Equality and Human Rights Commission

Briefing: Domestic Abuse Bill House of Commons, Second Reading

April 2020

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Introduction

The Equality and Human Rights 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.

Domestic abuse is a serious, violent and widespread crime, which primarily impacts women and children. Figures released in March 2019 showed that 1.6 million women had experienced domestic abuse in the preceding year. The Covid-19 pandemic, and associated social distancing and home confinement restrictions, has thrown this into sharp relief. Since restrictions were implemented, domestic abuse has increased in the UK, with significantly increased calls to helplines[1] and reports that domestic homicides have more than doubled.[2]

The Domestic Abuse Bill is intended to be a 'once-in-a-generation opportunity to transform the response' to this crime. The Commission warmly welcomes the opportunity the Bill presents to ensure better support and protection for survivors of domestic abuse in England and Wales and to improve adherence to our international human rights commitments.

However, we consider that significant changes to the Bill are required for it to be the transformative legislation the Government aims it to be and 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).

We are particularly concerned about the situation of migrant women. Many women with insecure immigration status are currently unable to access essential support

[1] For example, Refuge reported a 700 per cent increase in calls to its helpline in a single day, see Guardian, Revealed: surge in domestic violence during Covid-19 crisis, 12 April 2020. See also BBC, Coronavirus: Domestic abuse calls up 25% since lockdown, charity says, 6 April 2020.

[2] Guardian, Domestic abuse killings 'more than double' amid Covid-19 lockdown, 15 April 2019.

services, such as refuges, forcing them to choose between destitution and returning to their attacker, a situation that is only exacerbated by the current Covid-19 related restrictions. We are concerned that many may also not seek help from the police or hospital, through fear of information being shared with immigration enforcement.

The Commission recommends changes to the Bill in three priority areas. We have developed a proposed amendment to the Bill, working with End Violence Against Women Coalition, SafeLives and Barnardo's and in consultation with the specialist VAWG and children's sectors, which would address a number of these priorities; see Appendix 1 to this briefing for the text of the proposed amendment.

With the current increases in domestic abuse due to the Covid 19 pandemic, and likely spike in numbers of survivors who will seek help once social distancing and home confinement restrictions are eased, we consider that these recommended changes are more vital than ever.

Summary of Commission's recommendations

The changes the Commission recommends are:

1. Adequate specialist services, properly funded and provided for all survivors

The Bill as currently drafted includes no provisions for adequate funding for survivor services and a narrow duty on local authorities to provide accommodation-based services only. We recommend a statutory duty on public authorities to commission sufficient specialist domestic abuse support services (both accommodation-based and non-accommodation-based) for all persons affected by domestic abuse, regardless of status. This would require that services are provided without discrimination, and are available to those with insecure immigration status, children and young people. We further recommend that such a duty on public authorities should be underpinned by a corresponding duty on the Secretary of State to ensure sufficient funding for the implementation of the duty. This would be addressed in the amendment to the Bill proposed by the Commission.

2. Equal protection for all survivors, including those with insecure immigration status

A Bill with the stated aim of protecting and supporting survivors should not exclude any survivors. However, the Bill in its current form leaves survivors with insecure immigration status without protection and support. This is despite clear recommendations from the draft Bill Committee that protection and support should be extended to migrant survivors. To address this, we recommend a statutory duty requiring the Secretary of State to ensure equally effective protection against domestic abuse and support for all victims of domestic abuse irrespective of their status. This duty is included in the amendment to the Bill proposed by the Commission. We also recommend: a prohibition on the sharing of the personal data of survivors accessing assistance or support for domestic abuse, for the purposes of immigration enforcement; and extension of eligibility to apply for leave to remain under the existing Domestic Violence (DV) Rule and Destitution Domestic Violence Concession (DDVC) to all migrants experiencing or at risk of abuse.

3. Removing barriers to justice in civil and family matters

We recommend consistency of protection for domestic abuse survivors across criminal, civil and family courts. The Bill in its current form does not achieve this. We therefore recommend the presumption of special measures in domestic abuse cases applies across family and civil cases, and that the automatic prohibition on cross-examination in person of a victim by a perpetrator should be extended to the civil courts as well as the family courts.

Detailed recommendations

1. Adequate specialist services, properly funded and provided for all survivors

The Bill as currently drafted includes no provisions for adequate funding for survivor services and a narrow duty on local authorities to provide accommodation-based services only.

We warmly welcome the Government's introduction of a statutory duty on local authorities to provide accomodation-based services. However, we are concerned that this is not accompanied by a corresponding funding duty on central government; does not address the need for wider service provision; and risks diverting funding from non-accomodation-based services. As recognised by the draft Bill Committee,[3] the evidence shows 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.[4] A 2015 report by the All-Party Parliamentary Group (APPG) on domestic and sexual violence concluded that 'the current model for funding specialist domestic and sexual violence services is not fit for purpose.'[5]

Adequate funding is particularly important for those survivors who face additional barriers when trying to access support. This includes ethnic minority and migrant women, who have been reported to experience a disproportionate rate of domestic homicide.[6] 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.[7] 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 refuges are wheelchair accessible.[8]

We recommend the introduction of a statutory duty on public authorities to commission sufficient specialist domestic abuse support services (both

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[3] House of Lords, House of Commons, Joint Committee on the Draft Domestic Abuse Bill, First Report of Session 2017-19, HL Paper 378, HC 2075, 11 June 2019, para 213.
[4] Women's Aid, 'The Domestic Abuse Report 2019: The Annual Audit', pp.33 and 38, 2019.
[5] 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.
[6] UN Special Rapporteur on violence against women, its causes and consequences. Statement at the conclusion of a country mission to the United Kingdom 2014, 15 April 2014.
[7] 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.
[8] Women's Aid, The domestic abuse report 2020, 2020.'

accommodation-based and non-accommodation-based) for all persons affected by domestic abuse, regardless of status. We further recommend that status should be defined with reference to Article 4(3) of the Istanbul Convention, which the Government intends to ratify. This would require that services are provided without discrimination, and are available to those with insecure immigration status, children and young people. This duty on public authorities should be underpinned by a corresponding duty on the Secretary of State for Home Affairs to ensure sufficient funding for the implementation of this duty.

This would be addressed in the amendment to the Bill proposed by the Commission, EVAW, SafeLives and Barnardos (See Appendix 1).

2. Equal protection for all survivors, including those with insecure immigration status

A Bill with the stated aim of protecting and supporting survivors should not exclude any survivors. This is required by CEDAW[9] and the Istanbul Convention.[10]

As recognised by the draft Bill Committee,[11] migrant survivors of domestic abuse face particular barriers to accessing support. They are less likely to seek help for fear of deportation and the threat of immigration enforcement is in itself used by perpetrators as a form of coercive control. They can also face destitution as a result of lack of entitlement to welfare support due to their immigration status.[12]

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[9] CEDAW Committee, General Recommendation 28, para 24-26 calls on states to: adopt a policy 'towards the goal of fully eliminating all forms of discrimination against women and achieving women's substantive equality with men.' And that the 'policy must identify women within the jurisdiction of the State party (including non-citizen, migrant, refugee, asylum-seeking and stateless women) as the rights-bearers, with particular emphasis on the groups of women who are most marginalized and who may suffer from various forms of intersectional discrimination".

[10] The Istanbul Convention requires states to implement its provisions without discrimination, including on grounds of migrant or refugee status. Article 4(3) provides that the '[i]implementation 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 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.)

[11] House of Lords, House of Commons, Joint Committee on the Draft Domestic Abuse Bill, First Report of Session 2017-19, HL Paper 378, HC 2075, 11 June 2019, para 232.

[12] Research from Bristol University details the vulnerabilities faced by migrant survivors: see Bates, L., Gangoli, G., Hester, M. and Justice Project Team (2018), Policy Evidence Summary 1: Migrant Women. University of Bristol, Bristol.

Despite recommendations from the draft Bill Committee,[13] the Bill does not address these barriers faced by migrant women at all. Instead, the Government has begun a review into "what support can be provided to migrant victims of domestic abuse".[14] We are concerned that this piecemeal approach does not take on board the serious and urgent concerns raised during the pre-legislative scrutiny phase of the Bill. We consider that statutory non-discrimination protections are required to protect this at-risk group of survivors and that non-legislative provisions will not provide the strength of protection required.

We recommend the Government introduce legislative changes to the Bill to ensure equally effective protection against domestic abuse and support for all victims of domestic abuse, regardless of immigration status:

i. Equal protection and support and access to support services

Migrant survivors face particular barriers in accessing support for domestic abuse.[15] The barriers are especially acute for women with insecure immigration status and no recourse to public funds (NRPF) seeking 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.[16]

We have recommended that statutory duties are placed on the Secretary of State with respect to funding for, and provision of, services. These duties must require non-discrimination in the provision of services including on grounds of immigration status. We also recommend a statutory duty on the Secretary of State to ensure equally effective protection and support for all survivors of domestic abuse, regardless of immigration status. These duties are included in the amendment to the Bill proposed by the Commission, EVAW, SafeLives and Barnardo's (see Appendix 1).

[13] House of Lords, House of Commons, Joint Committee on the Draft Domestic Abuse Bill, First Report of Session 2017-19, HL Paper 378, HC 2075, 11 June 2019, paras 232 – 259.
[14] HM Government, "Enhanced Domestic Abuse Bill Introduced to Parliament", 3 March 2020.
[15] See Bristol University Justice Project (2018).
[16] EVAW, 'Women living in a hostile environment - Increasing justice and protection for migrant women in the Domestic Violence and Abuse Bill', 2018.

ii. Extension of Domestic Violence Rule and Destitute Domestic Violence Concession

As set out above, migrant survivors on visas which require NRPF are generally unable to access key support services such as refuges and are not entitled to other welfare benefits. This can leave these survivors facing the choice of destitution or staying with a perpetrator. The Domestic Violence Rule (DV Rule) – an application under the Immigration Rules - provides a way out for survivors of domestic abuse on a spousal visa, allowing them to regularise their status by applying for indefinite leave to remain. However, it is not currently available to other survivors subject to immigration control and the NRPF rule.

The Destitute Domestic Violence Concession (DDVC) permits survivors applying under the DV Rule three months' temporary access to public funds, as well as allowing them to enter into employment. 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.[17] Further, as with the DV Rule, the DDVC is limited to those on spousal visas.

We recommend that barriers to protection and support faced by survivors with insecure immigration status could be reduced by extending eligibility to apply under the DV Rule all survivors of domestic abuse with insecure immigration status. We recommend an extension of the timeframe for the DDVC from three to six months, and that it should, like the DV Rule, be extended to all migrant survivors of domestic abuse with insecure immigration status.

iii. Prohibition on data sharing

We consider that it is inappropriate for survivors accessing support for domestic abuse, to have their information shared for the purposes of immigration enforcement. Such information-sharing acts as a deterrent on survivors from reporting crimes and seeking the support of these services. Further, as highlighted above, the threat of immigration enforcement is in itself used by perpetrators as a

[17] Southall Black Sisters, 'The Domestic Abuse Bill: A Briefing Paper by Southall Black Sisters', 2019.

form of coercive control. The CEDAW Committee has called on states, in the context of gender-based violence, to repeal "…restrictive immigration laws that discourage women, including migrant domestic workers, from reporting this violence…".[18] With respect to the UK in particular, the CEDAW Committee recommended in March this year that "asylum-seeking women, migrants and women with insecure immigration status are able to seek effective protection and support services without fear of having their immigration status reported to authorities."[19]

We recommend that the Bill prohibits the sharing of survivors' personal data for the purposes of immigration enforcement where the data was collected in the course of the person accessing assistance or support for domestic abuse.

3. Removing barriers to justice in civil and family matters

We recommend consistency of protection for domestic abuse survivors across criminal, civil and family jurisdictions. The Bill in its current form does not achieve this.

i. Special measures

The Bill creates a presumption that victims of domestic abuse are eligible for special measures in the criminal court, but does not extend this presumption to the family court. Special measures can include separate waiting rooms, separate entrance and exit times for the parties, screens and video-links; these serve to protect the survivor and go some way to reducing the re-traumatising effect of the court process. The Bill is silent as regards the provision of special measures outside the criminal courts.

Whilst the Family Procedure Rules give the court discretion to order special measures where a party's participation in proceedings and the quality of their evidence is likely to be diminished by reason of vulnerability, it is widely reported

[18] CEDAW, General Recommendation 35, para 31(c).
[19] CEDAW, 'Concluding observations on the eight periodic report of United Kingdom of Great Britain and Northern Ireland', Advance Unedited Version, CEDAW/C/GBR/CO/8, 14 March 2019, p. 7.

that special measures in the family court are not being provided often enough, and, when they are provided, they are often inadequate.

Recent Women's Aid research reported that 61% of domestic abuse survivors had not had any form of special measures in the family court.[20] Of the 35% who had accessed some type of special measure, the measures were only in place in some of the hearings they attended, rather than all.[21] The Women's Aid research also reveals inconsistent judicial attitudes where requests for special measures are made.[22] MoJ research commissioned on this issue also specifically highlights varying and inconsistent judicial views on special measures.[23] Prominent members of the judiciary have long been calling for protections for victims of domestic abuse in the family courts to be aligned with those in the criminal courts[24] and yet witnesses to the draft Bill Committee in May this year gave evidence that special measures in the family courts were still "not satisfactory or on a par with those facilities available in the criminal courts."[25] The Draft Bill Committee called for a 'single consistent approach' to be taken across all criminal and civil jurisdictions.[26]

We welcome the Government's recognition, in its most recent response to the draft Bill Committee, of "the importance of ensuring that all victims and vulnerable witnesses are able to participate fully in court proceedings" and note that they will be considering the findings and recommendations of the review currently underway by the MoJ family justice panel as well as the recommendations of the recent report by the Civil Justice Council."[27] However, we consider that there is

[20] Women's Aid, "What about my right not to be abused? Domestic abuse, human rights and the family courts", 2018.
[21] Ibid.
[22] Ibid, p.28.
[23] N. E. Corbett and A. Summerfield, Alleged perpetrators of abuse as litigants in person in private family law: The cross-examination of vulnerable and intimidated witnesses, Ministry of Justice Analytical Series, 2017, Section 4.2.
[24] See for example, Cobb J, Review of Practice Direction 12J FPR 2010, Child Arrangement and Contact Orders: Domestic Violence and Harm, Report to the President of the Family Division, November 2018 (in particular paragraphs 15-18).
[25] House of Lords, House of Commons, Joint Committee on the Draft Domestic Abuse Bill, First Report of Session 2017-19, HL Paper 378, HC 2075, 11 June 2019, para 140.

[27] Further Government response to the report from the Joint Committee on the draft Domestic Abuse Bill, March 2020

already sufficient evidence that extension of special measures to the family and civil courts is urgently needed.

We therefore continue to recommend that the presumption of eligibility for special measures for victims of domestic abuse be extended to the family courts and the civil courts.

ii. Cross examination

Cross-examination in person in cases where domestic abuse is an issue is well-recognised as being re-traumatising for survivors[28] and a means by which perpetrators can continue their abuse.[29] It remains a significant problem for domestic abuse survivors in the family courts, with a recent survey by Women's Aid finding that 24% of respondents had been cross-examined by a perpetrator.[30]

We therefore welcome that, in the new Bill, the automatic prohibition of cross-examination in person of a victim by a perpetrator has been widened to apply where the survivor can provide "specified evidence." [31] We note the commitment in the explanatory notes to the Bill that "specified evidence" is intended to broadly replicate the list of evidence that is currently specified for the purposes of accessing civil legal aid.

However, the Bill does not currently extend this automatic prohibition to the civil courts, despite the fact that such an extension was specifically recommended by the Civil Justice Council.[32] As stated above, we note that the government is carefully considering the Civil Justice Council recommendations but we urge the

[28] All-Party Parliamentary Group on Domestic Violence, Domestic Abuse, Child Contact and the Family Courts, 2016, p 4; and House of Commons Home Affairs Committee, Domestic Abuse: Government Response to the Committee's Ninth Report of Session 2017–19, 7 May 2019, HC 2172 of session 2017–19, p 7.
[29] Rights of Women, Written Evidence to the Joint Committee on Human Rights on the draft Domestic Violence and Abuse Bill, 15 February 2019, para 3.
[30] Women's Aid, "What about my right not to be abused? Domestic abuse, human rights and the family courts", 2018.
[31] Section 59, Domestic Abuse Bill.
[32] Civil Justice Council, Vulnerable Witnesses and Parties within Civil Proceedings: Current Position and recommendations for change, February 2020: see recommendation 8, p.127.

government not to delay in ensuring consistency across criminal, family and civil courts.

We recommend that the automatic prohibition of cross-examination in person of a victim by a perpetrator be extended to the civil courts as well as the family courts, to ensure protection is extended no matter where victims have to face their perpetrators in litigation.[33]

Further information

The Equality and Human Rights Commission is a statutory body established under the Equality Act 2006. Find out more about our work on the Equality and Human Rights Commission website.

For more information, please contact:

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[33] Letter from Rt Hon Harriet Harman MP, Chair of the Joint Committee on Human Rights, to Victoria Atkins MP, and Edward Argar MP,
10 April 2019.

Appendix 1 – Proposed Amendment to the Domestic Abuse Bill

Duty to commission specialist support and services

Explanatory statement

This amendment would establish a clear statutory duty on public authorities in England and non-devolved authorities in Wales to commission specialist domestic abuse support and services for all persons affected by domestic abuse regardless of status. It is underpinned by a corresponding duty on the Secretary of State for Home Affairs to ensure sufficient funding for the implementation of this duty. The duty will apply to all who are affected by domestic abuse including those with insecure immigration status, children and young people. It will also include the commissioning of perpetrator programmes.

In relation to children, the amendment clearly sets out that specialist age appropriate domestic abuse support services are required. It also requires the provision of specialist services for children whether they are living in a household where there is domestic abuse or experiencing domestic abuse in their own personal relationship.

As part of this duty, the Secretary of State will ensure that sufficient funding is allocated on a three year basis to ensure public authorities can meet their statutory duties in the New Clause.

Amendment

In Chapter 1, after Clause 2 of the Domestic Abuse Bill, insert the following new clause –

New Clause 3

Secretary of State's General Duty

1. The Secretary of State must take steps to ensure equally effective protection against domestic abuse and support for all victims of domestic abuse irrespective of their status including steps aimed at ensuring that:
    a. domestic abuse is prevented;
    b. all victims of domestic abuse receive protection and access to specialist services;
    c. all perpetrators of domestic abuse are able to access accredited perpetrator programmes;
    d. awareness of this Act is promoted.

2. In discharging the duty under section [1] the Secretary of State must –
    a. Ensure that sufficient funding is provided annually to ensure that relevant public authorities can meet their statutory duties under Clause [4]; and
    b. take steps to ensure continuous improvement in the outcomes that are achieved.

3. The outcomes referred to in subsection (b) of section [2] include, in particular, outcomes which demonstrate —
    a. adequate and effective steps aimed at ensuring that domestic abuse is prevented;
    b. adequate and effective protection and support for persons, including children, against domestic abuse irrespective of their status;
    c. adequate and effective services to all adult and child victims of domestic abuse irrespective of their status;
    d. adequate and effective access for all perpetrators to accredited perpetrator programmes; and
    e. adequate and effective steps to promote awareness of this Act.

Commission specialist domestic abuse support services for victims and perpetrators of domestic abuse

4.
    a. It is the duty of relevant public authorities in England and non-devolved public authorities in Wales to commission sufficient specialist services for all persons affected by domestic abuse regardless of status.
    b. To ensure compliance with the duty under (a) public authorities must:
        i. regularly assess population and support needs changes as and when they happen in their area; and
        ii. co-operate to discharge the duty.
    c. The Secretary of State may issue Regulations making provision for the resolution of disputes between public authorities relating to the discharge of the duty under this section.

5. In performing the duty under Clause [4], a relevant public authority must secure sufficient specialist services for, in particular:
    a. Victims of domestic abuse aged over 18.
    b. Children who experience domestic abuse aged under 18 in their personal relationships.
    c. Children who experience domestic abuse due to being a close relative of a person as defined in Chapter 1, Clause 1 (2).
    d. Persons aged over 18 who exhibit abusive behaviours (as defined in Chapter 1, Clause 1 (3)) towards another person that they are personally connected to as defined in Chapter 1, Clause 1 (2).
    e. Children aged under 18 who exhibit abusive behaviours (as defined in Chapter 1, Clause 1 (3)) towards another person that they are personally connected to as defined in Chapter 1, Clause 1 (2).

6. Every three years from the date on which this section comes into force the Secretary of State for Home Affairs must prepare, publish and lay before Parliament a strategic plan setting out their objectives, priorities and the measures they propose to take for the purpose of discharging their duty under section [1]. In preparing and adopting any strategic plan the Secretary of State for Home Affairs must take account of any strategy to end violence against women and girls adopted by a Minister or Ministers.

Interpretation

In this Part–
"**domestic abuse**" has the meaning given by Clause 1 of this Act.

"**relevant public authorities**" are public authorities with functions relevant to the provision of specialist services, and include but are not limited to,

- Ministers of the Crown and Government departments
- Local government in England
- NHS Trusts in England
- Police and Crime Commissioners
- Prison Service
- Police Probation Trusts

"status" includes a status for the purpose of Article 4(3) of the Council of Europe Convention on preventing and combating violence against women and domestic abuse and combined forms of such status.

"**specialist services**" include but are not limited to,

a. protective measures and action taken to protect persons against domestic abuse;

b. residential accommodation, including refuge services;
c. counselling and other support;
d. advocacy services;
e. access to welfare benefits;
f. perpetrator programmes;
g. financial support;
h. legal services;
i. helplines;
j. services designed to meet the particular needs of a group that shares a status to ensure appropriate and effective service provision, including separate or single-sex services within the meaning given in Part 7 of Schedule 3 of the Equality Act and “communal accommodation” within the meaning given in paragraph 3 of Schedule 23 of the Equality Act 2010;
k. whether provided by a public authority or other person or body.

“**victims of domestic abuse**” include persons who are reasonably believed to be at risk of domestic abuse.