

Briefing: Debate on Government's plans to support victims of domestic violence and abuse

House of Lords

Date: Thursday 6 June 2019

Introduction

The Equality and Human Rights Commission (the Commission) has been given powers by Parliament to advise Government on the equality and human rights implications of laws and proposed laws and to publish information or provide advice, including to Parliament, on any matter related to equality, diversity and human rights.

In March 2018, the Government published a range of legislative and non-legislative proposals on ‘Transforming the Response to Domestic Abuse,’ and opened a consultation on these proposals. In January 2019, the Government published its response to this consultation, together with a draft Domestic Abuse Bill. In March 2019, the Government published a refresh to its Violence Against Women and Girls (VAWG) Strategy 2016 – 2020.

This briefing provides an overview of the Commission’s view on measures needed to ensure better support and protection for survivors of domestic abuse in England and Wales and to meet international human rights requirements. We comment on measures proposed in the draft Domestic Abuse Bill (the Bill) and make recommendations for amendments to the Bill.

Summary of Recommendations

Legal framework

The Government should make the necessary policy and practice changes to ensure UK compliance with the Convention on Preventing and Combatting Violence against Women and Domestic Violence (the Istanbul Convention) and with the UN Convention on the Elimination of All Forms of Discrimination against Women (CEDAW). The Government should proceed with ratification of the Istanbul Convention.

Funding for support services

Services for survivors of domestic abuse, including the provision of accommodation (including refuges) and advice and advocacy services, should be adequately funded by central Government¹. This includes specialist provision for those who face multiple barriers to accessing support, including for ethnic minorities, disabled people, LGBT people, and individuals with complex needs.² We recommend that the Bill include a general statutory duty on the Home Secretary to plan for and adequately fund services for all victims and to provide them appropriately, in line with the gendered nature of domestic abuse.

Joined up, cross-Government working

We recommend that the Bill include a general duty on Ministers across Government requiring them to have due regard to the need to prevent domestic abuse and protect victims.³

Further, we recommend a proposed general duty on Government to publish (every three years) a strategy on preventing and responding to domestic abuse. This would put the Government's VAWG strategy, insofar as it applies to domestic abuse, on a statutory footing.⁴

Survivors with insecure immigration status

The Government should increase protections for survivors with insecure immigration status. We consider that it is inappropriate for victims of crime, or users of healthcare or other support services, to have their information shared for the purposes of immigration enforcement. Such information-sharing acts as a deterrent on survivors of domestic abuse from reporting crimes and seeking the support of these services. Further, the threat of immigration enforcement is in itself used by

¹ Equality and Human Rights Commission, [Response to HM Government consultation 'Transforming the response to domestic abuse'](#), 31 May 2018, p.3

² Ibid.

³ Ibid, p.3 and Equality and Human Rights Commission, [Written evidence to the Joint Committee on the draft Domestic Abuse Bill](#), 26 April 2019 pp. 1 and 4.

⁴ Equality and Human Rights Commission, [Written evidence to the Joint Committee on the draft Domestic Abuse Bill](#), 26 April 2019 p. 5.

perpetrators as a form of coercive control. We therefore recommend that information-sharing in these contexts be prohibited.

We also recommend extending the timeframe for the Destitute Domestic Violence Concession.

Recognition of disproportionate impact on women

The Bill should explicitly recognise in its text the disproportionate impact of domestic abuse on women. This recognition could be contained within the general duty on the Home Secretary recommended above.⁵

Broadening definition of domestic abuse

The statutory definition of domestic abuse included in the draft Bill should be sufficiently inclusive, such that survivors do not face unnecessary barriers when seeking support or justice. We recommend that the proposed statutory definition also include: forced marriage, female genital mutilation, slavery, sexual exploitation, coercive control over a person's immigration status and online abuse.⁶

Domestic Abuse Commissioner

The role of the Domestic Abuse Commissioner proposed in the draft Bill should be strengthened by: requiring appropriate funding for the role; empowering the Commissioner to collect data; and requiring them to take account of the disproportionate impact of abuse on women.⁷

⁵ Ibid, p.6

⁶ Ibid, p.9

⁷ Ibid, p.10.

Removing barriers to justice

More needs to be done to protect survivors in the family courts. New provisions for special measures should be extended to the family courts and the prohibition against cross-examination by an alleged perpetrator should be strengthened.⁸

Legal framework

We consider that the Bill needs to go further to comply with the requirements of CEDAW and the Istanbul Convention.

We urge the Government to amend the Bill to make the necessary policy and practice changes, and allocate sufficient and sustainable resources, to ensure UK compliance with CEDAW and with the Istanbul Convention. This includes ensuring specialist support services are provided, and addressing the chronic shortage of refuge spaces.

We also urge the UK Government to complete the process of ratifying the Istanbul Convention without delay, to provide greater clarity on, and accountability for, the standards the UK has committed to under international law.

Funding for support services

The evidence suggests that currently too few support services are available, and that provision is inconsistent. A recent Women's Aid survey of domestic abuse services showed that, since 2014, just under a third (30.6%) of services have had to reduce the amount of support (in terms of staff time) that they are able to give to each service user due to funding. Over half of services responding to the survey cited funding uncertainty as the biggest challenge in 2017.⁹ A 2015 report by the All-Party Parliamentary Group (APPG) on domestic and sexual violence concluded that 'the

⁸ Ibid, p.12.

⁹ [Women's Aid, 'The Domestic Abuse Report 2019: The Annual Audit'](#), pp.33 and 38.

current model for funding specialist domestic and sexual violence services is not fit for purpose.¹⁰

Further, a range of survivors face additional barriers when trying to access support in England. This includes ethnic minority and migrant women who experience higher rates of domestic homicide, while half of BME women experiencing abuse, do so from multiple perpetrators.¹¹ The APPG on domestic violence reported in 2015 that funding cuts by statutory agencies to violence against women services have had a disproportionate impact on BME-led VAWG organisations.¹² Disabled women, who experience disproportionate levels of all forms of violence, also face additional barriers to accessing support: for example, a recent report showed that less than 2% of refugees are wheelchair accessible.¹³

We recommend the introduction of a statutory duty on the Home Secretary to provide adequate funding for services for survivors (including specialist provision for ethnic minorities, disabled people, LGBT people, and individuals with complex needs). Such a duty would respond to these concerns and help the UK to meet the requirements of the Istanbul Convention, which requires States to '[t]ake the necessary legislative or other measures to ensure that victims have access to services facilitating their recovery from violence'.¹⁴

Joined up, cross-Government working

The Government should ensure they are undertaking joined-up, strategic cross-UK and cross-Government action to tackle domestic abuse. **We propose a general**

¹⁰ APPG on Domestic and Sexual Violence, Women's Aid and Rape Crisis. 'The Changing Landscape of Domestic and Sexual Violence Services All-Party Parliamentary Group on Domestic and Sexual Violence Inquiry.' 2015.

¹¹ Sisters for Change. 'Unequal regard, unequal protection. Public authority responses to violence against BME women in England.' 2017.

¹² APPG on Domestic and Sexual Violence, Women's Aid, Rape Crisis England & Wales 'The Changing Landscape of Domestic and Sexual Violence Services: APPG on Domestic and Sexual Violence Inquiry.' 2015.

¹³ Women's Aid 'Survival and Beyond: The Domestic Abuse Report 2017'. 2018.

¹⁴ Council of Europe. 'Convention on preventing and combating violence against women and domestic violence'. 2011, Article 20.

duty for Ministers across Government to have due regard to the need to prevent domestic abuse and protect victims. This would require Ministers to consider how Government policy in other areas may increase vulnerability or create obstacles for those attempting to escape domestic abuse.¹⁵

In addition, **we have proposed that a general duty should be placed on Government to regularly publish and review a strategy on domestic abuse.**

This would address the requirement under the Istanbul Convention to put in place effective and coordinated policies to prevent and combat violence.¹⁶ Such a strategy would put the Government's VAWG strategy, insofar as it relates to domestic abuse, on a statutory footing. It should take into account national and regional strategies in relation to violence against women, domestic abuse and sexual violence in Wales.

Survivors with insecure immigration status

Migrant survivors face particular barriers in accessing support for domestic abuse.¹⁷ This is particularly the case for women with insecure immigration status. Women with no recourse to public funds (NRPF) face particular barriers when trying to access life-saving support. For example, Women's Aid identified that an average of only one refuge space per region in England is available for a woman with NRPF.¹⁸

We recommend that the proposed general duty on the Home Secretary should require provision of support services free of charge, regardless of immigration status. This would reflect the requirements of CEDAW and the Istanbul Convention.¹⁹

¹⁵ Equality and Human Rights Commission, [Written evidence to the Joint Committee on the draft Domestic Abuse Bill](#), 26 April 2019, p. 4.

¹⁶ Article 7, Istanbul Convention.

¹⁷ See [Bristol University Justice Project](#) (2018).

¹⁸ ERAW. 'Women living in a hostile environment. Increasing justice and protection for migrant women in the Domestic Violence and Abuse Bill'. 2018.

¹⁹ The Istanbul Convention requires states to protect victims of gendered violence, no matter what their immigration status may be. It says that the '[i]mplementation of the provisions of this Convention by the Parties, in particular measures to protect the rights of victims, shall be secured without discrimination on any ground such as sex, gender, race, colour, language, religion, political or other opinion, national or social

Further, we consider that it is inappropriate for victims of crime, or users of healthcare or other support services, to have their information shared for the purposes of immigration enforcement. Such information-sharing acts as a deterrent on survivors of domestic abuse from reporting crimes and seeking the support of these services, and the threat of immigration enforcement is in itself used by perpetrators as a form of coercive control. **We therefore recommend that information-sharing in these contexts be prohibited.**

The Destitute Domestic Violence Concession (DDVC) provides those who are eligible (specifically, those on a spousal visa) with temporary leave outside the Immigration Rules. Where granted, it applies for three months and permits employment and immediate access to benefits displacing the normally applicable requirement of no recourse to public funds. However, the three month time limit has been found to be a major barrier to women in obtaining accommodation, accessing support and obtaining legal advice and representation.²⁰ **We recommend an extension of the timeframe for the DDVC from three to six months.**

We further have ongoing concerns for survivors with insecure immigration status who are not on a spousal visa and are therefore not eligible for the concession. **We recommend that the Government urgently publishes more information about the ways it intends to ensure that all survivors of domestic abuse are able to access support or services, regardless of their immigration status, in line with the Istanbul Convention.**

origin, association with a national minority, property, birth, sexual orientation, gender identity, age, state of health, disability, marital status, migrant or refugee status, or other status. ('Council of Europe Convention on preventing and combating violence against women and domestic violence'. 2011.)

²⁰ Southall Black Sisters. 'The Domestic Abuse Bill: A Briefing Paper by Southall Black Sisters'. 2019.

Disproportionate impact on women

The disproportionate impact of domestic abuse on women is very well documented and violence against women and girls is both a cause and a consequence of women's inequality. Women²¹ are around twice as likely as men to experience domestic violence, and men are far more likely to be perpetrators.²²

The continuum of violence against women, in its many forms, reflects the wider structural gender inequalities that make it 'one of the most pervasive human rights issues in the UK.'²³ It impacts on women's health and independence, reduces their ability to work and creates a cycle of economic dependence. Women's inequality limits their ability to escape from abusive relationships; it can make it more difficult for them to enforce their rights and more likely to experience sexual harassment and violence.²⁴ The majority of domestic homicide victims are women, killed by men. On average, two women are killed each week by their current or former partner in England and Wales, a figure that has changed relatively little in recent years.²⁵ In recognition of this, the Istanbul Convention²⁶ covers both sexes, but highlights that

²¹ Under the current cross-Government definition of domestic abuse, 'women' also includes 16 and 17 year olds.

²² Office for National Statistics. 'Domestic Abuse in England and Wales'. 2017. Crown Prosecution Service 'Violence against women and girls report, 10th edition.' 2017.

²³ Equality and Human Rights Commission. '[Submission to the United Nations Human Rights Committee Pre-Sessional Working Group on the United Kingdom's Implementation of the International Covenant on Civil and Political Rights.](#)' 2014.

²⁴ Equality and Human Rights Commission. 'Women's rights and gender equality in 2018'. Annex submission to the UN Committee on the Elimination of All Forms of Discrimination Against Women to inform the UK List of Issues. 2018.

²⁵ Office for National Statistics 'Crime Statistics, Focus on Violent Crime and Sexual Offences, Year ending March 2016, Chapter 2: Homicide'. 2016.

²⁶ The Council of Europe advises that 'parties to the Convention are encouraged to apply the protective framework it creates to men who are exposed to violence within the family or domestic unit. Nevertheless, it should not be overlooked that the majority of victims of domestic violence are women and that domestic violence against them is part of a wider pattern of discrimination and inequality.' Council of Europe. 'Convention on preventing and combating violence against women and domestic violence'. 2011.

violence against women is a form of gender-based violence that is committed against women, *because they are women*.²⁷

We therefore urge the UK Government to recognise the disproportionate impact of domestic violence on women and girls within the text of the bill (rather than only in the statutory guidance, as currently proposed). We recommend that such recognition be contained within the proposed general duty on the Home Secretary, as recommended above. This is particularly important in a context where the UN Special Rapporteur on violence against women reports that there has been a growth in commissioning of gender-neutral services, which disregard the specific needs of women and girls.²⁸

The legislative framework for equality in Great Britain (the Equality Act 2010) *does not preclude* a reference to the gendered impact of abuse within the Bill. The Public Sector Equality Duty (PSED) requires public authorities to have due regard to the need to tackle unlawful discrimination and advance equality of opportunity. Compliance involves consideration of positive action measures to overcome disadvantage experienced by, and meet the different needs of, particular protected groups.²⁹

Broadening the definition of domestic abuse

Unless certain forms of violence are included in the definition, public bodies may not immediately recognise them as domestic abuse.³⁰ To ensure it is in line with the Istanbul Convention, **we recommend that the statutory definition also includes:**

²⁷ Council of Europe '[About the Convention](#).'

²⁸ UN Human Rights Council. 'Report of the Special Rapporteur on violence against women, its causes and consequences, Rashida Manjoo. Mission to the United Kingdom of Great Britain and Northern Ireland'. 2015.

²⁹ Positive action can include providing additional or bespoke services, separate facilities, accelerated access to services and targeting resources to benefit a particular disadvantaged group. See s.158 Equality Act 2010, and EHRC [Statutory Code of Practice for Services, public functions and associations](#), Chapter 10.

³⁰ Southall Black Sisters. 'The Bach Commission: Evidence Submitted by Southall Black Sisters'. 2016.

forced marriage, female genital mutilation, slavery and sexual exploitation.³¹

We note that the definition of domestic abuse under the VAWG Wales Act 2015 already includes FGM and forced marriage.³²

The Istanbul Convention requires victims of violence against women and girls to be protected, regardless of their immigration status.³³ However, EVAW reports that domestic abuse can include threats about women's immigration status and control of their documents and applications. Fear of their own or their children's deportation prevents migrant women from reporting abuse, and seeking protection and justice³⁴.

We therefore recommend that coercive control over a person's immigration status is expressly included in the statutory definition.

The APPG on domestic violence examined online abuse in 2017, and advised that online abuse and harassment often reflect a pattern of coercive and controlling behaviour³⁵. **We therefore recommend that online abuse is included in the statutory definition.**

The Domestic Abuse Commissioner

We welcome the proposal to create an independent commissioner to tackle domestic abuse. However, in light of the Istanbul Convention and the existing policy

³¹ The Modern Slavery Act 2015 appears to recognise that family members may be at special risk of exploitation (section 1(4)(a)). Further, the Bill acknowledges that sexual exploitation very often occurs in the context of 'intimate relationships' (clause 2(1)(e). As drafted, clause 1(3), while addressing sexual abuse, may not be wide enough to include sexual exploitation (the abuse itself – sexual contact – may not be at the hands of the intimate partner). Although the Modern Slavery Act makes provision to protect and support victims, the protection is different in kind to the specialist provision that is required under CEDAW and the Istanbul Convention.

³² Welsh Government. Violence against Women, Domestic Abuse and Sexual Violence (Wales) Act 2015.

³³ Council of Europe. 'Convention on preventing and combating violence against women and domestic violence'. 2011.

³⁴ EVAW. 'Women living in a hostile environment. Increasing justice and protection for migrant women in the Domestic Violence and Abuse Bill.' 2018.

³⁵ The APPG on domestic Violence and Women's Aid. 'Tackling domestic abuse in a digital age. A Recommendations Report on Online Abuse by the All-Party Parliamentary Group on Domestic Violence'. 2017.

framework, we are disappointed that the Government has not created a 'VAWG and Domestic Abuse' Commissioner.

We recommend that the Commissioner's role should be full time. It is our understanding that comparable roles, such as the Independent Anti-Slavery Commissioner and the Victims Commissioner are full time roles.

We recommend that the Bill 'requires' rather than 'allows' the Secretary of State to provide funding for the Commissioner.

We welcome the proposed general functions of the Commissioner, but **recommend the following functions are added:**

- Collect disaggregated statistical data on all forms of domestic abuse³⁶.
- Take account of the particular impact of domestic abuse on women, and on others groups sharing a protected characteristic/s.

In line with the Istanbul Convention, **we recommend that the Commissioner should 'promote', rather than 'encourage' good practice.**³⁷

We welcome the requirement for inclusion of representatives from adult and children's social care, as well as someone to represent the interests of victims of domestic abuse on the Advisory Board. **We recommend that the advisory board should also include a representative from the Independent Anti-Slavery Commissioner, as well as a representative with expertise on harmful practices such as FGM and forced marriage.** This would help to ensure a holistic approach to domestic abuse as required by Article 7 of the Istanbul Convention.

We support the proposed establishment of a victims and survivors' advisory group, to ensure that the Commissioner engages directly with this group.

³⁶In our [2018 report to CEDAW](#), we recommended that the UK Government supports the collection of data on femicide, and ensure that national homicide data reflects the gendered nature of crimes by collecting data on the sex and age of the perpetrator and victim, their relationship and previous domestic abuse convictions, and by disaggregating this data across police force areas.

³⁷ Article 4(1) and 12(1) of the Istanbul Convention use the language of promotion.

Finally, **we recommend that further information is provided about how the Commissioner will work with the VAWG National Adviser in Wales, as well as with any relevant bodies in Scotland.**

Removing barriers to justice

Special measures

Article 56 of the Istanbul Convention requires States to '[t]ake the necessary legislative or other measures to protect the rights and interests of victims, including their special needs as witnesses, at all stages of investigations and judicial proceedings.'

The draft Bill proposes the automatic provision of special measures for victim-survivors of domestic abuse in the criminal courts. They will automatically be treated as eligible, unless they advise otherwise. We welcome these provisions in relation to the criminal courts. However, there is widespread evidence that more needs to be done to protect survivors in the family courts,³⁸ and **we therefore consider the Bill should go further, by extending this provision to the family courts.**

Cross examination

The number of unrepresented parties in domestic abuse cases in the family courts has been increasing year-on-year. In 2017, 28 per cent of applicants and 88 per cent of respondents were unrepresented, compared with 15 and 77 per cent respectively in 2011.³⁹ This means that victim-survivors may be faced with cross-examining their abuser, or being cross-examined by them. We therefore welcome the introduction of provisions to prevent cross-examination by alleged perpetrators in the family courts.

³⁸ APPG on domestic violence. 'Domestic Abuse, Child Contact and the Family Courts'. 2016.

³⁹ Ministry of Justice (2018), 'Family court statistics quarterly: January to March 2018', table 11.

However, an *absolute* prohibition on cross-examination will only apply in cases where there has already been an injunction, conviction, caution or charge. In other cases, the court simply has a *discretion* to prohibit cross-examination. The Commission has concerns about this, and **we recommend that the Bill includes a prohibition on cross-examination in all cases where domestic violence or abuse is raised.**

The Commission's Work

The Commission has made detailed submissions on the subject of the UK Government's response to domestic abuse to the following recent consultations and inquiries:

- [Submission to Government Consultation on Transforming the response to domestic abuse, 31 May 2018.](#)
- [Written evidence to the Home Affairs Committee Inquiry into domestic abuse, 5 July 2018.](#)
- [Written evidence to the Joint Committee on the draft Domestic Abuse Bill, 26 April 2019.](#)

Further information

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