach forms a key element of the approach of the Istanbul Convention contained in Chapter 3, particularly Article 13 which refers to the crucial role that education plays in this area.**

## Prevention and early intervention

269. The Government has stated that prevention and early intervention remain the foundation of its approach to domestic abuse.<sup>359</sup> It seeks to pursue this through non-legislative measures; there are no provisions in the Bill relating to prevention and early intervention.

270. One of our witnesses succinctly analysed the stages of prevention and intervention, and some of the obstacles in the way of early intervention:

Prevention happens at three levels: first, in wider population interventions and education; secondly, in helping those at the early stages of abuse, when they realise that something is happening, to get out; thirdly, in preventing it from reoccurring. On the second level, people's ability to get the right help and advice when they first seek help is still very variable. We fund some work with champions in local areas to try to inform public sector workers, so that they all know how to provide the right advice and support. There are challenges with universal credit and the wider benefits and housing systems. People who may want to separate their family unit early are not able to do so.<sup>360</sup>

271. One aspect of the Government's approach is through new statutory relationship and sex education for all school age children which covers domestic abuse, to help them have healthy and respectful relationships, and leave school prepared for adult life.<sup>361</sup>

272. We did not take evidence on the impact of online pornography on young people's views of relationships, particularly intimate adult relationships. We do however note the access young people have to often extreme online pornography which can shape their view of what a normal sexual relationship might be.

273. In our informal meeting with them, young people who had suffered from domestic abuse emphasised that many children are unaware of what healthy relationships look like and consider abusive behaviour normal. They argued that the education and support they had received had given them a clearer idea of what was and what was not acceptable behaviour that their compeers lacked. However, they had not received such education themselves until they had already suffered abuse and been identified as survivors: although

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359 Home Office, *Transforming the Response to Domestic Abuse: Consultation Response and Draft Bill* (January 2019), [p 7](#)

360 [Q133](#) (Duncan Shrubsole)

361 Home Office, *Transforming the Response to Domestic Abuse: Consultation Response and Draft Bill* (January 2019), [p 8](#)

individual teachers had been helpful and supportive to them, their previous schools had not provided them with the understanding of abusive behaviour, or the confidence to name it, or support in seeking help.

**274. We welcome the introduction by the Government of mandatory relationship education for all school-aged children in England, and we see breaking the 18-year impasse on delivering this important support for all children as of fundamental importance in delivering the domestic abuse strategy. It is as an opportunity to break the intergenerational cycle of domestic abuse. It is vital that children of all ages be taught about domestic abuse in a sensitive and age-appropriate way, giving them the tools to recognise abuse, the confidence to report it and the ability to develop respectful relationships themselves.**

*275. It is clear that there is still a great deal of work to be done in changing perceptions of what is normal and acceptable behaviour within relationships. We are aware of (often locally-funded) advertising campaigns to raise public awareness of the problem of domestic abuse. There have been similar, more widespread campaigns on issues such as modern day slavery, as well as the promotion of health messages on issues such as smoking. The cost of domestic abuse to the health service is high. We believe that a campaign to raise awareness and challenge behaviour should be undertaken; this could also provide pointers to where help may be sought and suspected instances reported. Such a campaign could be targeted particularly on online pornography sites.*

276. More broadly, statutory agencies must be able to identify, assess and support victims of domestic abuse by signposting them to the right support. Jo Todd, CEO, Respect, pointed to the need for changes to frontline service provision, so that for example every social worker and health practitioner understood and knew how to respond to victims, perpetrators and children.<sup>362</sup> Donna Covey, of Against Violence and Abuse, suggested that there should be a duty on public services to ensure that all their staff were trained to inquire and respond to disclosure around domestic abuse, which would help to identify cases of abuse more quickly. She referred to the IRIS (Identification and Referral to Improve Safety) model to assist early recognition of, and intervention in cases of domestic abuse. This model has been trialled in health practitioner settings and could be extended to other sectors.<sup>363</sup>

277. Ruth Bashall, Stay Safe East pointed to the importance of including disabled people in the development of prevention materials. She said that her organisation would like to see a duty in the Bill to ensure that prevention measures were developed by statutory services in partnership with disabled survivors, and that they reflected the reality of disabled people and the different forms of abuse that happened to them because of their impairment. She added:

... One single thing that would make an enormous amount of difference to our clients would be if every single health professional, at one point or another, saw them on their own and not with their carer, so they have a space to talk. We have developed those protocols with some local health professionals, and they work.<sup>364</sup>

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362 [Q154](#)

363 [Q154](#)

364 [Q157](#)

278. Survivors of domestic abuse, in particular those facing multiple disadvantage, are likely to be in contact with a range of public services in order to get support for the challenges they face as a result of abuse. For example, this could include addiction as a result of using substances to cope with trauma from abuse. Survivors are often in contact with other support services before they access a specialist domestic abuse service and it is therefore essential that those services are able to identify and respond appropriately to domestic abuse. Evidence shows, however, that often services do not ask about domestic abuse, or survivors are asked but are let down by a culture of disbelief, resulting in frequently missed opportunities for support, and sometimes responses that can worsen the situation for survivors.

279. There have been examples of good practice within the health services, with development of the role of Independent Domestic Violence Advisers, but there were problems with sustaining funding for these posts and ensuring that they were widespread. The Health Minister, Jackie Doyle-Price, said that the IRIS project was being adopted quite rapidly throughout the system by increasing numbers of GPs.<sup>365</sup> However, she acknowledged that there was scope for improvement in terms of early identification of domestic abuse by health professionals, saying that “within the national health service, there is a cultural and behavioural challenge as well with regard to working with other agencies”. She added:

I think we need to do a lot more with regard to really empowering the medical community to recognise where they perhaps need to go a bit further in steering people towards help. It is difficult. They are discussions we need to have with practitioners about how to share best practice in what is actually quite a fundamental change in culture.<sup>366</sup>

280. In terms of who within Government was responsible for leading on prevention work, Mrs Wheeler said that many departments and public authorities would be involved. She said that “there is prevention in health; prevention with the police; Home Office immigration prevention; and prevention that local authorities and local partnership boards will be part of”.<sup>367</sup>

**281. A key part of the Government’s strategy is to prevent domestic abuse and intervene early to stop abuse escalating. This part of the strategy is addressed through policies and is not covered in the draft Bill. We note that in Wales the statutory guidance on prevention, training and strategies is intended to incentivise widespread work on prevention throughout the public sector and to facilitate better multi-agency working and collaborative working with other specialist organisations. We urge the Government to consider how there might be greater consistency in approach across the UK, particularly in terms of the provision of public service early interventions and training for front-line staff in publicly funded services.**

**282. We are very conscious of the need to involve a wide variety of government departments and other public sector organisations in promoting the prevention of and early intervention in domestic abuse. There will be a requirement for co-ordination with the devolved administrations. Delivery will require significant cultural change in a number of organisations, and this reinforces our conviction that the strategy should**

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365 [Q358](#)

366 [Q350](#)

367 [Q367](#)



**be led from the centre of government. We therefore recommend that a Cabinet Office Minister should lead on implementing the Government's strategy to combat domestic abuse and to ensure full compliance with the Istanbul Convention.**

## 7 Domestic Abuse Commissioner

283. Part 2 of the draft Bill provides for the establishment of a Domestic Abuse Commissioner to give public leadership on domestic abuse issues and participate in overseeing and monitoring the provision of domestic abuse services in England and Wales. The role is based on that of the Anti-Slavery Commissioner.

284. Clause 6 of the draft Bill sets out the Commissioner's functions: to encourage good practice in the prevention of domestic abuse; the prevention, detection, investigation and prosecution of domestic abuse-related offences; the identification of perpetrators, victims and children affected by domestic abuse; and the provision of protection and support for victims. The clause also lists a number of activities that the Commissioner may carry out in performance of these functions. The Explanatory Notes to the Bill summarise these as follows:

assessing and monitoring the provision of services to people affected by domestic abuse. In this context the 'provision of services' will cover the provision of specialist services for victims and their children, such as refuges or other specialist support services; mainstream provision of statutory services, such as healthcare, which play a role in identifying victims, children and perpetrators and referring them onto more specialist services; and specialist provision for perpetrators, such as perpetrator behaviour change programmes. In carrying out such activities, the Commissioner is expected to co-operate and consult with specialist third sector organisations, public authorities, and other relevant Commissioners such as the Commissioner for Victims and Witnesses and the Children's Commissioner for England.<sup>368</sup>

285. While our witnesses were broadly in favour of the principle of having a Commissioner, they expressed concerns about whether the Commissioner would have enough resources, powers and independence to deliver what was expected of them. Some also sought greater clarity about the Commissioner's remit.

286. In December 2018, the Home Office advertised for a designate Commissioner for Domestic Abuse, suggesting the role would require a commitment of two to three days a week. Final interviews were to be held on 25 March 2019.<sup>369</sup> The appointee has not yet been announced, and the Home Secretary has assured us that recruitment is on hold while we complete our scrutiny.<sup>370</sup>

**287. We understand that the Government wishes to make rapid progress in implementing its Domestic Abuse Strategy, but we were surprised to learn that the process of recruiting a designate Commissioner had almost been completed before Parliament had had any opportunity to consider—still less to recommend any changes to—the draft Bill setting out proposals for the Commissioner's remit and powers and**

368 [Explanatory Notes](#), para 63. Clause 6 lists the Commissioner's activities as; assessing, monitoring and publishing information about the provision of services to people affected by domestic abuse; making recommendations to any public authority about its functions; undertaking or supporting research; providing information, education or training; taking other steps to increase public awareness of domestic abuse; consulting public authorities, voluntary organisations and others; co-operating or working jointly with public authorities, voluntary organisations and others, including outside the United Kingdom.

369 Cabinet Office, '[HM Government Public Appointments: Designate Commissioner for Domestic Abuse](#)', accessed 11 June 2019

370 Rt Hon Sajid Javid MP, Home Secretary ([DAB0542](#))

**the governance arrangements for the Commissioner’s office. We understand from the Home Secretary that the process has been put on hold while we complete our scrutiny, but it appears that the designate Commissioner’s appointment will be made on the basis set out in December 2018. We consider this unsatisfactory.**

## Remit

288. Our witnesses suggested that the proposed remit for the Domestic Abuse Commissioner was too narrow. A common criticism was that the role was that of ‘Domestic Abuse’ Commissioner rather than being explicitly a ‘Violence against Women and Girls’ Commissioner. They argued that many specialist services were designed not just for victims of domestic abuse but for victims of other forms of violence against women and girls; and that some local authorities commission services with regard to such a wider strategy.<sup>371</sup> Nazir Afzal, the Welsh Government Adviser on Violence against Women, described the failure to extend the Commissioner’s remit as “a massively missed opportunity”.<sup>372</sup>

289. In its response to the consultation on its proposed Domestic Abuse strategy, the Government explained its approach:

Given the challenges of improving the statutory agencies’ responses to domestic abuse, and the huge scale of the problem, we believe that the Commissioner’s remit should be focused on this issue [domestic abuse] alone, rather than being dissipated across all forms of violence against women and girls.

**290. *We have already stated our view that there needs to be greater integration of the legislation and policies relating to domestic abuse and violence against women and girls more generally.*<sup>373</sup> *We recommend that this be reflected in the remit given to the Commissioner.***

291. Many of our witnesses made suggestions about areas where the Commissioner might use their powers to spread best practice. Emily Frith of the Office of the Children’s Commissioner suggested that the Domestic Abuse Commissioner might look at the guidance to CAFCASS in order to improve the approach to children in family court proceedings.<sup>374</sup> Others proposed a role for the Commissioner in relation to judicial training and local family justice boards;<sup>375</sup> or argued that the Commissioner should consider the shortcomings in the approach of the probation service and prison authorities to programmes for perpetrators;<sup>376</sup> or said that they wanted the Commissioner to help them to understand which approaches worked to enable chief constables and Police and Crime Commissioners to improve consistency and drive best practice.<sup>377</sup> Amanda Barron JP said that she would like the Commissioner to establish specialist domestic abuse courts, “or certainly a multi-agency approach to domestic abuse,” in every justice area across the country.<sup>378</sup>

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371 See, for example, [Q9](#) (Ellie Butt and Andrea Simon), [Q149](#) (Diana Covey), [Q192](#) (Nazir Afzal and Kate Ellis), [Q232](#) (Jane Gordon)

372 [Q192](#)

373 See paragraphs 10–11 above

374 [Q81](#)

375 [Q105 \(Resolution\)](#) and [FiLiA \(DAB0421\)](#)

376 [Q149 \(Respect\)](#)

377 [Qq191 and 192](#) (DCC Louisa Rolfe)

378 [Q107](#)

292. There was considerable emphasis on the necessity for the Commissioner to understand and to promote multi-agency working, and in particular the strengths and needs of the third sector.<sup>379</sup> As a result, our witnesses urged the inclusion of third sector organisations as part of the Commissioner’s advisory board. Tina Reece commended the practice in Wales of holding regular meetings across the country involving public sector organisations, the specialist sector, and representatives from survivor groups.<sup>380</sup>

293. We were also told that it was vital for the Commissioner to take fully into account the needs of certain victims of abuse who risked being marginalised, including children, older people and migrant women. End Violence Against Women and Girls would like the Commissioner to have specific duties for more marginalised victims of domestic abuse, including black and minority ethnic women and girls and those with insecure immigration status.<sup>381</sup> Elspeth Thomson of Resolution suggested that the Commissioner might have a role in relation to children taken into the care system because of domestic abuse.<sup>382</sup> Age UK suggested that there should be a representative of older people on the Commissioner’s advisory board.<sup>383</sup> Kevin Hyland said that he had convened an informal group of victims of modern day slavery, and thought that creating a panel of survivors was “essential”.<sup>384</sup> Tina Reece commended this idea but emphasised that the Commissioner’s engagement with survivors should not be “tokenistic”.<sup>385</sup> Diana Covey was less enthusiastic about the idea of two bodies, the advisory board and a group of survivors, arguing:

it is important that survivors sit at the heart of it. We do not want to see a two-tier system whereby the advisory board, with the great and the good, and chief execs of voluntary sector organisations like us, is here and the survivors’ group is over there. The voice of survivors should be in there, but also the voice of children, so we have a commission that ultimately may be accountable in law to the Home Secretary, but morally should be accountable to survivors and survivors’ children.<sup>386</sup>

294. Asked about the Bill “relegating the gender element to statutory guidance”, the Home Office Minister told us she thought the Commissioner would have a role in ensuring that those commissioning support services for victims did not do so in a “generic” way.<sup>387</sup>

## Independence

295. The Government’s stated intention is that the new Commissioner would be independent. As a public, and publicly funded, official, however, the Commissioner has to be accountable. The draft Bill provides for the Secretary of State (as the Explanatory Notes state, in practice the Home Secretary)<sup>388</sup> to appoint the Commissioner, determine the level of funding the Commissioner receives, and provide staff and “such accommodation, equipment and other facilities as the Secretary of State considers necessary for the carrying

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379 See, for example, [Q106](#) (Allen), [Q107](#) (Jacobs)

380 [Q240](#)

381 [Q9](#)

382 [Q105](#)

383 Age UK ([DAB0318](#))

384 [Q248](#)

385 [Q249](#)

386 [Q149](#)

387 [Q267](#)

388 [Explanatory Notes](#), para 61

out of the Commissioner’s functions”.<sup>389</sup> The staff would be civil servants either seconded to the Commissioner’s office or specifically recruited for the posts and would be employed by the Home Office, although the Commissioner must be consulted, and would have a power of veto over the appointment of staff.<sup>390</sup>

296. The Secretary of State would have the power to review reports and direct the Commissioner to “omit” any material “if the Secretary of State thinks the publication of that material—(a) might jeopardise the safety of any person, or (b) might prejudice the investigation or prosecution of any offence.”<sup>391</sup> The same power would apply to any advice the Commissioner published.<sup>392</sup> The Commissioner would also be required to seek the Home Secretary’s approval for strategic plans, although any modifications would have to be agreed rather than being imposed.<sup>393</sup> It is unclear what would happen if there were disagreement between the two parties.

297. Our witnesses were unanimous that the Commissioner would need to be demonstrably independent of Government if the role was to be effective.<sup>394</sup> A number referred to the recent experience of the Anti-Slavery Commissioner, who had resigned on the grounds that he did not have sufficient independence from the Home Office.

298. Kevin Hyland told us he was concerned that the Secretary of State would have too much control of the Commissioner’s budget, the staff employed and the content of the Commissioner’s reports. He pointed particularly to the power wielded by the Secretary of State through control of the Commissioner’s budget, noting that immediately he took up his post, the Home Office had proposed a reduction in the funds that Parliament had been told he would be given. As a result, the budget for the office was not agreed by the start of the accounting year.<sup>395</sup> While he acknowledged that he had been able to appoint the staff he wanted from outside the civil service, he described the process of appointment as “unbelievable”, adding: “Sometimes I would select staff, and seven months later they had not arrived, or when they did arrive they sometimes waited two or three months for pay. In my 30 years in the police, I never, ever saw that happen once.”<sup>396</sup> He also described his experience of producing reports which, because they had to be approved by the Secretary of State, had to go through a long process of negotiation with and modification by a number of officials, with the final report not fully representing his views.<sup>397</sup>

299. He concluded that the proposal that the Commissioner should report to the Home Office was “a terrible idea”:

What you have is an office holder whose role is to step outside and look at this independently, engage with whoever needs to be engaged with in order to protect victims and pursue those who commit these crimes, and create policies and strategies that are not influenced by the current Government or officials, who may have competing demands on their time or their policies.<sup>398</sup>

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389 Draft Bill, [cl 5\(1\)](#)

390 Draft Bill, [cl 5\(2\)](#) and [Explanatory Notes](#), para 61

391 Draft Bill, [cl 7\(4\)](#)

392 Draft Bill, [cl 8\(6\)](#)

393 Draft Bill, [cl 11\(4\), \(5\) and \(6\)](#)

394 See, for example, Agenda ([DAB0457](#)), Dr Elizabeth Kubiak ([DAB0470](#))

395 [Q235](#)

396 [Q235](#)

397 [Q235](#)

398 [Q235](#)

300. Emily Frith, of the Office of the Children’s Commissioner for England, agreed that the draft Bill would not provide sufficient independence for the Domestic Abuse Commissioner, pointing in particular to the requirement for the Commissioner to send their draft reports and annual strategic plan to the Secretary of State for approval before publication. She also argued that the staff should be appointed by the Commissioner directly, rather than by the Secretary of State.<sup>399</sup>

301. We asked about experience in relation to other Commissioners, and particularly the Children’s Commissioner, and the adviser position in Wales. Kevin Hyland was of the view that the Children’s Commissioner experienced some of the same challenges, noting that, like him, the Children’s Commissioner had found it bureaucratic and time-consuming to set up a separate website, and that the Children’s Commissioner was housed in a building shared with a government department whereas at least his office had been in a building shared with an independent body, HM Inspectorate of Constabulary.<sup>400</sup> Tina Reece, of Welsh Women’s Aid, told us about the Adviser role established under the Violence against Women, Domestic Abuse and Sexual Violence (Wales) Act 2015, explaining that post-legislative scrutiny of that Act had raised issues about the independence of the role. She said that the former Adviser had expressed a number of concerns, “mostly linked to the fact that there was not a specific budget. She did not have enough resources. She was physically located within the Welsh Government office with the civil servants and she had a Welsh Government email address. She was quite critical of that. I think she found that that had consequences for how independent she could be.”<sup>401</sup>

302. Kevin Hyland believed that it was possible to achieve a balance between independence and accountability, citing as his model the role of Chief Constables.<sup>402</sup>

303. The Home Office Minister reiterated that the Government wanted the Commissioner to be independent, and that she expected the Commissioner to act “without fear or favour, including by criticising, where appropriate, local government and national Government.” She argued that the independence of the Commissioner would derive not just from the legislative framework, but from the way they discharged their functions. She noted that the Commissioner also had the final say on who was appointed, as members of staff, to their office. The Minister said that it was for the Commissioner to determine their own work programme and the content of their reports, and she categorically stated, “The Home Secretary has no right of veto in terms of the reports, the plans, or elsewhere. The reason the strategic plan is to be run past the Home Secretary is that this commissioner office, as with other commissioner offices, will be within the remit of the Home Office, but the Home Secretary does not have the power to veto that plan.”<sup>403</sup> She added:

We are very sensitive to the concerns that stakeholders have on this, which is why we are drawing up a charter for the commissioner and the Home Secretary or the Home Office to understand where responsibilities lie, and where functions lie. But I would like, again, to emphasise that this is an independent role. I want them to work.<sup>404</sup>

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399 [Q73](#)

400 [Q236](#)

401 [Q235](#)

402 [Q236](#)

403 [Q273](#)

404 [Q274](#)



She also assured us that the Government would apply lessons learned about the role of the Independent Anti-Slavery Commissioner in the independent review of the Modern Slavery Act 2015.<sup>405</sup>

304. When we sought views on how the Commissioner’s role could be made more clearly independent while still maintaining the accountability necessary in the public service, our witnesses focused on two aspects: whether the Home Office was the appropriate lead department,<sup>406</sup> and whether accountability to Parliament, as distinct from government, was necessary. Andrea Simon, of End Violence Against Women, emphasised that the Commissioner would need to be demonstrably independent from the Home Office if it were to represent all victims of domestic abuse effectively. She said:

We have some concerns about categories of victim such as migrant women. Since their situation is so deeply impacted by immigration policies and the Home Office is the holder of immigration enforcement, there could be a conflict in its representing the interests of that group of victims to its very best ability. Perhaps the potential domestic abuse commissioner could answer to the Cabinet Office or some other Department.<sup>407</sup>

305. Kevin Hyland reported on his experience of working with a multi-agency, cross-departmental taskforce led by a senior responsible person in the Cabinet Office, which he said had “enormous benefits” in terms of bringing Ministers and officials together with experts they would not normally meet and in encouraging the Cabinet Office to focus on a problem that required a cross-governmental approach.<sup>408</sup> Mr Hyland said, however, that his role in respect of the taskforce sometimes came into conflict with his responsibility to the Home Office.<sup>409</sup>

306. Emily Frith noted that the Children’s Commissioner had to send draft reports to the Secretary of State for Education before publication, and that the Secretary of State had to approve its annual strategic plan. She stated, “We would like to see both those things removed, because that would give the commissioner much more independence to report directly to Parliament.”<sup>410</sup> Kevin Hyland told us that, during his reappointment, he was criticised for giving evidence to a parliamentary committee. He suggested that, if the Commissioner were to be responsible to a parliamentary committee rather than a government department, then they would be able to express concerns more openly.<sup>411</sup>

307. In its report on domestic abuse, the Home Affairs Committee recommended that the Commissioner be accountable, and report directly, to Parliament rather than to Government, and should be independently accommodated and resourced.<sup>412</sup>

308. The Minister rejected the suggestion that the Commissioner should report to other departments as well as the Home Office or a parliamentary committee. She argued that this

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405 [Q281](#); Independent Review of the Modern Slavery Act, *First interim report: The Independent Anti-Slavery Commissioner* (17 December 2018)

406 See, for example, Association of Directors of Children’s Services ([DAB0062](#))

407 [Q9](#)

408 [Q242](#)

409 [Q244](#)

410 [Q73](#)

411 [Qq237](#) and [249](#)

412 Home Affairs Select Committee, Ninth Report of Session 2017–19, *Domestic Abuse*, HC 1015

was not how Commissioners were held accountable, citing the Children’s Commissioner reporting to the Department for Education and the Victims’ Commissioner to the Ministry of Justice.<sup>413</sup>

## Resources

309. There was virtual unanimity among our witnesses that the resources currently allocated to the Domestic Abuse Commissioner were inadequate. Concerns focused on three areas: the overall budget for the office, the ability to employ enough—and the right—staff, and the intention that the post of Commissioner should be part-time.

310. Dr Magić of Galop argued that the current budget (of about £1 million a year) was “insufficient to drive the planned step-up in ambition that is required”. She also expressed concerns about the proposed part-time nature of the role and believed it was unlikely to be sufficient given the scope of the crime and the number of people affected.<sup>414</sup> Refuge agreed on both counts.<sup>415</sup> Kevin Hyland thought the role should be full-time.<sup>416</sup> Nazir Afzal said it was “nonsense” that the Government was not prepared to pay the comparatively small cost to make the post full-time when domestic abuse was estimated to cost some £66 billion a year in GDP.<sup>417</sup>

311. Far from accepting that the Commissioner’s job should be part time, Elspeth Thomson of Resolution wondered whether it might be appropriate to employ in addition some local abuse commissioners to look at what was happening across the country.<sup>418</sup> Duncan Shrubsole, of the Lloyds Bank Foundation, agreed that it was unlikely that one person would have the expertise necessary to understand the full range of issues associated with domestic violence, which made access to a wide range of expertise and support within the Commissioner’s office all the more important.<sup>419</sup> He thought a part-time Commissioner was feasible only if they had an effective team of deputies.<sup>420</sup> He cited the lessons to be learned from the experience of the Children’s Commissioner and the Anti-Slavery Commissioner: “Those commissioners started with good intentions, but they did not necessarily have [the resources] they needed from the start.”<sup>421</sup> Tina Reece suggested that some of the difficulties experienced by the Adviser to the Welsh Government were attributable to insufficient resources being allocated to the role.<sup>422</sup> She also noted that the Adviser had initially been a part-time post, but was subsequently expanded to a full-time post and job share. She added that the Adviser had a narrower remit than the proposed Commissioner because the role did not involve criminal justice.<sup>423</sup>

312. The Minister stated that the proposed budget compared well with those for other commissioners. She also said the judgement that a three-day week would suffice had been

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413 [Q274](#)

414 [Q149](#)

415 [Q9](#)

416 [Q241](#)

417 [Q193](#)

418 [Q102](#)

419 [Q126](#)

420 [Q127](#)

421 [Q126](#)

422 [Q235](#)

423 [Q241](#)

based on what other commissioners were expected to do. She noted that the experience of the designate Commissioner’s part-time role would enable the Government to adjust the proposal.<sup>424</sup>

## Powers

313. The draft Bill imposes a duty on “specified public authorities”<sup>425</sup> to “so far as is reasonably practicable, comply with a request made”<sup>426</sup> to them under the Commissioner’s statutory powers.<sup>427</sup> Specified public authorities include English local authorities; various police bodies; the Crown Prosecution Service; education inspectorates; NHS bodies in England and the Care Quality Commission, among others.<sup>428</sup> It does not include central government departments. A specified public authority must respond to any report by the Commissioner that contains recommendations relating to it within 56 days of publication.<sup>429</sup>

314. Those who gave evidence to us concurred in arguing that the Commissioner needed “real teeth” to compel the necessary changes in practice.<sup>430</sup> They argued that commissioning was too fragmented and piecemeal, too much of a postcode lottery, and in some circumstances pressures were leading to dangerous practices. They considered that the Government’s strategy would work better if local authorities had to change their approach as a result of the Commissioner’s recommendations.<sup>431</sup> Jo Todd of Respect said that guidance on best practice already existed: “we need structures of accountability and inspectorates that really inspect. When we have seen it work—we have seen HMICFRS really scrutinise and delve into police performance on domestic abuse—it has transformed practice. There is real scope for using those kinds of powers to change things. We do not want this to be a wasted opportunity, specifically around perpetrators.”<sup>432</sup>

315. Jane Gordon of Sisters for Change suggested the powers and functions of the Equality and Human Rights Commission as a useful model, arguing that where systemic failings by public authorities were found, the Commissioner had to be able to ensure some measure of compliance.<sup>433</sup>

316. Kevin Hyland concurred, from his experience as Anti-Slavery Commissioner:

You kind of expect that most people will play nicely, and many do, but then you have challenges, even coming from a policing career.

The piece in the Bill about recommendations having to be reported on, and then a reply having to come, is one step forward from where the modern slavery commissioner role was, because there was no compelling of a reply. That is very important, but there are issues on which there needs to be a power to intervene. There will have to be checks and balances on that, and

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424 [Q276](#)

425 Draft Bill, [cl 13\(3\)](#)

426 Draft Bill, [cl 13\(2\)](#)

427 Draft Bill, [cl 13\(1\)](#)

428 Draft Bill, [cl 13\(3\)](#) generally

429 Draft Bill, [cl 14](#)

430 See, for example, [Q9](#) (Ellie Butt), [Q10](#) (Lucy Hadley), [Q74](#) (Eleanor Briggs), [Q104](#) (Nicole Jacobs) [Q126](#) (Duncan Shrubsole), [Q127](#) (Lyndsey Dearlove), [Q192](#) (Nazir Afzal and Kate Ellis), and CARE ([DAB0440](#))

431 [Q9](#), [Q10](#) and [Q126](#)

432 [Q149](#)

433 [Q232](#)

on what the intervention does, what it compels an organisation to do and to whom that should be made public, but the powers in that sense are so important.<sup>434</sup>

317. The dissenting voices were those representing local authorities and the Government. Councillor Blackburn was “not keen” about the Commissioner having the power to direct local authorities. He saw the role as sharing best practice and findings from homicide and serious case reviews to ensure that local authorities understood their duties. He argued that there would invariably—and sometimes rightly—be differing levels and types of services provided by different councils, as the picture of domestic abuse varied dramatically from one authority to another.<sup>435</sup> He stated: “It is a fundamental change to the nature of that relationship when a commissioner fundamentally becomes an inspector and starts to direct local authorities on how local services ought to be designed.”<sup>436</sup>

318. The Minister argued that it came down to a balance between the powers of a national commissioner and local democracy and accountability. She said that because the Commissioner would have the power to report and to make recommendations, and statutory agencies would be required, by law, to respond to those recommendations publicly, this would exert considerable pressure on local commissioners, the police and other agencies. “It would be for a local council or a police and crime commissioner, were they to reject the explicit findings of a commissioner as to improvements that need to be made locally or criticisms of how they are running their services. That would be, I have to say, quite a bold decision by the local agency or commissioner.”<sup>437</sup>

319. The Minister was of the view that the powers provided by the draft Bill were adequate. She pointed to the existing national statement of expectations, and said: “I would expect the commissioner to be not only independent but forthright in their assessment of the provision of services locally and nationally.”<sup>438</sup>

**320. Many of the issues raised in the course of our inquiry were considered by our witnesses to be matters for the Domestic Abuse Commissioner to address. They suggested widening the Commissioner’s remit and proposed comprehensive, detailed work in a number of specific areas. The Home Office clearly regards the role as one which issues guidance and reports compliance, and it has made provision for the Commissioner to be funded and for staff to be provided accordingly. However, those working in the field were firmly of the view that, if this role was to make a major contribution to combatting domestic abuse, the Commissioner would have to be more pro-active, would have to work across government and with multiple local partners, and would have to be able to hold public authorities to account for any failings. They therefore considered that the Commissioner’s role should be full-time and the budget and staffing for the Commissioner’s office should be larger.**

*321. While we do not necessarily endorse every suggestion made to us about the work the Domestic Abuse Commissioner should do, we think that in practice the Commissioner’s office would have a greater quantity and wider range of and more in-depth work than the current funding and staffing arrangements would permit. We recommend that*

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434 [Q246](#)

435 [Q260](#)

436 [Q260](#)

437 [Q275](#)

438 [Q267](#)

*the role of Commissioner should be full time, and that, within a year of the designate Commissioner starting their role, they or, if then in place, the statutory Commissioner should publish an assessment of the financial and personnel resources required to carry out the role.*

322. *As we have repeatedly emphasised, the Commissioner would need to work with multiple agencies, national and local, in areas such as healthcare, housing and education. While the draft Bill would require public authorities to reply to any recommendations addressed to them in a report by the Commissioner, it is silent about what would happen if the authorities failed to make the recommended changes to their practice. We were told that it was undesirable to confuse the role of commissioner with that of an inspector. We accept this, but we think it unacceptable that service providers might be able simply to ignore the Commissioner's recommendations. The role of enforcing best practice properly lies with Ministers, but currently there is no duty on government departments to co-operate with the Commissioner. We recommend that Clause 13 of the Bill be amended to place this duty on government departments. This would give Ministers a clear mandate to ensure that public sector commissioners and providers change their behaviour.*

323. *As far as the linked issues of independence and accountability are concerned, we have grave concerns about the proposal for the Commissioner's role to be responsible to the Home Office. There is a potential for the Home Office to experience serious conflicts between its work in relation to domestic abuse and its responsibility for immigration control. This has led a number of our witnesses to question whether the Commissioner could really be independent when considering the needs of migrant women if answerable to the Home Office. They suggested that a Cabinet lead would enable a cross-departmental approach. This argument was supported by the former Anti-Slavery Commissioner's assertion that his most effective cross-government work was done when he reported to the Cabinet Office rather than the Home Office.*

324. *We recommend that the Commissioner be responsible to the Cabinet Office, to provide the Commissioner with extra authority in relation to the wide range of Ministers and government departments with which their office will have to engage. We also recommend a clear, direct accountability to Parliament, as an assurance of the Commissioner's independence of government. Furthermore, the draft Bill should be amended to remove the requirement for the Commissioner to submit draft reports and advice to the Secretary of State and to obtain the approval of the Secretary of State for their annual strategic plan. The Commissioner should be given power to appoint staff independently, albeit on civil service terms and conditions.*

325. *We recommend that the Commissioner be given the duty to consult with partners and agencies in Wales, and that the National Assembly of Wales be enabled to undertake appropriate scrutiny of how the Commissioner's Office discharge their responsibilities.*

326. *Overall we consider that there should be a complete review of the approach taken to establishing Commissioners offices. The inconsistency between Commissioner powers, functions and independence is arbitrary and undesirable. We strongly recommend the Government to adopt a more uniform approach to establishing a Commissioner role with independence built into each by using the Cabinet Office as the sponsor department.*



# Conclusions and recommendations

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## Introduction

1. The Government's strategy is clear about the need for a multi-agency approach to combating domestic abuse, but a number of our witnesses believed the scope of the draft Bill could have been broader. Their detailed suggestions are addressed later in this report. We are firmly of the view that the aims of this Bill can be achieved only if there are changes in both policy and legislation relating to other areas of government activity, especially the provision of services to survivors (housing, health, financial support), the role of healthcare professionals and teachers in prevention and early intervention and a greater public awareness of the many forms that abuse can take. Throughout our report, we urge more active participation from all relevant government departments and a far more vigorous multi-agency response from those providing frontline public services. (Paragraph 6)
2. *We are encouraged that JCP has put in place training for its staff to identify victims of domestic abuse and to make advance payments in case of financial hardship. Ministers need to consider whether those payments should be converted into grants that are not repayable.* (Paragraph 8)
3. *We agree with the Work and Pensions Committee that Universal Credit should not exacerbate financial abuse. We are encouraged that DWP are considering alternative means of ensuring that the benefit system does not force people suffering from domestic abuse to continue to live with their abuser, but more has to be done to ensure this. We recommend that the Government reviews the impact of its welfare reform programme on victims of domestic abuse. Specifically, this review should examine how different approaches to splitting the Universal Credit single household payment might mitigate against the effects of domestic abuse.* (Paragraph 9)
4. We believe that there should be greater integration of policies on domestic abuse and violence against women and girls to reflect the realities of the experience of victims. This has to be achieved without excluding men, boys and non-binary people from the protection of domestic abuse legislation and services for survivors. The legislation and practice in Wales provide useful lessons in this area. (Paragraph 11)
5. We received a large number of written submissions on the issue of the law on abortion in Northern Ireland, the majority of which argued that the Bill should not be used as a means to change the law. The draft Bill makes no such provision, and we have not considered that it is part of our remit to consider this issue. (Paragraph 14)
6. *We consider it unacceptable that the people of Northern Ireland are denied the same level of protection in relation to domestic abuse as those elsewhere in the United Kingdom because of the lack of a Northern Ireland Executive and Assembly. We understand and respect the devolution settlement, but in the absence of an executive we recommend that the provisions of the draft Bill be extended to Northern Ireland unless and until Northern Ireland enacts its own legislation in this area. The draft Bill should be amended to include a 'sunset clause' to this effect.* (Paragraph 17)



## Statutory definition

7. We have heard compelling evidence that certain forms of abusive behaviour are not being recognised by public bodies as domestic abuse. This is usually because they are disproportionately experienced by BME people, or relate to an individual's immigration status, even though such abuse is almost invariably perpetrated by a member of the victim's household or extended family. We recommend that the Bill is amended to provide that the following types of abuse are always treated as domestic abuse: Female Genital Mutilation; forced marriage; honour-based crimes; coercive control related to immigration status; and modern slavery and exploitation. This amendment must make it clear that specifying these types of abuse does not limit the definition of domestic abuse, it simply clarifies that they fall within the statutory definition, and the victims and perpetrators should be treated accordingly. (Paragraph 28)
8. *We endorse the Government's approach to defining domestic abuse by the inclusion of broad categories of behaviour in order to future-proof the statutory definition, subject to our recommendation in paragraph 28 on specific abusive behaviours that must be treated as falling within the definition of domestic abuse.* (Paragraph 29)
9. *We recommend that the statutory definition should be redrafted to make it clear that single occurrences may constitute domestic abuse, and it is not necessary to prove a "course of behaviour". In making this recommendation we specifically have in mind abusive acts such as abandonment, where a wife or partner is deserted abroad without papers to prevent them from exercising their matrimonial or residence rights in England and Wales. It would not be in the spirit of the Government's stated ambitions for the Bill if such behaviour could arguably be excluded from the definition because it can be characterised as a stand-alone event.* (Paragraph 31)
10. We welcome that the Government has legislated to make relationship and sex education mandatory for all school age children and that it will tackle the issue of what healthy relationships look like with children from the age of five in an age appropriate way. We were disturbed to hear from young people themselves that they felt violent abuse in relationships between those under the age of 16 was not taken seriously. (Paragraph 40)
11. We have found it difficult to decide on the age limit that should apply to the definition of domestic abuse but, on balance, agree the age-limit of 16 in the proposed statutory definition of domestic abuse is the right one. We recognise the concerns of witnesses that abuse suffered, and perpetrated, by under 16s in intimate relationships is not captured by the definition but believe the danger of lowering the age-limit would be the inevitable criminalisation of under 16-year-old perpetrators. This does not mean that it would always be inappropriate for perpetrators under 16 to face the criminal courts. The police need to review their guidance in this area. The priority must be to develop consequences that ensure young perpetrators stop their abusive behaviour, for their own sake as well as the children they abuse. It is equally vital that children who have suffered abuse in a peer to peer relationship receive specialist support. (Paragraph 41)

12. We recommend that the Government conduct a specific review on how to address domestic abuse in relationships between under-16 year olds, including age-appropriate consequences for perpetrators. We note the inadequacy of the criminal justice system in dealing with these cases and recommend the review consider how to remedy this, including for cases that are not destined to come before the court, therefore ensuring victims' need for justice is met. While the adult model is not the right one for children, the harm caused to all concerned is very high and this Bill will not be the landmark legislation it is intended to be if it does not tackle this difficult area. (Paragraph 42)
13. We also agree that abuse of children by adults must always be treated as child abuse and reducing the age limit for victims runs the risk of confusing the approach of public authorities and denying the young victims of such abuse access to specialist services. (Paragraph 43)
14. *We are concerned over the absence from the definition of children as victims of abuse perpetrated by adults upon adults and the evidence we have heard that this has a negative impact on services for children who have suffered such trauma. We recommend the Bill be amended so the status of children as victims of domestic abuse that occurs in their household is recognised and welcome the assurance from the Home Office Minister that the Government seeks to include the harm caused to children in abusive households in the definition. This would also ensure compliance with the Istanbul Convention which makes it clear that children may be the victims of domestic abuse by witnessing it rather than being the subjects of it.* (Paragraph 46)
15. *We recommend the Government consider amending the relevant Children Act definition of harm to explicitly include the trauma caused to children by witnessing coercive control between adults in the household.* (Paragraph 47)
16. *We recommend the Government reconsider including the "same household" criterion in its definition of relationships within which domestic abuse can occur. This landmark Bill must ensure that no victim of domestic abuse will be denied protection simply because they lack the necessary relationship to a perpetrator with whom they live.* (Paragraph 49)
17. *We recognise that abuse of disabled people by their "carers" often mirrors that seen in the other relationships covered by the Bill. We conclude that abuse by any carer towards this particularly vulnerable group should be included in the statutory definition. We share the concerns of our witnesses, however, that, even with the "same household" criterion included in the definition of "personally connected", paid carers, and some unpaid ones, will be excluded from the definition of domestic abuse. We recommend the Government review the "personally connected" clause with the intention of amending it to include a clause which will cover all disabled people and their carers, paid or unpaid in recognition of the fact this type of abuse occurs in a domestic situation.* (Paragraph 51)
18. *We recommend that the Secretary of State publish draft statutory guidance in time for the Second Reading of the Bill, and Clause 57 be amended to require the final guidance to be published within six months of the Bill's enactment.* (Paragraph 65)

19. The Government has described this Bill as a once-in-generation opportunity to transform the response to the terrible crime of domestic abuse. Given the landmark nature of the proposed legislation, we believe it is crucial that the gendered context of domestic abuse is recognised on the face of the Bill. Without this recognition the Bill cannot begin to fulfil the Government's ambitions for it and achieve the transformative response required to combat the scourge of domestic abuse. (Paragraph 71)
20. We believe many of the objections to a gendered definition of domestic abuse come from concerns that it could exclude men from the protection of the Act. We recognise this concern but our evidence shows it is based on a misunderstanding of what a gendered definition means in practice. A gendered definition of abuse does not exclude men. Anyone can, sadly, suffer from domestic abuse just as anyone, regardless of gender, can perpetrate it. In recommending a gendered definition of domestic abuse we want to embed a nuanced approach to the most effective response to domestic abuse for all individuals who suffer such violence, and to ensure that public authorities understand the root causes of this complex crime. We also believe our recommendation on how a gendered definition should be drafted allows the courts to continue to judge the raft of cases they currently hear without any fear of perpetuating discrimination towards men and boys. Incorporating a gendered definition of domestic abuse ensures compliance with the requirements of the Istanbul Convention in demonstrating a gendered understanding of violence against women and domestic abuse as a basis for all measures to protect and support victims. (Paragraph 72)
21. *We recommend the Government introduce a new clause into the draft Domestic Abuse Bill in the following, or very similar, terms: When applying Section 1 and 2 of this Act public authorities providing services must have regard to the gendered-nature of abuse and the intersectionality of other protected characteristics of service users in the provision of services, as required under existing equalities legislation.* (Paragraph 73)
22. *We recommend that the statutory guidance the Government is committed to issuing on the operation of the statutory definition of domestic abuse should require public authorities to acknowledge the disproportionate impact of domestic abuse on women and girls when developing strategies and policies in this area. We believe this will make the Bill the landmark legislation the Government intends and transform the way we as a country respond to the scourge of domestic abuse. We recommend draft guidance on the Bill be published at Second Reading and that all final guidance be published within six months of the day the Act comes into force.* (Paragraph 74)

## Policing

23. Given the Crime and Security Act 2010 states that violence or the threat of violence is required before a notice can be issued or an order granted, we can understand why both the police and the courts have found it difficult to decide whether certain types of abusive behaviour qualified the perpetrator for a Domestic Violence Protection Order or Notice. We welcome the explicit inclusion of abuse other than violence or the threat of violence and believe this removes a key weakness of the previous scheme. (Paragraph 82)

24. Domestic Abuse Protection Orders may be applied for without the victim's consent by the police, specialist agencies and third parties with the consent of the court. We believe it is a key strength of the proposed orders that they can be made by the police without the victim's consent: the nature of domestic abuse is such that pressure not to take action against the perpetrator will often be overwhelming and it would significantly weaken the protective effect of the orders if only victims were able to apply for them. We note the concerns about third parties being able to apply for orders and this potentially been subject to abuse by family members or others. We believe the fact that any such application is at the discretion of the court will prevent instances of abuse. (Paragraph 87)
25. We are concerned that the potentially indefinite nature of Domestic Abuse Protection Orders will result in the courts' granting them less often than they grant time-limited Domestic Violence Protection Orders, meaning protection for victims will overall be reduced. (Paragraph 90)
26. We believe attaching positive requirements to Domestic Abuse Protection Orders has the potential to enhance the protection given to victims. The practicalities of the scheme, however, do not appear to have been thought through. Without funding for training or an infrastructure for monitoring compliance, use of positive requirements will be very limited or run the risk of making things worse as victims are forced to try and monitor their abusers' compliance with the order themselves. The simple question which the draft Bill does not address is which organisation or organisations are to be responsible for the monitoring of positive requirements. Without this clarity, the provisions relating to this proposal may fail. The use of positive requirements also has legal implications for the utility of the order which we consider below. (Paragraph 102)
27. *We are concerned at the potential for inconsistent approaches between the civil and criminal courts to applications for Domestic Abuse Protection Orders. We recommend that detailed guidance for applicants, defendants and the judiciary be introduced on the circumstances in which such protective orders are granted, with particular consideration given to the evidence required and the assessment of risk posed by the respondent to the applicant for the order.* (Paragraph 108)
28. The Government's insistence that the police pay a court fee to make an application for a Domestic Abuse Prevention Order, while victims do not, will undermine the entire scheme and end any chance of the orders becoming the 'go-to' order to protect victims of domestic abuse. Police officers will be put in the invidious position of having to choose to use scarce resources to make an application or persuading the victim to make the application themselves. This effectively removes a key strength of the order, that an application may be made without the victim's involvement, or even consent. *We strongly recommend that applications for Domestic Abuse Protection Orders be free to the police, with appropriate funding to HM Court and Tribunal Service.* (Paragraph 113)
29. We welcome the Government's ambition to improve the protection available to victims of domestic abuse. Strengths of the proposed scheme include explicitly broadening qualifying abusive behaviour beyond physical violence; not requiring

the victim's consent to the issuing of an application for an order but providing safeguards on who can make such applications; and, with significant caveats, the introduction of positive requirements. (Paragraph 114)

30. We accept the Government's assurance that the proposed new order is compliant with our human rights obligations. We are very concerned, however, that the introduction of indefinite time limits, positive requirements and criminal sanctions combine to create such a burden on the perpetrator that the courts will be reluctant to impose the orders in all but the most exceptional of circumstances, meaning the draft Bill runs the danger of reducing the protection available to victims rather than increasing it. We note the limited use of occupation orders by the courts as a lesson the Government needs to consider before going forward with these proposals. Without learning such lessons DAPOs will not be able to fulfil the Government's intention that they will be the 'go to' order in cases of domestic abuse. (Paragraph 115)
31. *We recommend the Government carry out a thorough review of the protective measures currently available before going ahead with its proposals for the Domestic Abuse Protection Order. Following that review, we anticipate the Government will amend the current scheme both to tackle the flaws seen in the Domestic Violence Protection Order process and to ensure that the courts are not obliged to take a restrictive approach to imposing the new order.* (Paragraph 116)
32. *While that review is being undertaken, we recommend additional resources are allocated to the police specifically for training and application fees for Domestic Violence Protection Orders.* (Paragraph 117)
33. *The changes to the bail regime in the Policing and Crime Act 2017 were well-meaning. Unfortunately, the result has been that pre-charge bail is no longer an effective protective measure in domestic abuse cases. While there may be an issue with police training and guidance on the operation of the reforms, 28 days bail combined with a rigid test for any extension does not take into account the need to protect victims from perpetrators and allow the police time to do their job within the resources available. We recommend that the Government urgently bring forward legislation to increase the length of time suspects can be released on pre-charge bail in domestic abuse cases. We also recommend a rebalancing of the test for allowing extensions to pre-charge bail to give full weight to the protection of the victim from the risk of adverse behaviour by the suspect, thereby balancing the rights of the victim with those of the suspect.* (Paragraph 128)
34. *We recommend the Government amend the Policing and Crime Act 2017 to create a presumption that suspects under investigation for domestic abuse, sexual assault or other significant safeguarding issues only be released from police custody on bail, unless it is clearly not necessary for the protection of the victim. We consider this vital not only to protect victims but to give them confidence that their complaint is being taken seriously and that the criminal justice system will have regard to their welfare throughout any proceedings arising from their complaint.* (Paragraph 131)
35. We endorse the Government's decision to place the guidance to the police on the Domestic Violence Disclosure Scheme (DVDS), also known as Clare's law, on a statutory footing. We believe this will increase awareness of the DVDS among the



general public and so those who could benefit from it. We acknowledge that the DVDS is only ever likely to be used by a small number of people, and there may be some risks involved for an individual making a ‘right to ask’ application, but we believe these can be reduced by a situation-sensitive approach by the police. Ultimately, the DVDS is only one small part of the wider state response to the challenge of tackling domestic violence. (Paragraph 142)

36. We note the criticisms of the police’s limited use of the ‘right to know’ powers they possess under the Domestic Violence Disclosure Scheme (DVDS). We believe this will improve with the reforms to the guidance contained in the draft Bill. We also believe that it would increase with improved multi-agency working and we recommend further work is done in this area. We have taken evidence both in favour and against a register of offenders committing repeat domestic abuse offences, and propose this is an area which the Government should keep under review. (Paragraph 143)

### Justice system

37. We welcome the proposal that complainants in criminal proceedings for an offence involving behaviour that amounts to domestic abuse will be automatically eligible for special measures. (Paragraph 152)
38. We recommend that this provision be extended to victims of domestic abuse appearing in family and other civil courts. We note the Government’s comment that this is already possible under family court rules but, given the persuasive evidence about poor implementation, we recommend that the provision for special measures in the family court’s rules and practice directions is put on a statutory basis, and that a single consistent approach is taken across all criminal and civil jurisdictions. This is particularly important given the Government’s plans for a reduced but improved court estate, which may provide an additional barrier to participation for vulnerable victims. (Paragraph 153)
39. Polygraph tests are considered to have assisted probation in monitoring the behaviour of sex offenders and the Government proposes to pilot their use with domestic abuse offenders. It must be absolutely clear that no statements or data from a polygraph test can be used in the criminal courts. This appears to be the effect of the draft Bill but care must be taken to ensure the results of testing are not used in court, and that testing does not become a substitute for careful risk analysis or for other evidence-based interventions with perpetrators. (Paragraph 159)
40. The proposal to prevent the perpetrators of domestic abuse themselves from cross-examining victims in the family courts is a welcome measure and warmly supported across the board. We are pleased that it is accompanied by publicly-funded representation for perpetrators of abuse where necessary in the interests of justice. (Paragraph 172)
41. However, we are concerned at the potential for inconsistency in application because too many victims of domestic abuse will be protected only at the discretion of the



court. We recommend that the mandatory ban is extended so that it applies where there are other forms of evidence of domestic abuse, as in the legal aid regime threshold. (Paragraph 173)

42. *Representing the voice of children and ensuring that decisions are made in their best interests is the primary responsibility of CAFCASS when providing reports to the Family Court under s.7 of the Children Act 1989. However, we are aware from evidence submitted to us together with wider research that there are ongoing and significant concerns that CAFCASS is not sufficiently representing the voices of children who do not wish to have contact with their parents where domestic abuse is a factor. We therefore consider that it is time for the Government to conduct a thorough review of how CAFCASS can improve its obligations in this regard.* (Paragraph 175)
43. We have also heard that judges and magistrates are increasingly meeting children who are involved in cases face to face. We very much welcome this development and would like to encourage all those hearing cases about children's welfare to consider hearing from children directly. (Paragraph 176)
44. Given the weight of case law that people cannot consent to violence against them that causes Grievous Bodily Harm, let alone death, we are surprised that prosecutors opted for the lesser charge in the case cited. We consider that the case does not and should not provide a precedent, and we therefore do not recommend any changes to the Bill. (Paragraph 178)
45. *We recommend that the Government considers the proposal that a new clause be added to the Bill to create a statutory defence for women whose offending is driven by their experience of domestic abuse.* (Paragraph 180)
46. The Government recognises that domestic abuse often occurs as a repeated pattern of behaviours, with some perpetrators abusing multiple partners over a number of years. As part of its non-legislative measures accompanying the Bill, it has set out ways in which it aims to improve and increase the use of perpetrator programmes to help stop reoffending. We decided to take evidence on this issue in order to examine whether there was also a need for legislative measures to support this provision. (Paragraph 182)
47. In recent years, the number of individuals given a court order to attend a perpetrator programme has been reducing and fewer perpetrators are successfully completing those programmes. There is also currently no incentive for the probation service to provide perpetrator programmes to offenders who do not receive a court order but might still benefit from the programme. HM Chief Inspector of Probation told us that this was because of systemic problems in the criminal justice system and in the delivery of probation services. (Paragraph 193)
48. Perpetrator interventions which succeed in bringing about significant changes in abusive behaviour must be tailored to the particular type of perpetrator if they are to achieve results, and can be expensive and time consuming. Increasing attendance on unsuitable programmes will not reduce the prevalence of domestic abuse. We heard that there is a need for a wider range of programmes, and for all programmes to be properly accredited and evaluated. (Paragraph 194)

49. The Government has responded to concerns about the probation service's performance, and its delivery model. It must now ensure that those reforms support its ambition to increase the number of offenders successfully completing good quality perpetrator intervention programmes. In her evidence to us, HM Chief Inspector of Probation identified several factors which were contributing to the reducing number of perpetrators attending and completing suitable programmes. We recommend that the Government sets out how it plans to address those specific concerns. (Paragraph 195)
50. The Government must also ensure that there is sufficient provision of quality assured specialist interventions for the full spectrum of perpetrators, across all risk levels. This will require an adequate level of funding and cooperation with expert providers. We did not identify a need for additional legislation to support perpetrator programme measures. (Paragraph 196)

### Refuges and support services

51. Currently there are too few places in refuges or supported housing and access to specialist services is limited. We welcome the Government's announcement that it plans to introduce a statutory requirement in the Bill for accommodation support services in England to be provided for survivors of domestic abuse, and its commitment to provide an adequate level of additional funding to local authorities to enable them to comply with the new duty. (Paragraph 213)
52. Further work is required to clarify the precise details of this duty, but this welcome step will make a significant difference to the support received by survivors of domestic abuse across the country. We encourage the Government to work closely with refuge providers, local authorities and other stakeholders to ensure that future service provision meets anticipated needs including the inter-relationships between local accommodation-based systems, so that they form a national network. This will assist in ensuring full compatibility with the requirements of the Istanbul Convention in this regard. (Paragraph 214)
53. The Government needs to provide clarity on how non- accommodation based support services such as community-based advocacy and IDVA services and open access advice, helpline and counselling support services will be provided and funded under the new statutory duty proposed by MHCLG and what arrangements will be made for the national provision of highly specialist services. We recommend that the Government works closely with refuge providers, local authorities and other stakeholders to ensure that these essential services are included in future service commissioning plans in order to ensure full compliance with the Istanbul Convention in this regard. (Paragraph 230)
54. We also note the key role in supporting survivors that other parts of the public service, especially in the areas of health and education, need to play. The Government must ensure that survivors of domestic abuse and their children have full access to health and other essential public services and do not suffer any detriment when they are forced to move to new accommodation in a different area. Finding school places and ensuring that survivors of domestic abuse experience no disadvantage in quickly accessing physical and mental health services are vital. Those leaving

their homes and communities to escape abuse are sorely in need of such support and should be treated on a par with other vulnerable groups, such as looked after children. (Paragraph 231)

### Migrant women

55. The Bill includes no specific provisions concerning migrant women, but we have considered this issue because of concerns that in practice some migrant women would not be protected by the proposed measures in the Bill. (Paragraph 234)
56. Some women with insecure immigration status are faced with the choice of staying with a perpetrator of abuse or becoming homeless and destitute because they do not know how to get help or may not be entitled to support and may be at risk of detention and deportation. Because of this vulnerability, immigration status itself is used by perpetrators of domestic abuse as a means to coerce and control. (Paragraph 240)
57. Witnesses told us that migrant women experiencing domestic abuse were effectively excluded from the few protective measures contained in the Bill and that this was not compliant with the requirements of Article 4, paragraph 3 of the Istanbul Convention which requires protection to be provided without discrimination on any ground, including migrant and refugee status. (Paragraph 241)
58. The police service has a critical role in providing a first line of response to victims of abuse, particularly when there is a crisis. We know from our informal meetings with survivors of abuse that many of them do not know where else to turn in an emergency other than the police, especially when they live in rural areas, or when they need help at night. (Paragraph 248)
59. We are particularly concerned to hear evidence that some police forces share details of victims with the Home Office for the purposes of immigration control rather than helping the victim access appropriate support. We note that the NPCC updated its guidance in December 2018, to specify that when someone reports a crime, the police must always, first and foremost, treat them as a victim, and that police must never check a database only to establish a victim's immigration status. However, it is clear that this guidance is not sufficient to prevent immigration authorities from taking enforcement action at a time when there is a duty on statutory authorities to ensure that victims of domestic abuse are provided with protection and support. (Paragraph 249)
60. We note the concerns that a statutory bar on sharing information could in some cases prevent the police from helping victims of abuse who are uncertain of their immigration status. We welcome the new NPCC guidance but doubt whether it will be sufficient to change long-standing bad practice. (Paragraph 250)
61. We recommend that a more robust Home Office policy is developed to determine the actions which may be taken by the immigration authorities with respect to victims of crime who have approached public authorities for protection and support. We

support the recommendation of the Step Up Migrant Women campaign to establish a firewall at the levels of policy and practice to separate reporting of crime and access to support services from immigration control. (Paragraph 251)

62. The provisions barring individuals from having recourse to public funds can prevent some victims of domestic abuse with uncertain immigration status from accessing refuges and other support services. We recommend that Government explores ways to extend the temporary concessions available under the DVR and DDVC to support migrant survivors of abuse, to ensure that all of these vulnerable victims of crime can access protection and support whilst their application for indefinite leave to remain is considered by the Government. We recommend that the Government consult on the most effective criteria to ensure such a measure reaches the victims it is designed to support and that it should extend the three-month time limit to six months for the DDVC in the light of the specific difficulties for victims highlighted by Southall Black Sisters. We note that the Home Office already publishes guidance on the evidence of domestic violence which is required to support applications under the DVR, and we would expect these protocols to continue to be applied. (Paragraph 258)
63. *We recommend the inclusion of an additional clause in the Bill, imposing on public authorities dealing with a victim or alleged victim of domestic abuse, or making decisions of a strategic nature about how to exercise functions, a duty to have due regard to the need to protect the rights of victims without discrimination on any of the grounds prohibited by Article 4, paragraph 3 of the Istanbul Convention.* (Paragraph 259)

### Other issues

64. We note the existence of divergence in legislation between England and Wales, and also the different agencies that operate in the two countries. We urge greater close co-operation between the UK and Welsh governments. (Paragraph 263)
65. Wales has placed its response to domestic abuse firmly into the context of its violence against women strategy. Welsh legislation has also focused on promoting multi-agency work and encouraging prevention. As yet there is little evidence about the effectiveness of this approach, but those engaged in it seemed optimistic, despite their caveats about funding difficulties. We are persuaded that developments such as the training programmes for public sector workers and the emphasis on the role of schools in prevention are valuable, and lessons learned should be incorporated into the approach to domestic abuse in England. This approach forms a key element of the approach of the Istanbul Convention contained in Chapter 3, particularly Article 13 which refers to the crucial role that education plays in this area. (Paragraph 268)
66. We welcome the introduction by the Government of mandatory relationship education for all school-aged children in England, and we see breaking the 18-year impasse on delivering this important support for all children as of fundamental importance in delivering the domestic abuse strategy. It is an opportunity to break the intergenerational cycle of domestic abuse. It is vital that children of all

ages be taught about domestic abuse in a sensitive and age-appropriate way, giving them the tools to recognise abuse, the confidence to report it and the ability to develop respectful relationships themselves. (Paragraph 274)

67. *It is clear that there is still a great deal of work to be done in changing perceptions of what is normal and acceptable behaviour within relationships. We are aware of (often locally-funded) advertising campaigns to raise public awareness of the problem of domestic abuse. There have been similar, more widespread campaigns on issues such as modern day slavery, as well as the promotion of health messages on issues such as smoking. The cost of domestic abuse to the health service is high. We believe that a campaign to raise awareness and challenge behaviour should be undertaken; this could also provide pointers to where help may be sought and suspected instances reported. Such a campaign could be targetted particularly on online pornography sites.* (Paragraph 275)
68. A key part of the Government's strategy is to prevent domestic abuse and intervene early to stop abuse escalating. This part of the strategy is addressed through policies and is not covered in the draft Bill. We note that in Wales the statutory guidance on prevention, training and strategies is intended to incentivise widespread work on prevention throughout the public sector and to facilitate better multi-agency working and collaborative working with other specialist organisations. We urge the Government to consider how there might be greater consistency in approach across the UK, particularly in terms of the provision of public service early interventions and training for front-line staff in publicly funded services. (Paragraph 281)
69. We are very conscious of the need to involve a wide variety of government departments and other public sector organisations in promoting the prevention of and early intervention in domestic abuse. There will be a requirement for co-ordination with the devolved administrations. Delivery will require significant cultural change in a number of organisations, and this reinforces our conviction that the strategy should be led from the centre of government. We therefore recommend that a Cabinet Office Minister should lead on implementing the Government's strategy to combat domestic abuse and to ensure full compliance with the Istanbul Convention. (Paragraph 282)

### Domestic Abuse Commissioner

70. We understand that the Government wishes to make rapid progress in implementing its Domestic Abuse Strategy, but we were surprised to learn that the process of recruiting a designate Commissioner had almost been completed before Parliament had had any opportunity to consider—still less to recommend any changes to—the draft Bill setting out proposals for the Commissioner's remit and powers and the governance arrangements for the Commissioner's office. We understand from the Home Secretary that the process has been put on hold while we complete our scrutiny, but it appears that the designate Commissioner's appointment will be made on the basis set out in December 2018. We consider this unsatisfactory. (Paragraph 287)



71. *We have already stated our view that there needs to be greater integration of the legislation and policies relating to domestic abuse and violence against women and girls more generally. We recommend that this be reflected in the remit given to the Commissioner. (Paragraph 290)*
72. Many of the issues raised in the course of our inquiry were considered by our witnesses to be matters for the Domestic Abuse Commissioner to address. They suggested widening the Commissioner's remit and proposed comprehensive, detailed work in a number of specific areas. The Home Office clearly regards the role as one which issues guidance and reports compliance, and it has made provision for the Commissioner to be funded and for staff to be provided accordingly. However, those working in the field were firmly of the view that, if this role was to make a major contribution to combatting domestic abuse, the Commissioner would have to be more pro-active, would have to work across government and with multiple local partners, and would have to be able to hold public authorities to account for any failings. They therefore considered that the Commissioner's role should be full-time and the budget and staffing for the Commissioner's office should be larger. (Paragraph 320)
73. *While we do not necessarily endorse every suggestion made to us about the work the Domestic Abuse Commissioner should do, we think that in practice the Commissioner's office would have a greater quantity and wider range of and more in-depth work than the current funding and staffing arrangements would permit. We recommend that the role of Commissioner should be full time, and that, within a year of the designate Commissioner starting their role, they or, if then in place, the statutory Commissioner should publish an assessment of the financial and personnel resources required to carry out the role. (Paragraph 321)*
74. *As we have repeatedly emphasised, the Commissioner would need to work with multiple agencies, national and local, in areas such as healthcare, housing and education. While the draft Bill would require public authorities to reply to any recommendations addressed to them in a report by the Commissioner, it is silent about what would happen if the authorities failed to make the recommended changes to their practice. We were told that it was undesirable to confuse the role of commissioner with that of an inspector. We accept this, but we think it unacceptable that service providers might be able simply to ignore the Commissioner's recommendations. The role of enforcing best practice properly lies with Ministers, but currently there is no duty on government departments to co-operate with the Commissioner. We recommend that Clause 13 of the Bill be amended to place this duty on government departments. This would give Ministers a clear mandate to ensure that public sector commissioners and providers change their behaviour. (Paragraph 322)*
75. As far as the linked issues of independence and accountability are concerned, we have grave concerns about the proposal for the Commissioner's role to be responsible to the Home Office. There is a potential for the Home Office to experience serious conflicts between its work in relation to domestic abuse and its responsibility for immigration control. This has led a number of our witnesses to question whether the Commissioner could really be independent when considering the needs of migrant women if answerable to the Home Office. They suggested that a Cabinet lead would enable a cross-departmental approach. This argument was supported



by the former Anti-Slavery Commissioner's assertion that his most effective cross-government work was done when he reported to the Cabinet Office rather than the Home Office. (Paragraph 323)

76. *We recommend that the Commissioner be responsible to the Cabinet Office, to provide the Commissioner with extra authority in relation to the wide range of Ministers and government departments with which their office will have to engage. We also recommend a clear, direct accountability to Parliament, as an assurance of the Commissioner's independence of government. Furthermore, the draft Bill should be amended to remove the requirement for the Commissioner to submit draft reports and advice to the Secretary of State and to obtain the approval of the Secretary of State for their annual strategic plan. The Commissioner should be given power to appoint staff independently, albeit on civil service terms and conditions.* (Paragraph 324)
77. *We recommend that the Commissioner be given the duty to consult with partners and agencies in Wales, and that the National Assembly of Wales be enabled to undertake appropriate scrutiny of how the Commissioner's Office discharge their responsibilities.* (Paragraph 325)
78. *Overall we consider that there should be a complete review of the approach taken to establishing Commissioners offices. The inconsistency between Commissioner powers, functions and independence is arbitrary and undesirable. We strongly recommend the Government to adopt a more uniform approach to establishing a Commissioner role with independence built into each by using the Cabinet Office as the sponsor department.* (Paragraph 326)

# Formal minutes

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**Tuesday 11 June 2019**

Members present:

Mrs Maria Miller, in the Chair

Baroness Armstrong of Hill Top	Diana Johnson
Baroness Bertin	Alex Norris
Baroness Burt of Solihull	Liz Saville Roberts
Lord Farmer	Helen Whately
Lord Ponsonby of Shulbrede	

Draft Report (*Draft Domestic Abuse Bill*), proposed by the Chair, brought up and read.

*Ordered*, That the Chair's draft Report be read a second time, paragraph by paragraph.

Paragraphs 1 to 326 read and agreed to.

Summary read and agreed to.

*Resolved*, That the Report be the Report of the Committee to both Houses.

*Ordered*, That the Chair make the Report to the House of Commons and that the Report be made to the House of Lords.

*Ordered*, That embargoed copies of the report be made available, in accordance with the provisions of House of Commons Standing Order No.134.

# Witnesses

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The following witnesses gave evidence. Transcripts can be viewed on the [inquiry publications page](#) of the Committee's website.

## Tuesday 2 April 2019

**Lucy Hadley**, Campaigns and Public Affairs Officer, Women's Aid, **Andrea Simon**, Public Affairs Manager, End Violence Against Women, and **Ellie Butt**, Senior Policy and Public Affairs Manager, Refuge [Q1–24](#)

**Karla McLaren** Government and Political Relations Manager, Amnesty International, **Olive Craig**, Senior Legal Officer, Rights of Women, and **Rachel Robinson**, Principal, Justice Domain, Equality and Human Rights Commission [Q25–64](#)

## Tuesday 23 April 2019

**Emily Frith**, Head of Policy and Advocacy, Office of the Children's Commissioner, **Eleanor Briggs**, Head of Policy and Research, Action for Children, and **Debbie Moss**, Chief of Staff, Barnardo's [Q65–89](#)

**Elsbeth Thomson**, member of the Resolution National Committee, Resolution, **Amanda Barron JP**, Domestic Abuse Liaison Magistrate for the Central London Magistrates Courts, **Nicole Jacobs**, CEO, and **Tanya Allen**, Specialist Domestic Abuse Court Coordinator, Standing Together Against Domestic Abuse [Q90–117](#)

## Tuesday 30 April 2019

**Duncan Shrubsole**, Director of Policy, Communications and Research, Lloyds Banking Foundation, and **Lyndsey Dearlove**, Head of UK SAYS NO MORE, Hestia Housing and Support [Q118–139](#)

**Donna Covey CBE**, Chief Executive, Against Violence and Abuse (AVA), **Dr Jasna Magic**, Domestic Abuse Research and Policy Development, Galop, **Jo Todd**, Chief Executive Officer, Respect, and **Ruth Bashall**, Chief Executive Officer, Stay Safe East [Q140–154](#)

## Tuesday 7 May 2019

**Dame Glenys Stacey**, HM Chief Inspector of Probation, **Suzanne Jacob OBE**, Chief Executive, SafeLives, and **Penelope Gibbs**, Director, Transform Justice; DCC [Q155–186](#)

**Louisa Rolfe**, NPCC lead on domestic abuse, National Police Chiefs' Council, **Detective Superintendent Deb Smith**, Police Superintendents Association, **Nazir Afzal OBE**, Welsh Government adviser on Violence against Women and former Chief Executive of the Association of Police and Crime Commissioners, and **Kate Ellis**, Solicitor, Centre for Women's Justice [Q187–207](#)

## Tuesday 14 May 2019

**Zehrah Hasan**, Policy and Campaigns Assistant, Liberty, **Lucila Granada**, Director, Latin American Women's Rights Service, **Jane Gordon**, Legal Director, Sisters for Change, and **Marchu Girma**, Deputy Director, Women for Refugee Women

[Q208–233](#)

**Tina Reece**, Head of Engagement, Welsh Women's Aid, and **Kevin Hyland OBE**, the former Independent Anti Slavery Commissioner

[Q234–252](#)

## Tuesday 21 May 2019

**Councillor Simon Blackburn**, Chair of the LGA Safer, Stronger Communities Board and Leader of Blackpool City Council, and **Hannah Gousy**, Policy and Public Affairs Manager, Crisis

[Q253–262](#)

**Victoria Atkins MP**, Parliamentary Under Secretary of State for Crime, Safeguarding and Vulnerability and Parliamentary Under Secretary of State (Minister for Women), Home Office, and **Edward Argar MP**, Parliamentary Under Secretary of State, Ministry of Justice

[Q263–306](#)

## Wednesday 22 May 2019

Mrs Heather Wheeler MP, Parliamentary Under-Secretary, Ministry of Housing, Communities and Local Government, and Jackie Doyle-Price MP, Parliamentary Under-Secretary, Department of Health and Social Care

[Q307–375](#)

# Published written evidence

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The following written evidence was received and can be viewed on the [inquiry publications page](#) of the Committee's website.

DAB numbers are generated by the evidence processing system and so may not be complete.

- 1 Action for Children ([DAB0450](#)), ([DAB0538](#))
- 2 Adoption UK ([DAB0452](#))
- 3 Age UK ([DAB0318](#))
- 4 Agenda ([DAB0457](#))
- 5 The AIRE Centre ([DAB0196](#))
- 6 All-Party Parliamentary Group for Ending Homelessness ([DAB0463](#))
- 7 Alliance for Choice NI ([DAB0425](#))
- 8 Amnesty International UK ([DAB0003](#)), ([DAB0336](#))
- 9 Amnesty International UK and FPA ([DAB0434](#))
- 10 APPG on Prostitution and the Global Sex Trade ([DAB0529](#))
- 11 Association of Directors of Children's Services ([DAB0062](#))
- 12 Attenti ([DAB0064](#))
- 13 AVA (Against Violence and Abuse) ([DAB0437](#))
- 14 Barnardo's ([DAB0517](#))
- 15 Bates, Dr Elizabeth ([DAB0400](#))
- 16 Belfast Area Domestic & Sexual Violence Partnership ([DAB0236](#))
- 17 British Pregnancy Advisory Service, BPAS ([DAB0485](#))
- 18 CARE ([DAB0440](#))
- 19 Cassidy, Ms Kathryn ([DAB0436](#))
- 20 Centre for Women's Justice ([DAB0323](#))
- 21 The Children's Society ([DAB0533](#))
- 22 Creasy, Dr Stella ([DAB0445](#))
- 23 Cris McCurley, Solicitor/Partner, Ben Hoare Bell LLP ([DAB0514](#))
- 24 de Londras, Professor Fiona ([DAB0317](#))
- 25 Dogs Trust ([DAB0499](#))
- 26 Dr Elizabeth Kubiak ([DAB0470](#))
- 27 Dr Jane Rooney and Dr Sheelagh McGuinness ([DAB0407](#))
- 28 Drive Partnership ([DAB0480](#))
- 29 End Violence Against Women Coalition ([DAB0490](#))
- 30 Equality and Human Rights Commission ([DAB0477](#))
- 31 Equi-law UK ([DAB0005](#))
- 32 Experts by Experience Group - Law in the Making Project ([DAB0527](#))
- 33 Family Justice Council ([DAB0417](#))

- 34 FiLiA ([DAB0421](#))
- 35 Follow up from Home Office and Ministry of Justice officials ([DAB0207](#))
- 36 Goddess Education ([DAB0525](#))
- 37 Green Party Northern Ireland ([DAB0409](#))
- 38 Hestia's UK SAYS NO MORE Campaign ([DAB0519](#))
- 39 Humanists UK ([DAB0423](#))
- 40 Joint letter submitted by Advocacy After Fatal Domestic Abuse (AAFDA) and Surviving Economic Abuse (SEA) ([DAB0523](#))
- 41 Joint submission from Women's Aid, Imkaan, Surviving Economic Abuse, Step Up Migrant Women UK, Against Violence & Abuse, Latin American Women's Rights Service, Southall Black Sisters, End Violence Against Women, Welsh Women's Aid, Agenda: The Alliance for Women & Girls at Risk, Galop, Rights of Women, Solace, SafeLives, and Refuge ([DAB0405](#))
- 42 Joint VAWG and children's sector ([DAB0524](#))
- 43 Joint written submission submitted by Amnesty International, End Violence Against Women, Imkaan, Latin American Women's Rights Service, Liberty and Sisters for Change ([DAB0522](#))
- 44 Katz, Dr Emma ([DAB0092](#))
- 45 The Law Society of England and Wales ([DAB0482](#))
- 46 Leeway Domestic Violence and Abuse Services ([DAB0414](#))
- 47 Letter to the Chair from Edward Argar MP, Parliamentary Under-Secretary of State for Justice, Ministry of Justice ([DAB0536](#))
- 48 Letter to the Chair from Rt Hon Nick Gibb MP, Minister of State for School Standards ([DAB0539](#))
- 49 Letter to the Chair from Rt Hon. Frank Field MP, Chair of the Work and Pensions Committee ([DAB0534](#))
- 50 Letter to the Chair from Yvette Cooper MP, Chair of the Home Affairs Committee ([DAB0535](#))
- 51 Letter from Rt Hon Sajid Javid MP, the Home Secretary, to the Chair ([DAB0542](#))
- 52 Liberty ([DAB0216](#))
- 53 Lloyds Bank Foundation for England & Wales ([DAB0476](#))
- 54 Local Government Association (LGA) ([DAB540](#))
- 55 The London Assembly ([DAB0002](#))
- 56 London Councils ([DAB0486](#))
- 57 London-Irish Abortion Rights Campaign ([DAB0238](#))
- 58 The Magistrates Association ([DAB0526](#)), ([DAB0530](#))
- 59 Maloney, Brian ([DAB0528](#))
- 60 The ManKind Initiative ([DAB0382](#)), ([DAB0537](#))
- 61 Marie Stopes UK ([DAB0473](#))
- 62 Nair, Dr Vikas ([DAB0036](#))
- 63 National Housing and Domestic Abuse Policy and Practice Group ([DAB0531](#))
- 64 Northern Ireland Women's European Platform ([DAB0349](#))



- 65 Northumbria PCC ([DAB0500](#))
- 66 Prison Reform Trust ([DAB0429](#))
- 67 Refuge ([DAB0453](#))
- 68 Refugee Council ([DAB0324](#))
- 69 Reproductive Health Law and Policy Advisory Group ([DAB0260](#))
- 70 Resolution (supplementary evidence) ([DAB0521](#))
- 71 Rights for Women ([DAB0004](#))
- 72 Royal College of Psychiatrists ([DAB0456](#))
- 73 SafeLives ([DAB0458](#))
- 74 Sisters For Change (supplementary evidence) ([DAB0532](#))
- 75 Sophie Linden, Deputy Mayor for Policing and Crime, and Claire Waxman, Victims Commissioner for London ([DAB0520](#))
- 76 Southall Black Sisters ([DAB0508](#))
- 77 Stay Safe East ([DAB0541](#))
- 78 Surviving Economic Abuse ([DAB0295](#))
- 79 Transform Justice ([DAB0038](#))
- 80 Union of Shop, Distributive and Allied Workers ([DAB0441](#))
- 81 UNISON ([DAB0488](#))
- 82 Victim Support Northern Ireland ([DAB0489](#))
- 83 Watkinson, Mr John ([DAB0462](#))
- 84 Women's Aid Federation NI ([DAB0348](#))
- 85 Women's Aid Federation of England ([DAB0404](#))
- 86 Women's Regional Consortium Northern Ireland ([DAB0066](#))