

Office of the designate Domestic Abuse Commissioner for England and Wales

Briefing: Domestic Abuse Bill 2019-21

House of Lords – Second Reading

5 January 2021

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 sets out several additional amendments that the Commissioner is supporting, in order to ensure that the Bill provides robust and inclusive support to all survivors of domestic abuse. The briefing also includes key contact details for organisations leading on the individual issues, who will each be providing more detailed briefings on each amendment ahead of Second Reading.

For further details please contact:

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Issue	Key details	Key contacts
Migrant victims and survivors	<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 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 	Southall Black Sisters Janaya Walker (Legal, Policy and Campaigns Officer) janaya@southallblackisters.co.uk

	<p>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.</p> <ul style="list-style-type: none"> • The Bill must ensure that all victims and survivors are supported and protected, regardless of their immigration status by: <ul style="list-style-type: none"> ➤ Extending eligibility for the Domestic Violence Rule (DV Rule) and the Destitution Domestic Violence Concession (DDVC) to all migrant victims of domestic abuse. ➤ Extending the time period for the DDVC from three to at least six months. ➤ Establishing safe reporting mechanisms for survivors accessing vital public services, so they can safely 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. • 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 Support for Migrant Victims pilot in order to make further recommendations on the support needed for migrant victims of domestic abuse. 	<p>Latin American Women’s Rights Service Elizabeth Jiménez-Yáñez (Policy and Communications Coordinator on VAWG) elizabeth@lawrs.org.uk</p>
<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 Bill should be amended to provide a statutory underpinning to commission community-based 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 	<p>Barnados Claire Stewart Senior Public Affairs Officer claire.stewart@barnados.org.uk</p>

	<p>abuse. However, it is my very strong recommendation that 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> <ul style="list-style-type: none"> • If the Government deems it necessary to wait for this work to be completed, I strongly recommend that a commitment is made within the legislation to extend powers at a later stage. 	
<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 Bill therefore provides an opportunity to create a new offence of non-fatal strangulation to reflect the severity of this form of abuse. • 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.offer@centreforwomensjustice.org.uk</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 can have devastating impact on survivor's lives. The Home Office committed to reviewing the offence, and we expect the review to be published while the Bill is in the Lords. • 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 Bill must therefore: Amend section 76 of the Serious Crime Act 2015 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 	<p>Surviving Economic Abuse Cyrene Siriwardhana (Legal and Policy Advisor) cyrene.siriwardhana@survivingeconomicabuse.org</p>

	<p>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>	
<p>Statutory defence for survivors who offend due to abuse</p>	<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 Bill provides the opportunity to: <ul style="list-style-type: none"> ➤ create a new statutory defence for those whose offending is driven by their experience of domestic abuse, 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. 	<p>Centre for Women's Justice Katy Swaine Williams k.swilliams@centreforwomensjustice.org.uk</p>
<p>Paid Leave / Employer Support</p>	<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. • Drawing on international examples of legislation on domestic abuse and support in the workplace, including from New Zealand, the Bill should include the following measures: <ul style="list-style-type: none"> ➤ Paid leave and guidance for employers The Bill should guarantee that employers are provided with guidance about the support they should provide to victims, including the provision of paid leave. Time off from work is essential in enabling victims and survivors of abuse to access medical assistance and to help find safe accommodation. Without this guarantee, many victims may stay in dangerous situations with their abusers, because they cannot risk losing their employment. ➤ Extending Domestic Abuse Protection Orders (DAPOs) and Domestic Abuse Protection Notices (DAPNs) to cover the workplace The Bill introduces a new civil Domestic Abuse Protection Notice (DAPN) to provide immediate protection following a domestic abuse incident, and a new civil Domestic Abuse Protection Order (DAPO) to provide flexible, longer-term protection for victims. Under the current wording of the Bill, a DAPO or DAPN may prohibit a preparator from coming within a certain distance of the premises lived in by the victim, but there is no mention of the victim's workplace. 	<p>Unison Josie Irwin (National Women's Officer) j.irwin@unison.co.uk</p>
<p>Threats to Share</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 	<p>Refuge Ellie Butt</p>

<p>Intimate Images</p>	<p>(2015), threats to share were not (although both the disclosure and threats are offences in Scotland).</p> <ul style="list-style-type: none"> • 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 Bill provides the opportunity to: <ul style="list-style-type: none"> ➢ outlaw threats to share intimate images more quickly and does not preclude the government introducing legislation to overhaul the law related to online offences in some years' time. 	<p>(Head of Policy and Public Affairs) eleanor_butt@refuge.org.uk</p>
<p>Family Courts</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, including: <ul style="list-style-type: none"> ➢ reversing the 'exceptionality' requirement for a barring order (restricting repeated cases being brought to the court), including provision for barring orders to be made where the court concludes that the bringing or prolonging of proceedings constitutes domestic abuse against the other parent • The Family Courts Panel Review also recommended an urgent review into presumption in favour of parental contact. I strongly welcome this review and would urge that provision is made for future statutory change within the Bill to change the legal presumption of parental involvement in the Children Act (1989). • The Bill should also be used to prohibit unsupervised contact for a parent waiting for trial, or on bail for, a domestic abuse related offence, 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. 	<p>Women's Aid Sophie Francis-Cansfield (Senior Campaigns and Policy Officer) s.francis-cansfield@womensaid.org.uk Standing Together</p>

	<ul style="list-style-type: none"> • 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 domestic abuse, when the survivor wishes to remain in the property and it is financially viable for them to do so. • 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. 	<p>Against Domestic Abuse 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 reviews 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. • In order to create this new oversight mechanism, it will be essential that the Domestic Abuse Commissioner can collect information from a wider range of public bodies. We therefore propose extending clause 15 of Part 2 of the Bill to include the Independent Office for Police Conduct and the Coroner’s Court to ensure that the office is able to obtain relevant information on domestic homicides and suicides. • We also propose adding a new clause to the Domestic Abuse Bill which would require all public bodies that carry out a review following a domestic homicide or suicide to send a copy of the review to the Office of the Domestic Abuse Commissioner and the Home Office upon publication. These reviews include: Independent Office of Police Conduct investigations; police misconduct hearings; Inquest jury narrative verdicts and Coroners’ Prevention of Future Deaths reports; Domestic Homicide Reviews; Safeguarding Adults Reviews / Serious Case Reviews for children; NHS Serious Incident investigations, and other internal investigations by other bodies involved with victims and perpetrators, including probation and the CPS. 	<p>The Domestic Abuse Commissioner’s Office Commissioner@domesticabusecommissioner.independent.gov.uk</p>