



## The Domestic Abuse Bill Joint Second Reading Briefing

Tuesday 28<sup>th</sup> April 2020

**Please add your voice to the Bill's Second Reading to highlight the legislative changes that are needed to recognise and address the needs and experiences of children and young people affected by domestic abuse.**

The Domestic Abuse Bill is a once in a generation opportunity to deliver a step change in our response to domestic abuse. The COVID-19 crisis has underlined the importance of our recommendations, with levels of domestic abuse expected to rise and vital support services, which were struggling with demand even before this pandemic, coming under further pressure.

We welcome this Bill, but are clear that it must address the needs of children and young people affected by domestic abuse. We are concerned that current proposals are too narrow to transform the response for children. As many as one in five children and young people experience domestic abuse during their childhood. Domestic abuse can have a devastating impact on children and young people, resulting in emotional, social, psychological and behavioural difficulties with short and long-term implications. Some children even endure the unimaginable loss of a much-loved parent through domestic homicide, and many lose their own lives at the same time.

The children's sector, the domestic abuse and the violence against women and girls sectors have come together to highlight the areas where the Bill must be strengthened, and how children and young people could be better supported.

### **Statutory recognition that children experience domestic abuse too**

#### *Statutory definition of domestic abuse*

The Government has said it recognises the impact that domestic abuse has on children and young people. However, the Domestic Abuse Bill currently fails to acknowledge this impact, particularly in relation to coercive and controlling behaviour.

The proposed statutory definition of domestic abuse put forward by the Bill will guide the responses of public authorities and frontline practitioners. It is vital that the needs and experiences of children are reflected on the face of the Bill, and that the definition specifically recognises that children experience domestic abuse too. This will enable a child-focused response.

Initial reactions to the current crisis demonstrate that children are often a secondary consideration when it comes to domestic abuse. Their needs were not covered by the first iteration of Home Office guidance, and it is unclear how heavily children have been factored into the government's extra funding for specialist domestic abuse services. This is despite a recent SaferLives survey of frontline services showing that 42% felt that they are not able to effectively support child victims of abuse at this time.

*"All our children groups are cancelled and resources are being posted on Facebook and video calls are being made to all children."*

We welcome the proposal from Government for statutory guidance that will include children. However, this guidance has not yet been published – even in draft form. The proposed guidance should be available alongside the Bill as it proceeds through Parliament so that it can be scrutinised by the whole House.

At the same time, we welcome the Government’s recent assertions that ministers have been grappling with including children within the statutory definition. However, we urge them to go further so that children’s experiences are more likely to be understood and addressed.

#### *Amending the Children Act 1989*

One way the Government must explore better recognition of child victims of domestic abuse, is through strengthening child protection responses to domestic abuse. Whilst s120 of the Adoption and Children Act 2002 extended the concept of ‘significant harm’ within the Children Act 1989 to include impairment suffered by seeing or hearing the ill-treatment of another, we are clear that this does not go far enough.

The proposed statutory definition and the Children Act 1989 need to acknowledge coercive control as ‘harm to children’, if we are to drive a shift away from children being identified not just as ‘witnesses’ but also as victims and survivors of domestic abuse.

We welcome the Government’s recent commitment to amend the statutory guidance, *Working Together to Safeguard Children*, to ensure all relevant authorities understand the impact of coercive control. However, we do not agree with the Government’s assertion that witnessing and experiencing coercive control falls under the Act’s current definition, and would welcome further detail on how explicitly including coercive control would undermine the generality of that definition.

**Recommendation: The Government must include children affected by domestic abuse in the proposed definition of domestic abuse, to make clear that they too experience domestic abuse.**

**Recommendation: The Children Act (1989) must be amended to better reflect children’s experiences of domestic abuse and our enhanced understanding of what domestic abuse is, making clear that coercive control constitutes ‘harm to children’.**

#### **Support for children**

There is compelling evidence from serious case reviews and research showing domestic abuse is one of the most common factors in situations where children have experienced (or are at risk of) serious harm. It can have a detrimental and long-lasting impact on a child’s health, development, ability to learn and well-being – including physical and mental health difficulties, educational challenges, and lasting neurological impacts. Children also face increased risks of criminal behaviour, interpersonal difficulties in future intimate relationships and friendships, and risks of experiencing sexual abuse, sexual exploitation and other forms of violence and abuse in later life.

*But we also know that this is not inevitable and even in difficult circumstances, with the right support, children can thrive.*

Research demonstrates that specialist children’s services reduce the impact of domestic abuse and improve children’s safety and health outcomes. This is why we are concerned that the percentage of domestic abuse services providing dedicated support to children and young people fell from 62% in 2010 to 52% in 2017. New research suggests there is significant variability in the level of provision for children and young people impacted by domestic abuse both between and within local authorities in England and Wales.

There is currently insufficient funding allocated to provide a sustainable future for vital projects working with children. There is no clear funding stream for children and young people experiencing domestic abuse

- even within refuges, where there are more children resident than women. Services now have to deal with the challenges presented by COVID-19 as well, with the ability to fundraise severely affected.

60% of the service providers that responded to the recent Women's Aid Federation of England survey on the impact of COVID-19 stated that they had needed to reduce or cancel their service provision for children.

There was already significant variation across the country regarding the type of support that is specifically offered to children who have experienced domestic abuse, even before COVID-19. Over the summer, the Ministry of Housing, Communities and Local Government consulted on a new statutory duty for the provision of accommodation-based services for domestic abuse across England, now included within the Bill. The needs of children affected must be considered as a central part of this, to ensure funding for children is not an 'optional extra' but integrated as a core part of service delivery. We also echo the call from the Joint Committee that scrutinised the draft Bill for clarity on how non-accommodation-based support services will be provided and funded under this new statutory duty.

#### *Teenage relationship abuse*

We would also draw attention to those young people aged under 16 who experience abuse in their own intimate relationships. A quarter (25%) of girls aged 13 to 17 in a 2009 study reported having experienced some form of physical violence from an intimate partner. There is currently a lack of clarity as to how young people who are in abusive relationships should themselves be supported.

In their further response to the Joint Committee on the Draft Domestic Abuse Bill, published alongside the Bill on March 3<sup>rd</sup>, the Government is clear that it does not consider a specific review on how to address teenage relationship abuse, as recommended by the Joint Committee, to be necessary. It is not clear how the existing workstreams related to young people's relationships, though they are welcome, outlined by the Government will address the gaps in specialist support for young people experiencing abuse in those relationships, with the emphasis very much on prevention (through Relationships and Sex Education) and youth justice.

**Recommendation: The Bill must ensure all children and young people get the specialist support they need (including those experiencing abuse in their own intimate relationships) and this must be sufficiently resourced.**

**Recommendation: The Government must reconsider its decision not to conduct a comprehensive and specific review on how to address abuse in intimate relationships between under-16s, as recommended by the Joint Committee on the Draft Domestic Abuse Bill.**

**Recommendation: The statutory guidance must include the needs of young people aged under 16 who experience abuse in their own intimate relationships. It should cover prevention and early intervention through to referral and specialist support, including for those who continue to cause harm.**

#### **Migrant children and families**

Migrant children and their families can face specific difficulties when it comes to accessing support.

#### *Families with No Recourse to Public Funds*

We know that migrant women experiencing domestic abuse currently find it virtually impossible to access

life-saving services, such as refuges, because they typically have No Recourse to Public Funds (NRPF), meaning they can't access housing or welfare benefits. This has repercussions for their children too.

Women with NRPF who are caring for children are theoretically entitled to continued support for their children under Section 17 of the Children Act. Of the 20 women with NRPF who were fleeing with children in 2017-18, supported by Women's Aid Federation of England's No Woman Turned Away project, social services either refused outright to fund a refuge space or provide emergency accommodation (14), or offered to accommodate the children in emergency accommodation but not the mother (six). Five women with NRPF who were refused help from social services then spent time sleeping rough, four of these women slept rough with children, and one woman left her baby with a friend while she slept on the streets. The findings suggest that women with children who have NRPF are being refused help despite Section 17 duties, and that, in some cases, social services fail to recognise the welfare and safety of the mother as part of the duty of care to children.

Language barriers are also a key difficulty for women reporting abuse, leading to children sometimes having to act as translators to describe abuse to police and other authorities.

#### *Destitution and Domestic Abuse*

The Domestic Violence (DV) Rule only allows women on spousal visas to apply for settled status independent of their perpetrator and to access public funds through the Destitution Domestic Violence Concession (DDVC) for three months. The current system creates an arbitrary distinction between women on spousal visas and others, and so has serious impacts on children in the care of women not eligible for the DDVC.

Research from Women for Refugee Women on asylum seeking women and destitution found a third of women interviewed had stayed in unwanted relationships and that 60% of these women were raped or subject to sexual violence. 15% of these women were caring for children while they were destitute; 56% said that they went hungry and without warm clothing.

#### *No Safe Reporting*

Research has shown that women with insecure immigration status are deterred from reporting abuse to the police. The Step Up Migrant Women Campaign has found some police officers are acting as immigration enforcement agents due to a lack of clear rules. This prevents police from acting to protect and investigate crimes reported by women with immigration issues. Rights of Women report that victims often refer to advice given to them by the police such as being told they need to "sort their immigration issues first" before they can report domestic abuse issues. This places both migrant women and children at further risk of abuse by perpetrators.

**Recommendation: The Bill must ensure that all survivors of domestic abuse, regardless of age or immigration status, are entitled to support, equal access to welfare systems and legal tools that can provide protection from abuse, in accordance with the requirements of the Istanbul Convention which the Bill seeks to ratify.**

**Recommendation: Statutory guidance must make clear that those providing Section 17 support for children and their families base support on the child's need and best interests, not their parents' immigration status.**

**Recommendation: Abolish the no recourse to public funds (NRPF) policy which prevents many migrant women with insecure immigration status from accessing vital, often life-saving support and routes to safety.**

**Recommendation: Extend eligibility for the existing Domestic Violence (DV) Rule, to ensure all women with insecure immigration status, not only those on spousal visas, can access a life-saving refuge space, financial support and housing.**

**Recommendation: Extend the time period for which the Destitution Domestic Violence Concession (DDVC) is provided for at least six months.**

**Recommendation: Deliver safe reporting mechanisms which ensure immigration enforcement is kept completely separate from the domestic abuse response and the safety of the victim is paramount.**

## **The courts**

The seriousness and impact of domestic abuse can be treated very differently between the criminal and family courts. While criminal courts deal with defendants accused of crimes related to domestic abuse, family courts are needed for protection orders, divorce proceedings, and contact and residence arrangements for children. The disparity in the response to domestic abuse can lead to survivors and their children falling between two systems - where a perpetrator of domestic abuse is seen as violent criminal in the criminal courts, but a 'good enough' parent in the family courts. We believe that the family courts should be a place of safety, where the best interests of children are put first and where the concerns and fears of survivors of domestic abuse are listened to and respected.

A number of our organisations have engaged with the Ministry of Justice-led Family Justice Panel review of how the family courts handle cases where domestic abuse and other serious offences occur and, in particular, the courts' application of Practice Direction 12J (which sets out the responsibilities of family courts when making decisions about child contact). The Panel's progress update report confirms that the evidence highlights:

*"Systemic issues in relation to how risk is identified and managed which need to be addressed to ensure that victims and children involved in these proceedings are better protected from further harm."*

We are also deeply concerned by cases where children have died or been seriously harmed during unsafe contact with a parent who was a perpetrator of domestic abuse. Our experience shows that some professionals and judicial officers continued to endorse a message of 'contact at all costs' after Practice Direction 12J was issued. Despite a number of welcome reforms, evidence points to continued failings within the family courts in cases involving domestic abuse.

The Family Justice Panel had been scheduled to publish their full report shortly, which will be welcome, however due to the continued failings and urgency of this issue we are calling for the Domestic Abuse Bill to deliver a safer approach to child contact.

**Recommendation: We urge the Ministry of Justice to share the evidence gathered for the review and their recommendations as soon as possible.**

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**Recommendation: The Bill must be amended to introduce a prohibition on unsupervised contact for a parent on bail for domestic abuse related offences, or where there are ongoing criminal proceedings for domestic abuse.**

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**Recommendation: Mandatory specialist training in identifying domestic abuse should be provided to all professionals involved in child contact cases.**

**For further information or a meeting, please contact:**

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