

Office of the designate Domestic Abuse Commissioner for England and Wales

Briefing: Domestic Abuse Bill House of Lords – Committee Stage

The role of the Domestic Abuse Commissioner for England and Wales

The Domestic Abuse Bill enshrines in law the office of the Domestic Abuse Commissioner for England and Wales. The Commissioner will be tasked with encouraging good practice in preventing domestic abuse; identifying victims and survivors, and perpetrators of domestic abuse, as well as children who are affected; and improving the protection and provision of support to people affected by domestic abuse. Part 2 of the Bill provides the Commissioner with powers to publish reports and lay them before Parliament; these reports will hold local commissioners, statutory agencies and national government to account and make recommendations on how they can improve their response. Specified public bodies will be under a duty to cooperate with the Commissioner, and they and government Ministers will be required to respond to each recommendation made to them within 56 days. Nicole Jacobs was appointed as the designate Domestic Abuse Commissioner in September 2019.

The Commissioner strongly welcomes the ambition and scope of the Bill. This briefing is designed to support peers during Committee stage of the Bill. It provides a general overview on key issues for various sections of the Bill as well as a table on the specific priority amendments for the Commissioner.

For further details please contact:

hannah.gousy@domesticabusecommissioner.independent.gov.uk

General comments and powers of the Commissioner

Part 1- Definition

- The Commissioner strongly welcomes the Government's amendment to recognise children as victims in the statutory definition of domestic abuse. To provide further support to children via the Bill, the Commissioner supports amendments to provide equivalent priority access to education for children who are victims of domestic abuse and maintain the places of children in refuges or fleeing abuse on NHS waiting lists.
- The Commissioner does not believe that specific references to 'parental alienation' are needed within the Bill, as an abusive parent who restricts access to children would be covered by the offence of controlling and coercive behaviour.
- The Commissioner supports amendments that would ensure equal access to support regardless of their immigration status, and is concerned that without these additional provisions in the Bill the Government will be unable to ratify the Istanbul Convention.

- The Commissioner welcomes proposed amendments to the Bill, which would ensure the rights of Jewish Women to end their religious marriage and secure a Get (document in Jewish religious law which effectuates a divorce between a Jewish couple) is included as part of the statutory definition of domestic abuse. This would be on the grounds of domestic abuse by way of controlling and coercive behaviour, psychological abuse, and economic abuse where it is also a factor. The Commissioner urges the Government to explore where this might also be the case for other religious groups and measures taken accordingly.

Part 2 – Domestic Abuse Commissioner

Expanding the powers of the Domestic Abuse Commissioner to create an oversight mechanism on investigations into domestic homicides and suicides

- The Commissioner is proposing to establish an oversight mechanism, working in conjunction with the Home Office, on investigations into domestic abuse related homicides and suicides. The oversight mechanism would ensure a more systematic collection of investigations into suicides and homicides in which domestic abuse is identified as a contributory factor, a robust accountability framework to ensure that individual recommendations are acted upon, and identification of key themes across investigations to help target key policy changes needed to prevent future deaths.
- Over the last decade there has been no significant reduction in the number of domestic homicides each year, indicating that further work is needed to identify broader policy change to prevent future deaths as well as following up on individual recommendations in local areas.
- The recent publication of the 10-year Femicide Census report found that over the last decade 1,425 women were murdered by men.¹ Overwhelmingly, the largest number of femicides (888, 62%) were carried out by men who were currently, or had previously been, in an intimate relationship with the victim. The number of women killed by men from year to year has remained largely unchanged over the last decade.
- In 2011, Domestic Homicide Reviews (DHRs) were established on a statutory basis under Section 9 of the Domestic Violence, Crime and Victims Act (2004). DHRs are carried out by Community Safety Partnerships to ensure that lessons are learnt when a person has been killed as a result of domestic abuse. They can bring a huge amount of value to local leadership, and the process brings together disparate parts of the statutory and non-statutory system to consider how to prevent future deaths. However, too often recommendations are not implemented effectively, or are implemented in the short-term but actions drift over time. A clear oversight and accountability mechanism, led by the Commissioner, would help to drive effective implementation and share lessons nationally in the long- as well as short-term.
- Beyond DHRs, there are a range of other investigations into the circumstances surrounding an individual's death which contain recommendations relating to the response of public authorities to incidences of domestic abuse in the run up to their death. These include: the Independent Office of Police Conduct reports; misconduct hearing; Safeguarding Adults Reviews; Serious Case Reviews; and NHS Serious Incident investigations. There is currently no systematic way however, of identifying these investigations for the purpose of ensuring that recommendations are followed up and that key themes across investigations are examined and acted upon in order to prevent future deaths.

¹ <https://www.femicidecensus.org/wp-content/uploads/2020/11/Femicide-Census-10-year-report.pdf>

- **The Commissioner therefore calls on peers to support the following amendments tabled by Baroness Burt, Baroness Bertin, Baroness Wilcox and Lord Russell to create the oversight mechanism.**
 - An amendment to extend the list of public authorities which have a duty to co-operate with the Domestic Abuse Commissioner to include the Independent Office for Police Conduct, HM Prison Service, the National Probation Service, the Prisons and Probation Ombudsman and the Chief Coroner so that we can request information from them regarding investigations they conduct into domestic homicides.
 - An amendment to place a new duty on public authorities who carry out investigations into deaths where domestic abuse has been identified as a contributory factor to notify the Home Office and Office of the Domestic Abuse Commissioner upon completion and to provide them with a copy of the findings.
- We welcome the amendment that has been tabled by Baroness Lister to place a new duty on the Commissioner to investigate the impact of single payments of Universal Credit and support measures that would also ensure that the Department for Work and Pensions carries out a full impact assessment of changes to welfare policy on survivors of domestic abuse and their children.
- With regards to the membership of the Advisory Board, the Commissioner supports the inclusion of an additional representative from mental health services and, to facilitate this amendment, lifting the cap on the number of members who can sit on the advisory board as stated in clause 12 (2).

Part 3 Powers for dealing with domestic abuse

- The Commissioner welcomes the creation of the new DAPOS and DAPN and the positive requirements that can be placed on a perpetrator.
- The Commissioner would welcome measures from the Government to ensure that a national perpetrator strategy is put in place.
- With regards to the statutory guidance that will accompany the Bill, the Commissioner is concerned that there is no clear oversight mechanism to ensure that public authorities have due regard for the guidance. The Commissioner would therefore welcome further measures from the Government to make this clear within the Bill. The Commissioner would welcome further exploration from the Government regarding the role of the Domestic Abuse Local Partnership Boards (as established in Part 4 of this Bill) in ensuring that public authorities at a local level observe the guidance.
- The Commissioner welcomes the amendment tabled by Baroness Lister to ensure that statutory guidance issued alongside the Domestic Abuse Bill takes into account any violence against women and girls (VAWG) strategy adopted by the Government, so that efforts to prevent and address domestic abuse are linked to integrated and coordinated responses to tackle VAWG.

Part 4 Local Authority support

- The Commissioner has strongly welcomed the new statutory duty on local authorities to provide support to victims of domestic abuse and their children within refuges and other safe accommodation with the requirement placed on tier one local authorities in England to appoint a multi-agency Domestic Abuse Local Partnership Board to help make an assessment of local need and draw up a strategy for delivery.
- The Commissioner has welcomed the funding secured by the MHCLG in the recent Spending Review of £125 million for councils to deliver this duty. With regards to the

delivery of this duty the Commissioner strongly urges the MHCLG to ensure that the statutory guidance accompanying this duty sets out a clear definition of specialist accommodation and support to ensure the commissioning of safe refuge accommodation and specialist by and for services for BAME, LGBT, disabled and migrant survivors, which face particular disadvantages with regards to local commissioning processes, and often lose out to more generic services.

- In light of the statutory underpinning of accommodation-based support in Part 4 of the Bill, the Commissioner strongly recommends that the Government place a similar duty on wider public bodies to deliver community-based services, without which we are concerned that there might be a reduction in the number of commissioned services. Further details on the proposed amendment are set out below.

Priority amendments

The Table below sets out several additional priority amendments that the Commissioner believes are essential in order to ensure robust and inclusive support to all survivors of domestic abuse, alongside key contact details for organisations leading on the individual issues, who will each be providing more detailed briefings on each amendment ahead of Committee Stage.

Issue	Key details	Key contacts
<p>Migrant survivors</p>	<ul style="list-style-type: none"> • Currently, the No Recourse to Public Funds rule means that a significant number of the most marginalised victims of domestic abuse in our society are unable to access the support they need. This often leaves people in this situation facing the prospect of destitution/homelessness or staying with their abuser. • In addition, where a victim or survivor reports abuse to a statutory agency, their information can be passed to Immigration Enforcement. • A recent report from the HMICFRS, which is responsible for independently assessing and reporting on the efficiency and effectiveness of police forces and policing, recommended that the police immediately stop sharing information on domestic abuse victims with Immigration Enforcement. The recommendation was made in light of the significant evidence that this practice deters victims with an insecure immigration status from coming forward for support, allowing abuse to continue and perpetrators to go unpunished. • The Commissioner therefore calls on peers to support the following amendments tabled by <ul style="list-style-type: none"> ➤ Lord Rosser, Baroness Hamwee, Baroness Butler - Sloss, and Baroness Bennett to extend recourse to public funds for domestic abuse survivors ➤ The Lord Bishop of Gloucester, Lord Rosser, Baroness Hamwee and Lord Alton to ensure access to public funds, and extend eligibility for the existing Domestic Violence (DV) Rule and Destitution Domestic Violence Concession (DDVC), to all migrant women experiencing domestic abuse and extending the time period for the DDVC from three to at least six months. 	<p>Southall Black Sisters Janaya Walker (Legal, Policy and Campaigns Officer) janaya@southallblacksisters.co.uk</p> <p>Latin American Women’s Rights Service Elizabeth Jiménez-Yáñez (Policy and Communications Coordinator on VAWG) elizabeth@lawrs.org.uk</p>

	<ul style="list-style-type: none"> ➤ Baroness Meacher, Baroness Wilcox, The Lord Bishop of London and Baroness Hamwee to establish safe reporting mechanisms for survivors accessing vital public services, so they can report abuse to the police, social services, health professionals and others with confidence they will be treated as victims and without fear of immigration enforcement. ➤ Baroness Helic, Baroness Wilcox, Baroness Hussein-Ece and Baroness Butler-Sloss to ensure all survivors of domestic abuse can equally access support, welfare systems and legal tools that provide protection from abuse, without discrimination on any grounds, in accordance with the language in Article 4(3) and fundamental principle of the Istanbul Convention. • Ample evidence on the need for change, and the support required, already exists to support these amendments, and it is not therefore necessary to wait for the report from the Home Office’s Support for Migrant Victims pilot in order to make further recommendations on the support needed for migrant victims of domestic abuse. 	
<p>Statutory Duty to provide community-based services</p>	<ul style="list-style-type: none"> • Community-based services provide a crucial lifeline of support to survivors of domestic abuse and their children – around 70% of people experiencing domestic abuse and receiving support will do so via community-based services. • These services include specialist Independent Domestic Violence Advisors (who advocate on behalf of survivors with regards to court support, health services, housing advice and are a crucial source of emotional support), helplines and perpetrator programmes, as well as specialist local agencies offering drop in services for children. • The statutory duty on local authorities to provide accommodation-based services is strongly welcomed. However, without a similar statutory underpinning in the Bill for the provision of specialist community-based services there is a risk that local authorities may redistribute their funding simply to meet the statutory duty on accommodation, deprioritising critical community-based services that can prevent a survivor from being forced to flee to a refuge and undoing years of work to move towards prevention and early intervention. • The Commissioner therefore calls on peers to support the following amendment tabled by <ul style="list-style-type: none"> ➤ Lord Polak, The Lord Bishop of Derby, Lord Rosser and Lord Russell to place a duty on relevant public bodies to take all reasonable steps to secure the provision of sufficient specialist domestic abuse services • The Government has previously stated that this provision cannot be made in the Bill until the Domestic Abuse Commissioner has completed the mapping research off all domestic abuse services (due to be completed by the end of 2021). This mapping will be vital in helping to end the postcode lottery faced by victims and survivors of domestic abuse. However, it is my very strong recommendation that 	<p>Barnados Claire Stewart Senior Public Affairs Officer</p> <p>claire.stewart@barnados.org.uk</p>

	<p>the government does not need to wait for the outcome of this exercise to make this provision because we already have very strong evidence on the projected demand and actual provision.</p>	
<p>Post Separation Coercive Control</p>	<ul style="list-style-type: none"> • The introduction of the coercive and controlling offence in 2015 was a very positive step in recognising and responding to this form of abuse, which has a devastating impact on survivor’s lives. The Home Office committed to reviewing the offence, and we expect the review to be published ahead of Report Stage. • However, we know that coercive control commonly continues post separation, and the current offence does not extend to post-separation. Economic abuse as a form of coercive control is particularly common post-separation, often leaving survivors with significant debts and such poor credit ratings that they are unable to move on, and is not covered by other offences such as stalking and harassment • The Commissioner therefore calls on peers to support the amendment tabled by: <ul style="list-style-type: none"> ➢ Baroness Lister, Lord Harries, Baroness Bertin and Lord Rosser to extend the offence of controlling and coercive behaviour to include post-separation abuse. • This would help bring perpetrators, who continue to abuse survivors long after separation, to justice and help to remove a barrier for survivors trying to rebuild their lives. The proposed amendment also removes the requirement to live together in the case of family members as well as intimate partners, in line with the new definition of domestic abuse. 	<p>Surviving Economic Abuse Cyrene Siriwardhana (Legal and Policy Advisor) cyrene.siriwardhana@survivingeconomicabuse.org</p>
<p>Non-Fatal Strangulation</p>	<ul style="list-style-type: none"> • Non-fatal strangulation and asphyxiation are common features of domestic abuse, and strangulation and asphyxiation are the second most common method of killing in female homicides (29%). • Non-fatal strangulation is frequently used as a tool to exert power and control, and to instil fear, but there is currently no distinct offence of non-fatal strangulation or asphyxiation. • It can be difficult to prove intent for an offence of attempted murder and the lack of observable injuries for an ABH charge means that in the majority of non-fatal strangulation cases prosecutions are only brought for a common assault offence, minimising the perpetrator’s behaviour and limiting prosecutions to within six-months from when the offence took place. • The New Zealand Law Commission conducted a detailed examination of the arguments for and against this free-standing offence and concluded that strangulation and suffocation met the criteria for being specified in law. Following the introduction of the new offence in 2018 we have had reports of increased police awareness and a positive shift in willingness to report strangulation now that police are treating incidences more seriously. Thirty-seven US states have also introduced specific laws on this, Australian states are following this lead and I urge the Westminster Government to do the same. 	<p>Centre for Women’s Justice Nogah Ofer (Solicitor) n.ofer@centreforwomensjustice.org.uk</p>

	<ul style="list-style-type: none"> The Commissioner strongly welcomes the commitment made by the Lord Chancellor to legislate for a standalone offence of non-fatal strangulation following the 2nd Reading of the Bill in the House of Lords. The Commissioner calls on peers to continue to support the amendment tabled by Baroness Newlove, Baroness Wilcox, Baroness Meacher, and the Lord Bishop of London to ensure this protection is available to survivors at the earliest opportunity. 	
Statutory defence for survivors who offend due to abuse	<ul style="list-style-type: none"> People trapped in coercive relationships can be driven to offend, trapping them in a vicious cycle of victimisation and criminal activity. Their situation is often worsened by poverty, substance dependency or poor mental health. Imprisonment has a severely detrimental impact on their health and the relationships they have with their children. Almost 60% of women offenders have experienced domestic abuse and women in prison are more than twice as likely as men to say they have committed offences to support someone else's drug use as well as their own. Despite this, the criminal law still fails to protect those whose experience of abuse drives them to offend. The Commissioner therefore calls on peers to support the amendment tabled by <ul style="list-style-type: none"> ➤ Baroness Kennedy and Baroness Hamwee which would create a new defence for victims of domestic abuse who commit an offence, adapted from the defence in Section 45 of the Modern Slavery Act 2015 for victims of human trafficking or modern slavery who are coerced into offending. 	Centre for Women's Justice Katy Swaine Williams k.swilliams@centreforwomensjustice.org.uk
Paid Leave / Employer Support	<ul style="list-style-type: none"> A workplace can become a lifeline for survivors and a place of respite and safety. But equally, employers who fail to understand the dynamics of domestic abuse, how this affects survivors and what support is needed, can add to the anguish faced by those subjected to domestic abuse. The Commissioner welcomes the Department for Business, Energy and Industrial Strategy's review into domestic abuse and the workplace, which reinforced the important role that employers can play. However, despite the review highlighting that best practice included implementing an internal policy and introducing paid leave for survivors, the department's recommendation was only voluntary. The Bill provides a clear opportunity to address this issue. Drawing on international examples of legislation on domestic abuse and support in the workplace, including from New Zealand, the Commissioner calls on peers to support the amendment tabled by <ul style="list-style-type: none"> ➤ Lord Kennedy which would ensure that employers are provided with guidance about the support they should provide to victims of domestic abuse, including provision of paid leave. The Commissioner strongly welcomes the amendment that has been tabled by the Government ahead of Committee Stage to extend Domestic Abuse Protection 	Unison Josie Irwin (National Women's Officer) j.irwin@unison.co.uk

	<p>Orders (DAPOs) and Domestic Abuse Protection Notices (DAPNs) to cover the workplace.</p>	
<p>Threats to Share Intimate Images</p>	<ul style="list-style-type: none"> • While the actual sharing of intimate images without consent was criminalised in the Criminal Justice and Courts Act (2015), threats to share were not (although both the disclosure and threats are offences in Scotland). • This gap in the law allows abusers to threaten to share intimate images in order to coerce, control, and frighten survivors both during relationships and following separation. Survivors report long-term impacts, feeling like there is no escape while these threats hang over them. • The Law Commission is currently conducting a review of the law with regards to image-based offences and harmful online communications. The report may not be published until at least the end of 2021, followed by a Government review process. Any change in the law via this mechanism may therefore take several years. • The Commissioner calls on peers to support the amendment tabled by <ul style="list-style-type: none"> ➢ Baroness Morgan, Baroness Crawley and Baroness Grey-Thompson to criminalise threats to share intimate images. 	<p>Refuge Ellie Butt (Head of Policy and Public Affairs) eleanor_butt@refuge.org.uk</p>
<p>Family Courts</p> <p>-</p>	<ul style="list-style-type: none"> • The family courts are frequently used by abusive partners as an opportunity to inflict further damage on their victims. The Ministry of Justice Family Courts Panel to review the operation of the courts was therefore most welcome. • Now that it has been published, the Bill should be used as a mechanism to implement recommendations which require statutory change • The Commissioner calls on peers to support the amendments tabled by <ul style="list-style-type: none"> ➢ Lord Rosser, Baroness Gardner and Baroness Jones to change the presumption that parental involvement furthers the child’s welfare when there has been domestic abuse; and prohibits unsupervised contact for a parent awaiting trial or on bail for domestic abuse offences, or where there are ongoing criminal proceedings for domestic abuse 	<p>Women’s Aid Sophie Francis-Cansfield (Senior Campaigns and Policy Officer) s.francis-cansfield@womensaid.org.uk</p>
<p>Joint tenancies</p>	<ul style="list-style-type: none"> • Currently it is practically impossible for a landlord to evict a tenant who has perpetrated domestic abuse without provision for the transfer of the tenancy. If the perpetrator is the sole tenant, or joint tenant, then the termination of the perpetrator’s tenancy will terminate the whole tenancy. • A court order is required to transfer the tenancy rights, either from perpetrator’s sole tenancy to survivor’s sole tenancy, or from a joint tenancy to the survivor’s sole tenancy. The current mechanisms for the transfer of tenancy rights under the Matrimonial causes Act (1973), the Children’s Act (1989) and the Family Law Act (1996) are complex, expensive and lengthy, with cases often taking over a year to resolve. • The Bill provides an opportunity to address this issue by providing a broader and more straightforward mechanism for the transfer of tenancies to the survivor in situations of 	<p>Women’s Aid Sophie Francis-Cansfield (Senior Campaigns and Policy Officer) s.francis-cansfield@womensaid.org.uk</p> <p>Standing Together Against Domestic Abuse</p>

	<p>domestic abuse, when the survivor wishes to remain in the property and it is financially viable for them to do so.</p> <ul style="list-style-type: none"> • Where a Domestic Abuse Protection Notice (as set out in the Bill) has been issued against the perpetrator, there will be a strong presumption that the tenancy should be transferred, which the perpetrator must rebut. If the perpetrator has been convicted of a domestic abuse related offence (for example, violence, harassment, coercive control) against the survivor, the court should order the transfer of tenancy. • The Commissioner calls on peers to support the amendment tabled by <ul style="list-style-type: none"> ➤ Baroness Burt, Lord Young, Baroness Deech and Lord Kennedy to create a more straightforward mechanism for the transfer of joint tenancies to survivors of domestic abuse. 	<p>Deidre Cartwright (DAHA PRS Development Manager) d.cartwright@standingtogether.org.uk</p>
<p>The powers of the domestic abuse commissioner</p>	<ul style="list-style-type: none"> • Evidence from the recent Femicide Census 10-year report, shows that over the last decade 1,425 women were killed by men. Almost two thirds of these women (62%) were murdered by their current or former partner. The rate at which women were killed each year over the last decade has remained constant. • The Domestic Abuse Commissioner, working with the Home Office, intends to create a new oversight mechanism which would collate investigations into domestic homicides and suicides to identify key themes and make recommendations to local and national decision makers on the interventions needed to prevent future deaths. • As outlined above the Commissioner calls on peers to support the amendments tabled by Baroness Burt, Baroness Bertin, Baroness Wilcox and Lord Russell to create the new oversight mechanism. 	<p>The Domestic Abuse Commissioner's Office hannah.gousy@domesticabusecommissioner.independent.gov.uk</p>
<p>GP charging</p>	<ul style="list-style-type: none"> • Survivors of domestic abuse are able to claim for legal aid if they can prove that they cannot afford to pay legal costs. To qualify they must provide evidence that they have experienced domestic abuse. One source of evidence is from a health care professional. • As noted by Lord Kennedy, there are still examples of GPs charging survivors of domestic abuse over £150 for a letter confirming their injuries to enable the victim to get access to legal aid and other services, despite guidance from the British Medical Association that there should be no charge for these letters. • Without legal aid most survivors are unable to challenge the perpetrator through the family courts. • The Commissioner therefore calls on peers to support the amendment tabled by <ul style="list-style-type: none"> ➤ Lord Kennedy, Baroness Burt, Baroness Bull and the Lord Bishop of London to prevent GPs who have a contract with the NHS from charging victims of domestic abuse for letters confirming their injuries so that they can seek access to legal aid. 	<p>Lord Kennedy</p>