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Article

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Prevention and Protection: will the Domestic Abuse Bill transform the response to domestic abuse¹ in England and Wales?

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Abstract

Hailed as a landmark in the prevention of domestic abuse and the protection of victims, the much-anticipated Domestic Abuse Bill 2019-21² was passed by the House of Commons in July 2020 and is expected to come into force later this year. This article considers the extent to which the raft of measures introduced under the new legislation will transform the response to domestic violence and abuse in England and Wales. The paper considers domestic violence and abuse to be a gendered phenomenon with roots in broader social and cultural conditions of inequality, with women being disproportionately impacted due to the role violence and abuse have in sustaining male dominance at a societal level. Recognition of this necessitates a gendered approach to addressing domestic violence and abuse, which in turn shifts the focus away from discrete incidents and on to a full programme of behaviours aimed at disempowering victims. Through a discussion of the major provisions, the paper will argue that while the Bill is a welcome addition and has clear potential to improve prevention and protection for individual victims, much more is needed in order to truly transform the response to domestic abuse in England and Wales.

Keywords: Domestic Abuse Bill, domestic abuse, domestic violence, coercive control, child victims, migrant women

Introduction

The passing of the much-anticipated Domestic Abuse Bill by the House of Commons in July 2020 was hailed as a landmark moment for protecting victims from the many different forms domestic abuse can take. In terms of its commitment to addressing this issue, and its far-reaching provisions, the legislation is certainly to be welcomed. Activists and academics have long highlighted the inadequacies of the

¹ Throughout this article ‘domestic abuse’ is the term that will be used in relation to current and future law and policy because this is the language adopted by the Bill and now frequently used in official terminology. It is, however, noted that this shift is problematic and unusual; in most national and global contexts the preferred term has been “domestic violence and abuse” (DVA) or “intimate partner violence” to cover the range of perpetrator behaviour and the experiences of its victims and survivors (J Aldridge, “‘Not an Either/or Situation’: The Minimization of Violence Against Women In United Kingdom ‘Domestic Abuse’ Policy” (2020) *Violence Against Women* DOI: <https://doi.org/10.1177/1077801220927079>). Aldridge suggests this could be seen to be a deliberate move to underplay DVA as a gendered issue and while, as will be seen, the focus on nonphysical forms of abuse in the Bill is important as it helps to recognize and cement coercive and controlling behaviour, the removal of “violence” as a key rubric suggests a “watering down” or obfuscation of the serious and gendered nature of DVA (ibid, 2). ‘Domestic violence and abuse’ will be used in discussions not explicitly focused on the Bill and related documentation, to facilitate focus on a broader range of harms.

² This article refers to the Domestic Abuse Bill 2019-20 as passed in the House of Commons in July 2020 (HL Bill 124).

existing laws around domestic violence and abuse in England and Wales, emphasising issues such as the lack of legal recognition of non-physical harm and the failure to recognise abuse as a process in everyday life rather than as a series of discrete ‘incidents’,³ the traumatic nature of giving witness testimony in court proceedings,⁴ the lack of funding and other provision for those fleeing violence and abuse,⁵ and the lack of recognition that children who live with domestic abuse are victims in their own right.⁶ The key aims of the legislative changes contained in the Bill are to raise awareness and understanding about the devastating impact of domestic abuse on victims and their families, further improve the effectiveness of the justice system in providing protection for victims of domestic abuse and bringing perpetrators to justice, and strengthen the support from statutory agencies for victims of abuse.⁷ The key provisions place a much clearer focus on children as *victims* of domestic abuse, not just ‘witnesses’ and also include the creation of a statutory definition of domestic abuse, the establishment of a Domestic Abuse Commissioner who will play a key role in overseeing and monitoring the provision of domestic abuse services in England and Wales, statutory duties on local authorities to provide support to victims, and a range of measures and protections for victims within the criminal, civil, and family justice systems.

This article will discuss each of the major provisions,⁸ explaining the thinking behind them and the importance of the measures, whilst at the same time exploring issues that remain and the ways in which the legislation itself will not be a panacea when it comes to protecting lives and providing justice for the millions of victims of domestic abuse in England and Wales each year. Before concluding it will consider a major limitation of the Bill in terms of its failure to specifically address migrant women who are victims of domestic abuse. This is a worrying oversight because, whilst ‘domestic abuse and other

³ A Robinson and D Cook, ‘Understanding Victim Retraction in Cases of Domestic Violence: Specialist Courts, Government Policy, and Victim-Centred Justice’ (2006) 9 *Contemporary Justice Review* 189; C Bishop, ‘The Limitations of a Legal Response’ in V Bettinson and S Hilder (eds), *Domestic Violence: Interdisciplinary Perspectives on Protection, Prevention and Intervention* (Palgrave, 2016); C Bishop and V Bettinson, ‘Evidencing Domestic Violence, including Behaviour that falls under the new Offence of ‘Controlling or Coercive Behaviour’ (2018) 22 *International Journal of Evidence and Proof* 3.

⁴ C Bishop, ‘Safe and Effective Courtroom Participation for Domestic Violence Complainant-Witnesses’ in J Child and A Duff (eds), *Criminal Law Reform Now: Proposals and Critique* (Hart Publishing, 2018); L Trinder et al, *Litigants in person in private family law cases* (Ministry of Justice, 2014).

⁵ See, for instance, Women’s Aid, *Funding crisis for domestic abuse sector with 64% of refuge referrals declined* (2020) Women’s Aid, 28 January 2020 February 2021) <https://www.womensaid.org.uk/funding-crisis-for-domestic-abuse-sector-with-64-of-refuge-referrals-declined/> (accessed 18 February 2021).

⁶ A Barnett, *Domestic abuse and private law children cases: A literature review* (Ministry of Justice, 2020); J Callaghan et al, ‘Beyond “Witnessing”: Children’s Experiences of Coercive Control in Domestic Violence and Abuse’ (2018) 33 *Journal of Interpersonal Violence* 1551; D McLeod, *Coercive Control: Impacts on Children and Young People in the Family Environment* (Research in Practice, 2018); L Smith, *Children experiencing inter-parental coercive control* (The Institute for Research and Innovation in Social Services (IRISS), 2018); N Stanley, *Children Experiencing Domestic Violence: A Research Review* (Research in Practice, 2011).

⁷ Home Office, *Domestic Abuse Bill 2020: overarching factsheet* (Home Office, 2020) <https://www.gov.uk/government/publications/domestic-abuse-bill-2020-factsheets/domestic-abuse-bill-2020-overarching-factsheet> (accessed 18 February 2021).

⁸ This article will not discuss two important provisions in the Bill that pertain solely, or primarily, to the criminal justice system. These are s 65, which restates the law following *R v Brown* [1994] [1994] 1 AC 212 that consent is not a defence to the infliction of serious harm for the purposes of obtaining sexual gratification, and s 70 which covers disclosure of information by police forces for the purposes of preventing domestic abuse (the domestic violence disclosure scheme, or ‘Clare’s Law’).

forms of violence against women and girls (VAWG) occur across stratifications of ethnicity and socioeconomic status, there are both intra-community factors and structural factors that institutionalise migrant women's marginalisation and place them at greater risk of harm.⁹ Calls to provide specific measures for migrant women within the Bill were ignored by Government, an omission with concerning implications that are explored here. Overall the argument put forward is that the Bill has the potential to significantly improve the protections available for individual victims and may help to prevent victims experiencing further abuse by improving the support available to help them escape their abuse and seek justice for their experiences. However, ongoing challenges in this area are often entrenched by a lack of understanding of the gendered dynamics and harm of domestic violence and abuse. By taking a gender-neutral approach to domestic abuse, the Bill fails to engage with the broader cultural and social conditions in which male violence and abuse against intimate partners and children is enabled to take root. As will be seen, inadequate recognition of the role domestic violence and abuse have in terms of sustaining male dominance has often led to a focus on discrete incidents of violence and abuse, rather than on patterns of controlling behaviours aimed at disempowering victims. It will be argued that without this understanding being embedded into the new legislation, the transformative potential of the Bill is unclear, although that is not to say that it will not significantly improve upon the existing protective and preventative measures.

Prevalence and gender

In its August 2020 policy paper, the Home Office states that there are around 2.4 million victims of domestic abuse a year aged 16 to 74 and that two-thirds of them are women¹⁰. In fact, this is a misrepresentation of the prevalence statistics based on the erroneous Conflict Tactic Scale (CTS) which conflates the type and extent of abuse and has led to the oft-cited statistic that '1 in 4 women and 1 in 6 men have experienced domestic violence'. Many are unaware that these statistics refer to 'any incident', meaning that a single push, slap or demeaning comment carries the same weight as strangulation and threats to kill.¹¹ Therefore prevalence data such as this relies upon the measurement of discrete acts in a way that conflates forms of violence and abuse, single incidents and repeated patterns, with no separation of severity or context. A single incident therefore counts the same in these topline figures as ongoing repeated abuse of a different nature.¹² This conflation leads directly to the contention that women are (almost) as violent as men in interpersonal relationships. Research that uses the CTS to assess levels of domestic abuse is therefore 'insensitive to context: by concentrating narrowly on

⁹ Written evidence submitted by Southall Black Sisters (DAB18) to the Domestic Abuse Public Bill Committee (DAB18, June 2020) <https://publications.parliament.uk/pa/cm5801/cmpublic/DomesticAbuse/memo/DAB18.htm> (accessed 18 February 2021) at para [12].

¹⁰ Home Office (n7). The Explanatory Notes to the DA Bill also cite the statistic that two-thirds of victims are women.

¹¹ L Kelly and N Westmorland, 'Naming and Defining 'Domestic Violence': Lessons from Research with Violent Men' (2016) 112 *Feminist Review* 113, 115.

¹² Ibid.

discrete acts, the research de-contextualises these acts.’¹³ The difficulties with the incident-based approach also seen here will be discussed below.

Whilst it is recognised that men can be victims and that violence and abuse occurs within same-sex relationships, as well as heterosexual ones,¹⁴ the role of gender, particularly where the abuse is coercive and controlling in nature,¹⁵ cannot be ignored. Stark emphasises that coercive control ‘is “gendered” in its construction, delivery and consequences’ because the behaviours used to maintain power and control over the victim focus on ‘gendered enactments’ – that is the micro-regulation of many of the everyday activities and roles already typically associated with women in their roles as homemakers, parents and sexual partners, such as how the victim dresses, cooks, cleans, looks after children and performs sexually.¹⁶ This means it is not simply that women are statistically more likely to experience violence and abuse in intimate relationships, it is that the gender-role expectations prevalent in society enable it to happen in the first place, and often prevent it from being fully recognised as the behaviour may be hard to discern as it falls at the extreme end of the spectrum of power relations that exist in ‘normal’ family life and within ‘normal’ intimate partnerships.¹⁷ The incident-based approach, discussed below, has also served to obscure the role of domestic violence and abuse in sustaining male dominance. It is therefore concerning that official communications persist in suggesting that men experience nearly as much abuse in intimate relationships as women do, especially because this overlooks the role that gendered expectations play in the commission of abuse itself. Men who are violent towards their female partners do so as a result of the cultural norms that reinforce male dominance.¹⁸ The Domestic Abuse Bill does little to correct these misconceptions, taking a gender-neutral approach and failing to identify the root causes of domestic abuse, although it is hoped that certain of the provisions, such as the creation of the role of Domestic Abuse Commissioner, will raise awareness in this area.

¹³ H Reece, ‘Feminist Anti-Violence Discourse as Regulation’ in S Day Sclater, F Ebtehaj, E Jackson and M Richards (eds), *Regulating Autonomy: Sex, Reproduction and Family* (Hart Publishing, 2009) 42.

¹⁴ L Martin, ‘Debates of difference: male victims of domestic violence and abuse’ in V Bettinson and S Hilder (eds), *Domestic Violence: Interdisciplinary Perspectives on Protection, Prevention and Intervention* (Palgrave, 2016); M Hester, *Who Does What to Whom? Gender and Domestic Violence Perpetrators* (University of Bristol and Northern Rock Foundation, 2009); C Donovan and M Hester, ‘Seeking help from the enemy: help-seeking strategies of those in same-sex relationships who have experienced domestic abuse’ (2016) 23 CFLQ 26.

¹⁵ This author has written previously on the need to understand most forms of domestic abuse as a programme of controlling and coercive behaviours with physical violence being just one tool employed by the perpetrator to maintain power and control. See Bishop (n3). See also E Pence and M Paymer, *Education Groups for Men Who Batter: The Duluth Model* (Springer Publishing Company, 1993); E Stark, *Coercive Control: How Men Entrap Women in Personal Life* (Oxford University Press, 2007); Robinson and Cook (n2); V Tadros ‘The Distinctiveness of Domestic Abuse: A Freedom Based Account’ (2004-2005) 65 La. L. Rev. 989.

¹⁶ Stark (n15) 129-130. Also see K Anderson, ‘Gendering coercive control’ (2009) 15 Violence Against Women 1444.

¹⁷ J Hearn, *The Violences of Men: How Men Talk About and How Agencies Respond to Men’s Violence to Women* (Sage, 1998) 36. See C Bishop and V Bettinson, ‘Evidencing Domestic Violence, including Behaviour that falls under the new Offence of ‘Controlling or Coercive Behaviour’ (2018) 22 *International Journal of Evidence and Proof* 3 for a full discussion of the role of gender in relation to the dynamics and harms of domestic abuse and coercive control.

¹⁸ R Dobash and R Dobash, *Violence Against Wives: A Case Against the Patriarchy* (The Free Press, 1979), 22–24.

The new definition and the ‘incident’-based approach

The new definition of domestic abuse provided under s 1 has the potential to be a major driver of awareness and new understandings of domestic abuse due to its use of the term abusive ‘behaviour’ rather than ‘incidents’. It is not yet clear whether this new definition will replace alternative definitions of domestic violence and abuse currently in existence in the legal system and among statutory agencies and service providers. Difficulties have been reported with previous definitions because they take an ‘incident’-based approach when in reality most domestic abuse is experienced as ‘a process in everyday life’ rather than a series of discrete incidents.¹⁹ Taking an incident-based approach misconceptualises both the harm and the behaviours that are typically apparent in a relationship characterised by power and control. Focusing on incidents, whether of physical violence or other forms of abuse, implies there is sufficient volitional space between incidents for the victim to exercise their autonomy and leave the relationship. In reality, this is usually not the case because the behaviours are intended to disempower the victim and thus leave them in a permanent state of hypervigilance,²⁰ impacting upon every aspect of their life and reducing their autonomy to the point that they become entrapped in the relationship.

Framing domestic violence and abuse in terms of incidents - whether in research, policy definitions or practice responses - reflects how violent men describe their behaviour rather than what we know from victim/survivors. Women describe abuse as an ongoing, ‘everyday’ reality in which much of their behaviour is ‘micro-managed’ by their abuser: this includes what they wear, where they go and who they see, household management and childcare. None of these are ‘incidents’, nor would they be considered crimes, and, as discussed above, Stark has urged that domestic violence and abuse itself be characterised as a programme of coercive control with incidents of physical violence and other abuse being seen as tools used by the perpetrator to maintain power and control over the victim, rather than as articulations of the harm in and of themselves. However, whilst the concept of coercive control is included in the new definition, it does not situate it at the heart of domestic abuse.²¹ This means that even though the new definition represents a clear improvement by moving away from an incident-based approach, it remains problematic in its inclusion of coercive control as a ‘type’ of domestic abuse rather than as the central component. Far from being ‘mere semantics’, this is important because when a victim/survivor is viewed as someone who is being controlled rather than abused, it may enable practitioners and others involved in domestic violence support and service provision to better

¹⁹ Robinson and Cook (n3).

²⁰ M Dutton and L Goodman, ‘Coercion in Intimate Partner Violence: Toward a New Conceptualization’ (2005) 52 *Sex Roles* 743.

²¹ S (1)(c) Domestic Abuse Bill (hereafter DAB) defines “domestic abuse” as behaviour towards another person that is abusive where both parties are aged 16 or over and are ‘personally connected to each other’²¹ Behaviour is “abusive” if it consists of any of the following— (a) physical or sexual abuse; (b) violent or threatening behaviour; (c) controlling or coercive behaviour; (d) economic abuse; (e) psychological, emotional or other abuse.²¹ It also does not matter whether the behaviour consists of ‘a single incident’ or a ‘course of conduct’.

understand the dynamics of domestic violence and abuse and therefore understand why they cannot ‘just leave’.

Moving away from an incident-based approach needs also to lead to a reconceptualisation of the harm of domestic violence and abuse as being the loss of autonomy and decision-making ability caused by a programme of coercive control. This would require acknowledgment of the gendered nature of much domestic violence and abuse, since, as outlined above, coercive control is inseparable from an analysis of gender; recognising the role of behaviour such as this in a male-dominated society is essential to understanding the phenomenon and driving wider and deeper societal change. Viewing the harmful behaviour as a programme of coercive control means the essence and reality of domestic abuse is captured; ‘what is measured counts, and not counting means the everydayness of violence is again hidden, minimised and trivialised.’²² Despite the move away from ‘incidents’ seen in the Bill, there is a concern that legal and other professionals will find it difficult to move away from this approach towards a model that focuses on an overall pattern of behaviour. Research indicates that in the past legal professionals have encountered extreme difficulties in moving away from an abstract, incident-based approach towards a model that focuses on the overall impact of a programme of behaviour designed to disempower and control the victim, even when the terminology is there.²³ Therefore, while it is to be welcomed that the new legislation defines domestic abuse in terms of ‘behaviour’, it is important that awareness is raised about the nature and dynamics of domestic abuse more broadly to facilitate a move away from a focus on *incidents* across all sectors of society, service provision, and the legal and criminal justice systems. It is anticipated that the new role of Domestic Abuse Commissioner may go some way towards bringing about the changes in awareness and understandings needed in this regard.

Domestic Abuse Commissioner

The Bill establishes in law the role of Domestic Abuse Commissioner as a statutory office holder and sets out their functions and powers.²⁴ The role of the Commissioner is multi-faceted and will include providing public leadership on domestic abuse issues, playing a key role in overseeing and monitoring the provision of domestic abuse services in England and Wales, and encouraging good practice in preventing domestic abuse. The Home Office factsheet on the role of the Commissioner explains their responsibilities and functions in full and outlines that, to fulfil them, the Commissioner will:

- map and monitor provision of services,²⁵

²² Kelly and Westmorland (n11), 125.

²³ See C Bishop and V Bettinson, ‘Is the creation of a discrete offence of coercive control necessary to combat domestic violence?’ (2015) 66 NILQ 2016) 179, 187-189 for a discussion of how judicial assessments of the ‘course of conduct’ required for the purposes of the Protection from Harassment Act 1997 have been shown to lapse back into examination of individual assaults and batteries and whether these, in combination, amount to a course of conduct.

²⁴ Part 2 DAB

²⁵ S 7(2)(a) DAB

- make recommendations to public bodies about their response,²⁶
- carry out research,²⁷
- work jointly with public authorities and voluntary organisations,²⁸ and
- raise public awareness of domestic abuse.²⁹

The Commissioner will also have the power to publish reports to Parliament, thus holding local commissioners, statutory agencies and national government to account and making recommendations on how they can improve their response. The creation of this role is certainly to be celebrated, especially as it will be carried out by Nicole Jacobs who was formerly the CEO of the charity Standing Together Against Domestic Violence, and who has more than two decades of experience in the sector. The work of the Commissioner, and the recommendations they will make, will be of clear importance in a democratic system where research, collection and dissemination of information, free and open discussion, and the ability of independent bodies to raise concerns with the public and with key institutions are fundamentally valuable. However, there are limits to how far recommendations can go in facilitating the type of deep-level change needed in this area because they are not legally binding or enforceable. They are therefore only as effective as the attention they are given and the concrete steps that follow. It is not always the case that the state, legal system, and other institutions and organisations have the means or will to facilitate fundamental change in understandings and responses to domestic abuse. This is likely to limit the effectiveness of the role as awareness-raising, while potentially a first step towards fundamental transformation, would need to lead to understandings and behaviours at all levels of society which challenge the gendered dynamics and power and control at the heart of domestic abuse.

Children as Victims

On its second reading, the Bill was amended to recognise children as *victims* of domestic abuse.³⁰ This move is reflective of academic and activist work in this area that has long-emphasised that children are never simply ‘witnesses’ and are instead directly involved and affected by domestic abuse ‘in a variety of interlinked and co-existing ways.’³¹ As many as 1 in 5 children are affected by domestic abuse³² and growing up in a home where there is violence and abuse, and where the family dynamics involve one parent (usually the mother) being coercively controlled, typically leads to lifelong mental, physical and social challenges such as chronic pain, developmental disorders,

²⁶ S 7(2)(b) DAB

²⁷ S 7(2)(c) DAB

²⁸ S 7(2)(g) DAB

²⁹ S 7(2) DAB

³⁰ S 3(2) DAB

³¹ Barnett (n6); Callaghan et al (n6); McLeod (n6); Smith (n6); Stanley (n6).

³² Action for Children, Domestic Abuse Bill: children no longer the ‘invisible victims’ (2020) Action for Children, 30 June 2020, <https://www.actionforchildren.org.uk/blog/domestic-abuse-bill-children-no-longer-the-invisible-victims/> accessed 18 February 2021).

mental and physical health difficulties, anti-social, criminal and violent behaviour, alcohol and substance misuse, and interpersonal difficulties.³³ Qualitative studies indicate that living with coercive control can have the same cumulative impact on children as it does on adult victims, which may contribute to emotional and behavioural problems in children.³⁴ As the new statutory definition of domestic abuse will be used by a variety of different frontline workers, including legal professionals working in the courts, including children means it is now far more likely that their perspectives, their experiences, and their need for support, will be taken into account by the professionals working with their families.³⁵ However, there is a concern that the culture of ‘contact at all costs’ found within the family court system will continue, despite child contact being a key site for the perpetration of continued violence and abuse, thus limiting the scope of this change and undermining the spirit behind this aspect of the Bill.

Despite concerns being raised about the impact of contact on children and mothers where there is abuse, family policy and legal decision-making, and professional practice in parenting proceedings, has been shaped by a pro-contact culture for the past 50 years.³⁶ The presumption that the involvement of **both** parents will further a child’s welfare, and the insistence that children need contact with non-resident fathers for their emotional, psychological and developmental health, has led to a de facto ‘presumption of contact’ with the family courts strongly promoting ongoing relationships between children and both their parents following separation.³⁷ This means the higher courts interpret the welfare principle almost solely in terms of the child’s ‘need’ to maintain contact with non-resident parents and repeatedly emphasise that a refusal to grant contact requires ‘cogent’ or ‘compelling’ reasons and that courts should not ‘give up’ on endeavouring to ensure that contact happens.³⁸ In practice this means that judges, lawyers and child welfare professionals all operate on the presumption that there should be contact unless there are *overwhelming* reasons to the contrary, and that courts ‘bend over backwards’ to try to achieve this, even in circumstances of proven domestic abuse.³⁹ Cafcass officers and family

³³ Callaghan et al (n6); S Holt, H Buckley and S Whelan, ‘The impact of exposure to domestic violence on children and young people: A review of the literature’ (2008) 32 *Child Abuse and Neglect* 797; L Radford and M Hester, *Mothering through Domestic Violence* (Jessica Kingsley Publishers, 2006); Smith (n5); Stanley (n5).

³⁴ Barnett (n6).

³⁵ Action for Children (n32).

³⁶ R Hunter et al, ‘Introduction: contact and domestic abuse’ (2018) 40 *J.Soc.Wel & Fam L* 401

³⁷ R Bailey-Harris et al, ‘From utility to rights? The presumption of contact in practice’ (2016) 13 *Int J Law Pol Fam* 111; F Kaganas, ‘Parental involvement: a discretionary presumption’ (2018) 38 *Leg Stud* 549. This pro-contact culture is further supported by the presumption of contact under section 11 of the Children and Families Act.

³⁸ Hunter et al (n37). See, for example, *Re S (Contact: Promoting Relationship with Absent Parent)* [2004] EWCA Civ 18; *Re M (Children)* [2009] EWCA Civ 1216; *Re J-M (A Child)* [2014] EWCA Civ 434; *Re T (A Child: Suspension of Contact: Section 91(14) CA 1989)* [2015] EWCA Civ 71.

³⁹ A Barnett, ‘Contact at all costs? Domestic violence and children’s welfare’ (2014) 26 *CFLQ* 43; J Birchall and S Choudhry, *What About My Right Not To Be Abused: Domestic Abuse, Human Rights and the Family Courts* (Women’s Aid, 2018); M Coy et al, *Picking up the pieces: domestic violence and child contact* (Rights of Women, 2012); M Coy et al, ‘“It’s like going through the abuse again”: domestic violence and women and children’s (un)safety in private law contact proceedings’ (2015) 37 *J.Soc.Wel & Fam L* 53; S Holt, ‘Domestic Violence and the Paradox of Post-Separation Mothering’ (2017) 47 *British Journal of Social Work* 2049; J Hunt and A Macleod, *Outcomes of Applications to Court for Contact Orders after Parental Separation or Divorce* (Ministry of Justice 2008); G MacDonald, ‘Domestic Violence and Private Family Court Proceedings: Promoting Child Welfare or Promoting Contact?’ (2015) 22 *Violence Against Women* 1.

lawyers equate positive outcomes in child contact cases with ensuring that some form of contact takes place.⁴⁰ That this happens even in circumstances of domestic abuse is problematic and indicates that the impact of domestic abuse on children has not been properly understood by those involved in the decision-making processes.⁴¹ This is especially concerning given that the prevalence of domestic abuse in private law children cases is considerably higher than in the general population.⁴²

Case law shows a demonstrable failure to refer to or apply the guidelines laid down in *Re L, V, M, H (Contact: Domestic Violence)*⁴³ and Practice Direction 12J (PD12J), despite the Court of Appeal repeatedly emphasising their importance.⁴⁴ In addition, the 2020 Harm Panel report, which assessed the risk of harm to children and parents in private law children cases, found that the ‘pro-contact culture’ is continuing to impede understandings by the family courts of the ongoing impacts abuse has on children and parents who are victims. In particular, the panel found there is a lack of understanding of the different forms domestic abuse takes and the pro-contact culture continues to contribute to systematic minimisation or disbelief of abuse, and the acceptance of counter-allegations without robust scrutiny.⁴⁵

The presumption of contact has therefore led to a blind spot whereby perpetrators’ use of the family court system to continue to abuse and control former partners, and the impact that one parent being forced to negotiate and remain in contact with an abuser having managed to end the relationship, has on the primary carer and their children, has not been a significant enough consideration. This is the case even though it is known that child contact is a key site for the perpetration of violence and abuse that

⁴⁰ R Thiara and A Gill, *Domestic Violence, Child Contact, Post-Separation Violence: Experiences of South Asian and African-Caribbean Women and Children* (NSPCC, 2012).

⁴¹ A Barnett, ‘Contact at all costs? Domestic violence and children’s welfare’ (2014) 26 CFLQ 43; C Harrison, ‘Implacably Hostile or Appropriately Protective?: Women Managing Child Contact in the Context of Domestic Violence’ (2008) 14 *Violence Against Women* 381; M Hester, ‘The three planet model: Towards an understanding of contradictions in approaches to women and children’s safety in contexts of domestic violence’ (2011) 41 Br. J. Soc. Work 837; Hunt and Macleod, *Outcomes of Applications to Court for Contact Orders after Parental Separation or Divorce* (Ministry of Justice 2008).

⁴² Allegations or findings of domestic abuse in samples of child arrangements/contact cases range from 49% to 62% (Barnett 2020 n6).

⁴³ [2001] Fam 260

⁴⁴ A Barnett, ‘Greater than the mere sum of its parts: Coercive control and the question of proof’ (2017) 29 CFLQ 379.

⁴⁵ R Hunter et al, *Assessing Risk of Harm to Children and Parents in Private Law Children Cases: Final Report* (Ministry of Justice, 2020) 4, 42-44.

can continue for many years following separation, and that often increases in severity at this point in time,⁴⁶ sometimes to fatal levels.⁴⁷

Studies undertaken both before and after the 2014 revisions to PD12J indicate that judges and professionals had gained a greater theoretical understanding of domestic abuse beyond the physical incident model and were showing understanding of its power and control dynamics. However, this was not consistently translated into practice and it was still too often the case that coercive and controlling behaviours were minimised and anything less than recent, severe physical violence was seen not to be serious, important, or relevant to contact.⁴⁸ This seems to have led to mothers experiencing considerable pressure from courts, Cafcass officers, fathers and their own lawyers to agree contact arrangements or attend mediation.⁴⁹ Resisting these attempts was not seen as being a justifiable result of fear or concern for children, but was seen as ‘gatekeeping’ and ‘implacable hostility’ by courts and professionals.⁵⁰ It is also still extremely rare for the court to order that there be no contact, even where domestic abuse has been established, consistently representing less than 1% of total contact orders.⁵¹ The presumption that contact is in a child’s best interests, alongside misunderstandings of the dynamics and harm of domestic abuse unless there is past evidence of serious physical violence, means that domestic abuse is often minimised, marginalised and downgraded by professionals.⁵²

⁴⁶ The most dangerous time for a victim is when they leave or attempt to leave a controlling relationship. This is the time when a fatal attack is most likely. 41% (37 of 91) of women killed by a male partner/former partner in England, Wales and Northern Ireland in 2018 had separated or taken steps to separate from them. Eleven of these 37 women were killed within the first month of separation and 24 were killed within the first year (Femicide Census, 2020, <https://www.femicidecensus.org/> (accessed 21 February 2021)). Coercive control is one of the strongest indicators of female homicides (McLeod (n5); Smith, (n5) meaning serious physical violence cannot be used as an indicator of risk. Other consequences may be the threat or actual disclosure of intimate images online or to a victim’s friends and family (D Citron and M Franks, ‘Criminalizing Revenge Porn’ (2014) 49 *Wake Forest Law Review* 345) and threats to report the victim to immigration authorities (H Baillot and E Connelly, *Women seeking asylum: Safe from violence in the UK?* (Refugee Council, 2018) Refugee Council, https://www.refugeecouncil.org.uk/wp-content/uploads/2019/03/Safe_from_violence_in_the_UK._ASAP-RC_report.pdf (accessed 21 February 2021)).

⁴⁷ D Brownridge ‘Violence against women post-separation’ (2006) 11 *Aggression and Violent Behaviour* 514; L Harne, *Violent Fathering and the Risks to Children* (Policy Press, 2011); Harrison (n41); Holt (n39); MacDonald (n37); McLeod (n5); L Radford and M Hester, *Mothering through Domestic Violence* (Jessica Kingsley Publishers, 2006); L Radford et al, *Unreasonable Fears: Child Contact in the Context of Domestic Violence: A Survey of Mothers’ Perceptions of Harm* (Women’s Aid Federation, 1999). The risk of child homicide during contact with abusive fathers has been highlighted by studies of serious case reviews (Women’s Aid, *Nineteen Child Homicides: What must change so children are put first in child contact arrangements and the family courts* (Women’s Aid, 2016)).

⁴⁸ A Barnett, ‘Contact at all costs? Domestic violence and children’s welfare’ (2014) 26 *CFLQ* 439; A Barnett, ‘Greater than the mere sum of its parts: Coercive control and the question of proof’ (2017) 29 *CFLQ* 379.

⁴⁹ A Barlow et al, *Mapping paths to family justice: Resolving family disputes in neoliberal times* (Palgrave Macmillan, 2017); L Harne, *Violent Fathering and the Risks to Children* (Policy Press, 2011). Hunter et al (n36); F Kaganas, ‘Parental involvement: a discretionary presumption’ (2018) 38 *Leg Stud* 549

⁵⁰ Birchall and Choudhry (n39); S Holt, ‘Post-separation Fathering and Domestic Abuse: Challenges and Contradictions’ (2015) 24 *Child Abuse Review* 210.

⁵¹ Barnett (n6). The most recent study involving case file analysis found that in cases where domestic abuse was alleged, the most common outcome was still direct, unsupervised contact (39% of cases). Orders for supervised or supported contact were made far less frequently. (Cafcass and Women’s Aid, *Allegations of domestic abuse in child contact cases* (Cafcass and Women’s Aid, 2017)).

⁵² Barnett (n6)

Adequate and effective training on domestic abuse in the family court context is therefore clearly needed. Unfortunately, the ‘training amendment’ tabled by Baroness Helic in the House of Lords, which provided for mandatory training on domestic abuse for all Family Court judges and magistrates, was removed by the government when the Bill went back to the House of Commons for its third reading.⁵³ This removal is regrettable as, without adequate training, it is likely that many of the positive provisions of the Bill in relation to Family Court proceedings will be undermined. Nevertheless, an important aspect of the role of the Domestic Abuse Commissioner is to scope out and make recommendations for training and it is therefore expected that a recommendation for mandatory training in this context will be made again in future.

Overall, it is anticipated that the new definition of domestic abuse, as well as the work of the Commissioner through awareness raising, will raise the profile of the dynamics and harm of domestic abuse, especially where it is non-physical in nature. This, combined with the recognition of children as victims instead of passive observers and the strengthening of barring orders⁵⁴ in recognition of the ways in which perpetrators use Family Court proceedings as a further means of abuse,⁵⁵ has the potential to drive significant change in this area, especially as the Bill extends coercive and controlling behaviour to post-separation abuse through its important and much-needed change to Section 76 Serious Crimes Act 2015.⁵⁶ In addition, it is encouraging that the Harm Panel report and Implementation Plan recommended that the presumption of parental involvement under the Children Act 1989 should be reviewed on the basis that it exacerbates the pro-contact culture at the expense of the safety and welfare of children and their victim parent.⁵⁷ However, whilst a panel is currently reviewing this provision, an amendment tabled in the House of Lords to remove the presumption from the Children Act 1989 was not accepted by the government and was withdrawn. Therefore, whilst it is possible that the presumption of contact will be removed following the review, it is not yet known whether this will be the case. For now, despite some positive moves within the Bill and more widely, concern remains that, without removing the presumption of contact entirely, and without situating coercive control at the heart of the new definition, the focus will continue to be on incidents of predominantly physical violence, despite these not being the only indicator of the likelihood of ongoing harm. This means contact with the non-resident parent is likely to be deemed to be in a child’s ‘best interests’ even where there is significant abuse and coercion against the mother.

⁵³ See Amendment 33 (HL Bill 190 Commons disagreement, amendments in lieu and reasons).

⁵⁴ S 91(14) Children Act 1989

⁵⁵ Reference section of DAB, and reference harm panel report and other research

⁵⁶ Amendments to s 76(1)(b) Serious Crime Act 2015 to extend the definition of ‘personally connected’ to those who have been in an intimate relationship in the past, rather than requiring it to be an ongoing relationship, were introduced in the House of Lords in March 2021 (HL Bill 281).

⁵⁷ Hunter (n45); Ministry of Justice, *Assessing Risk of Harm to Children and Parents in Private Law Children Cases: Implementation Plan* (Ministry of Justice, 2020) 4.

Refuges and housing

The Bill puts in place a statutory requirement for local authorities to ensure that there is a sufficient supply of refuge places and other safe accommodation in their area.⁵⁸ Whilst these obligations are clearly to be welcomed, unless they are matched with adequate and sustained levels of government funding, the obligations cannot possibly be met. Under the legislation, local authorities will also be under an obligation to assess, or make arrangements for the assessment of, the need for domestic abuse support in its area (s 55(1)(a)) and prepare and publish a strategy for the provision of such support in its area (b), and monitor and evaluate the effectiveness of the strategy (c). However, a strategy is not effective unless there is means to implement it and, in this context, there is a clear requirement for adequate resourcing to enable councils to translate their strategies into practical action for victims. It is unclear how many councils will have the resources necessary to implement these measures.

Despite insufficient public spending on support services and social housing prior to 2010, the package of austerity measures implemented then saw spending on refuges cut by nearly a quarter between 2010 and the end of 2019. Research also shows three quarters of councils in England have reduced the amount they spend on refuges since 2010, leaving 44% of survivors homeless and reliant on friends and family to take them in while waiting for a refuge space.⁵⁹ The impact of austerity has then been exacerbated by the measures needed against the Covid-19 pandemic at the same time as patterns of pre-existing violence and abuse have become more frequent because both parties remain together at all times.⁶⁰ At the start of the lockdown in March 2020, 85% of domestic abuse services responding to a survey by Women's Aid said they had to reduce or cancel one or more of their services.⁶¹ Whilst the government announced an additional £2 million in funding to help domestic abuse helplines and launched a social media campaign to encourage people to report domestic abuse, this was just a drop in the ocean compared with what is needed. With a woman killed by her partner every 2 days for the first three

⁵⁸ Part 4 DAB

⁵⁹ 'Revealed: Thousands of vulnerable women turned away as refuge funding is cut' (2017) The Bureau of Investigative Journalism, 16 October 2017 <https://www.thebureauinvestigates.com/stories/2017-10-16/a-system-at-breaking-point> (accessed 21 February 2021).

⁶⁰ E Williamson et al, 'Domestic Violence and Abuse, Coronavirus, and the media narrative' (2020) JGBV 4 289. This perspective is in contrast to media reports suggesting there was a 'surge' or 'spikes' in the number of domestic violence and abuse cases at the start of lockdown; it is not that more men are starting to be abusive or violent, it is that the patterns of abuse are becoming more frequent. According to a study conducted jointly by Refuge and the BBC's Panorama, reports of domestic abuse increased at the start of the first lockdown in March 2020, with a call being made to the police every 30 seconds in the first 7 weeks. Two-thirds of women in abusive relationships also reported that they suffered more violence from their partners during this time and Refuge, the UK's largest domestic abuse charity, reported a 700% increase in calls to its helpline in a single day. Three-quarters of victims also say the lockdown has made it harder for them to escape their abusers (H McDonald, Domestic abuse surged in lockdown, Panorama investigation finds (2020) The Guardian, 17 August 2020 <https://www.theguardian.com/society/2020/aug/17/domestic-abuse-surged-in-lockdown-panorama-investigation-finds-coronavirus> (accessed 21 February 2021).

⁶¹ Women's Aid, Domestic abuse has worsened during Covid-19 and frontline services expect rising demand (2020) Women's Aid, 18 August 2020 <https://www.womensaid.org.uk/a-perfect-storm-the-impact-of-the-covid-19-pandemic-on-domestic-abuse-survivors-and-the-services-supporting-them/> (accessed 18 February 2021).

months of lockdown in March 2020,⁶² the pandemic has highlighted more than ever the urgent need for priority housing and other support for domestic abuse victims.

The inevitable funding cuts to local authorities as a result of the financial impact of the Covid-19 pandemic make it even more unlikely that councils will be able to meet their obligations under the Bill when it comes to refuge provision. According to the Local Government Association, there is now a council funding gap of £7.4 billion and no government plan in place to reduce this deficit.⁶³ While the Wealth Tax Commission, made up of tax experts, has suggested that a one-off "wealth tax" on millionaire couples would be the best way to repair UK public finances following the pandemic, which cost The Treasury £280 billion in 2020,⁶⁴ it is unlikely this step will be taken and therefore also likely that cuts to local authorities will continue over the coming years. As well as limiting the effectiveness of the requirement that councils have adequate refuge places and safe accommodation for all domestic abuse victims, austerity and future cuts in public spending due to the Covid-19 pandemic will impact upon longer-term housing provision for those escaping violence and abuse.

Housing and homelessness

As emphasised by housing and homelessness charity Shelter, 'domestic abuse is, by its very nature, a housing issue... because domestic abuse and other forms of violence against women and girls (VAWG) typically occur within the home'.⁶⁵ This makes the response from local authorities and public housing sectors crucial. There have been difficulties in the past due to an over-focus on physical violence when defining housing needs for victims of domestic violence and abuse.⁶⁶ This misplaced focus risks victims escaping abuse being seen to have made themselves 'intentionally homeless' after leaving an abusive or controlling relationship unless there was serious physical violence, meaning local councils do not need to provide longer-term housing.⁶⁷ Currently, a person experiencing domestic abuse must prove that they are "more vulnerable than an ordinary person would be if they became homeless"⁶⁸ in order

⁶² J Grierson, Domestic abuse killings 'more than double' amid Covid-19 lockdown (2020) *The Guardian*, 15 April 2020 <https://www.theguardian.com/society/2020/apr/15/domestic-abuse-killings-more-than-double-amid-covid-19-lockdown> (accessed 18 February 2021).

⁶³ Local Government Association, *LGA analysis: COVID-19 council funding gap widens to £7.4 billion* (LGA, 2020) <https://www.local.gov.uk/lga-analysis-covid-19-council-funding-gap-widens-ps74-billion> (accessed 21 February 2021).

⁶⁴ A Advani et al, 'A wealth tax for the UK: final report' (Wealth Tax Commission, 2020) 9 Dec 2020 <https://warwick.ac.uk/fac/soc/economics/research/centres/cage/news/a-wealth-tax-for-the-uk.pdf> (accessed 18 February 2021).

⁶⁵ Shelter, Response to MHCLG consultation: Support for victims of domestic abuse in safe accommodation (Shelter, 2020) https://england.shelter.org.uk/_data/assets/pdf_file/0009/1896633/Shelter_response_to_MHCLG_Consultation_on_support_for_victims_of_domestic_abuse_in_safe_accommodation.pdf (accessed 21 February 2021).

⁶⁶ See *Danesh v Kensington and Chelsea RBC* [2007] 1 WLR 69; *Yemshaw v London Borough of Hounslow* [2011] UKSC 3

⁶⁷ Shelter, Intentionally homeless (2020) https://england.shelter.org.uk/housing_advice/homelessness/intentionally_homeless (accessed 21 February 2021).

⁶⁸ S 189(1)(c) Housing Act 1996. See also *Panayiotou v London Borough of Waltham Forest* (2017) EWCA Civ 1624, a Court of Appeal decision on the meaning of 'significantly' in Lord Neuberger's definition of vulnerability under in *Hotak v Southwark LBC* [2015] UKSC 30. In the latter case, Lord Neuberger, at 53, said: "Accordingly, I consider that the approach consistently adopted by the Court of Appeal that "vulnerable" in section 189(1)(c) connotes "significantly more vulnerable than ordinarily vulnerable" as a result of being rendered homeless, is correct."

to be defined as being in ‘priority need’ and eligible for an offer of settled housing. Studies indicate that domestic abuse in isolation has rarely been seen to meet the criteria of priority need, particularly where the victim did not have dependent children, and in 2017 only two per cent of people were found to be in priority need and made an offer of settled housing because they were vulnerable as a result of domestic abuse.⁶⁹ However, it seems there is cause for optimism that this will not be the case going forwards.

In a positive move, the Bill amends Part 7 of the Housing Act 1996 (homelessness: England) to both clarify and widen its definition of domestic violence and abuse and also to make victims automatically in ‘priority need’ for homelessness assistance.⁷⁰ The section currently states that it is not reasonable to expect a person to continue to occupy accommodation if it is ‘probable that this will lead to domestic violence or other violence’ against that person or against a person who normally resides with him as a member of his family, or against any other person who might reasonably be expected to reside with him.⁷¹ Section 71 of the Bill amends this definition by re-defining domestic abuse to give it the meaning laid down by s 1, discussed above. This will likely extend the situations and circumstances in which it is not reasonable to expect a person to continue to occupy accommodation, thereby placing an obligation on local authorities to provide a suitable place to live for those who need to escape violence and abuse. Although *Yemshaw*⁷² considered the meaning of the term ‘domestic violence’ under the Housing Act in 2011, and Baroness Hale (as she was at the time) stated that it is a phrase ‘capable of bearing several meanings and applying to many different types of behaviour’⁷³ and thus is not limited to physical contact, concerns have remained. Primarily it is of concern that both the review panel and trial judge initially upheld the decision made by housing officers that Mrs Yemshaw was not ‘homeless’ as a result of domestic violence because her husband had never actually hit her, or threatened to do so. It has also remained concerning that Lord Brown – whilst not dissenting – stated that he did not believe that at any point the “domestic violence” provisions at issue in the case were intended to extend beyond the limits of physical violence,⁷⁴ and nor did Parliament contemplate or intend for psychological abuse to be “violence”.⁷⁵ This case had to be decided on appeal to the Supreme Court⁷⁶ and reveals little about what may still be happening at a lower administrative level. Therefore, the new statutory definition of domestic abuse that is to be substituted in these provisions is to be welcomed, despite the outstanding difficulties with the definition discussed above.

⁶⁹ All Party Parliamentary Group on Domestic Abuse, Domestic Abuse Campaign Briefing, <https://www.crisis.org.uk/media/240051/appgeh-domestic-abuse-campaign-briefing.pdf> (accessed 21 February 2021).

⁷⁰ S 71 DAB

⁷¹ S 177 Housing Act 1996

⁷² *Yemshaw* (n66)

⁷³ *Ibid*, at para [27]

⁷⁴ *Ibid*, at para [48]

⁷⁵ *Ibid*, at para [51]

⁷⁶ The Court of Appeal held that they were bound by *Danesh v Kensington and Chelsea RBC* [2007] 1 WLR 69 where it was held that ‘violence’ involved some sort of physical contact (at para [15]).

However, difficulties with regards funding for local authorities to provide alternative accommodation will continue to limit the effectiveness of obligation in this area. The housing crisis caused by a lack of social homes in England and Wales means there is funding for only one social home for every 96 households on the waiting list and there are currently more than 1 million households on council housing waiting lists and many vulnerable living in adequate housing.⁷⁷ Without refuge accommodation and the promise of safe housing, many domestic abuse victims confront the ‘option’ of facing homelessness and housing insecurity or having to return to a perpetrator.⁷⁸ Even if sufficient refuge accommodation were in place for all of those fleeing domestic abuse, this accommodation is only meant to be temporary and therefore long-term safe housing is needed for abuse survivors and their dependents.

Decisions need to be made and provision put in place quickly in situations of escalating domestic violence and abuse; if the abusive partner were to find out that the victim has disclosed the abuse and is looking to escape then there is a high likelihood that violence may increase, potentially to a fatal level, or that another serious and negative consequence may materialise.⁷⁹ This means it is of paramount importance that temporary refuge accommodation is immediately available while the process is put in place for longer-term provision of safe social housing. This would be needed in conjunction with domestic abuse protection notices (DAPNs) and domestic abuse protection orders (DAPOs) to provide protection while temporary and longer-term accommodation is put in place. These provisions will be discussed now.

Domestic Abuse Protection Notices and Domestic Abuse Protection Orders.

A number of protective orders that can be used in domestic abuse cases are already in existence. These include non-molestation orders and occupation orders,⁸⁰ restraining orders,⁸¹ and domestic violence protection orders (DVPOs).⁸² Issues that have been identified with these orders include the wide variation in terms of who can apply for them, the conditions that can be attached to them and the consequences of breach, the fact that there is currently no single order that is accessible across the criminal, family and civil courts which can lead to confusion for victims and practitioners in domestic abuse cases, and problems with enforcement.⁸³ The effectiveness of DVPOs is also reported to be limited because there is not a criminal sanction imposed for a breach and the maximum duration is 28

⁷⁷ Shelter (n67).

⁷⁸ Ibid

⁷⁹ See discussion of post-separation abuse, above.

⁸⁰ Part IV Family Law Act 1996

⁸¹ Following the implementation of section 12 of the DVCVA 2004 which amends section 5 of the Protection from Harassment Act 1997, restraining orders may be made on conviction or acquittal for any criminal offence, offering an element of protection for victims even when there is not enough evidence to convict under the criminal standard of proof.

⁸² Ss 24-33 Crime and Security Act 2010

⁸³ *Domestic Abuse Protection Notices/Orders Factsheet* (Home Office, 2020)

<https://www.gov.uk/government/publications/domestic-abuse-bill-2020-factsheets/domestic-abuse-protection-notices-orders-factsheet> (accessed 18 February 2021).

days.⁸⁴ With these limitations in mind, Part 3 of the Bill sets out measures related to Domestic Abuse Protections Notices (DAPNs) and Domestic Abuse Protection Orders (DAPOs). These will replace DVPNs and DVPOs under Sections 24-33 Crime and Security Act 2010 and are intended to consolidate and improve upon the existing protection orders. Other protective orders such as non-molestation orders and restraining orders are not repealed under the Bill and can continue to be used in cases which are not domestic abuse-related, such as cases of stalking or harassment where the perpetrator is not a current or former intimate partner or a family member. However, it is intended that the new orders will be used instead of these measures where they are relevant, and that they will be the new ‘go to’ protective order in cases of domestic abuse.⁸⁵

A new civil DAPN will provide immediate protection following a domestic abuse incident,⁸⁶ and a new civil DAPO will provide flexible, longer-term protection for victims. This has been welcomed by leading domestic abuse charity Refuge, who noted in their submission to the Joint Committee on the Draft Domestic Abuse Bill that survivors ‘consistently report that existing injunctions are limited in their effectiveness’ and welcomed the new consolidated Domestic Abuse Protection Order (DAPO) and that breach of a DAPO will be a criminal offence. Further, Refuge is pleased that the new DAPO can be applied for, and recognised, in both criminal and civil courts.’⁸⁷

Both DAPNs and DAPOs will be able to be used to protect victims from all forms of domestic abuse, including non-physical abuse and controlling or coercive behaviour. This is clearly important given that physical violence doesn’t always feature in abusive and controlling relationships. Much like the current DVPN, DAPNs will give victims immediate protection following an incident. A DAPN would be issued by the police and could, for example, require a perpetrator to leave the victim’s home for up to 48 hours, not contact the victim or come within a specified distance of their home for 48 hours, or not enter a particular premises.⁸⁸ Section 22 sets out the matters to be considered by police before giving a notice and this includes considering ‘the welfare of any person under the age of 18 whose interests the officer considers relevant to the giving of the notice’ and so would include the welfare of any relevant children, whether or not they are the perpetrator’s own children.⁸⁹ This is an emergency measure effective immediately and offering short-term protection; an application for a DAPO must be heard by a

⁸⁴ This was reported to the Home Office by police, practitioners and organisations representing victims (ibid).

⁸⁵ ibid

⁸⁶ See earlier discussion for a critique of the focus on ‘incidents’ to assess severity and likelihood of harm.

⁸⁷ Written evidence submitted by Refuge (DAB33) to the Domestic Abuse Public Bill Committee (DAB33, June 2020) <https://publications.parliament.uk/pa/cm5801/cmpublic/DomesticAbuse/memo/DAB33.htm> (accessed 21 February 2021) at para [15].

⁸⁸ The full list of provisions that may be made by DAPNs is set out in s 21 of the Bill.

⁸⁹ S 22(1)(a) DAB

magistrates' court within 48 hours of the time of giving the notice.⁹⁰ Breach of a DAPN is an arrestable offence.⁹¹

A DAPO offers more comprehensive and longer-lasting protection. Unlike DVPNs which they replace, DVPOs can be of flexible duration rather than lasting for a maximum of 28 days. This means they can provide longer-term protection where necessary and proportionate.⁹² Alternative application routes are provided in the Bill so that as well as police being able to make an application for a DAPO to a magistrates' court, victims and specified third parties will also be able to apply for a DAPO directly to the family court.⁹³ Criminal, family, and civil courts can also make a DAPO of their own volition during existing court proceedings, which do not have to be domestic abuse-related.⁹⁴ Again, the welfare of any relevant person under 18 has to be taken into account before an order is issued⁹⁵ and the court must be satisfied, on the balance of probabilities, that the perpetrator has been abusive towards a person aged 16 or over to whom they are personally connected and the order must be necessary and proportionate to protect that person.⁹⁶ The same provisions can be made as under the DAPN but for an extended period. Preventing the perpetrator from returning to a residence and from having contact with the victim allows the victim a degree of breathing space to consider their options with the help of a support agency and is thus an important step in terms of both protection and prevention.

As well as prohibiting the perpetrator from engaging in certain forms of behaviour, the new protective measures allow for the court to impose positive obligations.⁹⁷ For example it might prohibit the perpetrator from having any form of contact with the victim and also require them to attend a behaviour change programme, an alcohol or substance misuse programme or a mental health assessment.⁹⁸ These positive obligations are important whether or not the perpetrator and victim are to continue a relationship, especially if children are involved, because, as discussed above, violence and abuse rarely ends on separation, with long-lasting impacts on victims and their children. Providing effective support for perpetrators to understand and change their behaviour is also a necessary way of addressing this social issue and rehabilitating abusers.

The requirements imposed by a DAPO can also be varied by the courts so that they can respond to changes over time in the perpetrator's behaviour and the level of risk they pose.⁹⁹ Breach of a DAPO

⁹⁰ S 23(2)(c) DAB

⁹¹ S 24(1) DAB

⁹² Home Office (n83).

⁹³ S 26(5) DAB

⁹⁴ S 29 DAB

⁹⁵ S 31(1)(a) DAB

⁹⁶ Ss 30(2) and (3) DAB

⁹⁷ S 25(b) DAB

⁹⁸ Home Office (n83).

⁹⁹ S 42 DAB

will be a criminal offence, carrying a maximum penalty of up to five years' imprisonment, or a fine, or both.¹⁰⁰ However, it will also be possible to deal with a breach as civil contempt of court instead, and the victim's views would be considered, together with issues of public interest, when deciding which sanction for breach is appropriate. This is important because many victims wish to avoid the stigma of criminalisation for their former partner, who is often the father of their children, and so may not report a breach, or even apply for an order, if they know that the police will become involved in the event of a breach. This was one of the criticisms made of the legislative changes under the Domestic Violence Crime and Victims Act 2004 because, by criminalising breaches of civil protection orders, it effectively removed the option of a civil-only remedy for victims and also meant police needed to be relied upon to respond appropriately to breaches which was not always the case.¹⁰¹ It does therefore seem that these protection orders are a significant improvement upon the current orders in terms of providing increasing safety for victims and preventing further violence and abuse. However, concerns will remain over whether those implementing them have a sufficient understanding of the likelihood of serious harm resulting from non-physical abuse and coercive control, meaning their use might be more limited than they otherwise could be. A further potential reason that these orders may not be effectively implemented stems from the courts current reluctance to make protection orders that involve the perpetrator being excluded from the family home. This is seen with occupation orders under the Family Law Act 1996, which the courts view as draconian and only to be granted in exceptional circumstances, and where property rights may be given precedence over victim safety.¹⁰² There is a concern that courts will apply the same stringent approach when deciding whether to make a DAPO, subsequently undermining their effectiveness. The penalties that will be imposed on those who breach DAPOs may also exacerbate court reluctance to impose the orders.

Protections for victims and witnesses in court

Part 5 creates a statutory presumption that victims of domestic abuse are eligible for special measures in the criminal, civil and family courts. It also prohibits cross-examination in person by a party to the proceedings in both family and civil proceedings in certain circumstances.¹⁰³ Giving evidence in legal proceedings is traumatic and sometimes dangerous for victims of domestic abuse and the impact of this can leave them without the means of protecting themselves from escalating violence and abuse or obtaining a fair and just outcome in family court proceedings. It is therefore anticipated that these new provisions will have a significant impact upon victims of domestic abuse seeking protection and justice via the legal system.

¹⁰⁰ S 37(5) DAB

¹⁰¹ J Platt, 'The Domestic Violence, Crime and Victims Act 2004 Part I: Is it Working?' (2008) July Fam Law 642; L Bates and M Hester, 'No longer a civil matter? The design and use of protection orders for domestic violence in England and Wales' (2019) 42 J.Soc Wel & Fam L 133.

¹⁰² *Chalmers v Johns* [1999] 1 FLR 392; *B v B (Occupation Order)* [1999] 1 FLR 715; *Re Y (Children) (Occupation Order)* [2000] FCR 470; *G v G (Occupation Order: Conduct)* [2000] WL 416.

¹⁰³ Ss 60-64 DAB

Special Measures

In criminal proceedings, special measures such as giving evidence from behind a screen or via live video link to avoid having to see the perpetrator, and the use of separate entrances, exits and waiting rooms for victims and perpetrators, have been available for vulnerable and intimidated witnesses for more than two decades.¹⁰⁴ Despite this, evidence indicates that insufficient applications have been made where the witness is a domestic abuse victim/survivor¹⁰⁵ and it is therefore to be welcomed that witnesses who are also victims of domestic abuse are *automatically* eligible for special measures in criminal courts under the Bill. The family courts have had no equivalent legislative protections with little and inconsistent use of the measures that are in place.¹⁰⁶ New measures, called ‘participation directions,’ were introduced in 2017 which require courts to consider whether those involved in family proceedings are vulnerable and if so, whether this is likely to diminish their participation in proceedings or the quality of their evidence, including from actual or perceived intimidation. If this is found to be the case, witnesses are entitled to similar, though more limited, measures as the ones available in the criminal courts.¹⁰⁷ Evidence into the effectiveness of these measures indicates clear inconsistencies and failures in the provision of these measures.¹⁰⁸ For example, victims were often brought into direct contact with perpetrators who had committed serious offences against them, enabling perpetrators to use hearings in the family courts to continue abuse and harassment.¹⁰⁹ There have also been cases where perpetrators of domestic abuse were on bail for violent offences against mothers but were allowed into the family courts to pursue contact with their children.¹¹⁰ In a 2012 study, almost half of the legal professionals surveyed reported that special measures were not advertised for vulnerable and intimidated court users and three quarters of victims interviewed said they had concerns for their safety while attending court because of the lack of facilities such as separate waiting rooms and entrances/exits.¹¹¹ A Women’s Aid survey of victims carried out in 2015 found that 39% had been verbally or physically abused by their former partner in the family court, and requests to wait in a separate room from perpetrators were sometimes refused. It is also not uncommon for women to be followed, stalked and harassed after leaving court.¹¹² The Harm Panel report further highlights that many victims do not feel safe at court and found the proceedings re-traumatising. Submissions to the panel from professionals confirmed that, whilst in theory measures to protect victims were in place, in practice these were not always available or used effectively. Vast inconsistencies, variations in local

¹⁰⁴ Ss 16 and 17 Youth Justice and Criminal Evidence Act 1999

¹⁰⁵ L Ellison and V Munro, ‘Taking Trauma Seriously: Critical Reflections on the Criminal Justice Process’ (2017) 21 E&P 183.

¹⁰⁶ Barnett (n6) 74

¹⁰⁷ Family Procedure Rules 2010, Part A and 3A, as amended in 2017.

¹⁰⁸ Birchall and Choudhry (n39).

¹⁰⁹ Her Majesty’s Inspectorate of Court Administration (HMICA), *Domestic Violence, Safety and Family Proceedings* (HMICA, 2005).

¹¹⁰ Birchall and Choudhry (n39).

¹¹¹ M Coy et al, *Picking up the pieces: domestic violence and child contact* (Rights of Women, 2012).

¹¹² All-Party Parliamentary Group on Domestic Violence, *Domestic Abuse, Child Contact and the Family Courts* (All-Party Parliamentary Group on Domestic Violence and Women’s Aid, 2016).

practices, and resource limitations impacting the availability and use of special measures to protect victims were all reported.¹¹³

One of the reasons that the quality of the evidence given by domestic abuse victims may be reduced or their participation in proceedings is likely to be diminished without these special measures results from the often-unrecognised impact of trauma and dissociation on a victim's ability to give evidence.¹¹⁴ The process of giving evidence may itself trigger traumatic flashbacks, panic attacks or episodes of dissociation. Consequently, the witness may become anxious or forget momentarily where they actually are or be unable to grasp and/or answer the questions.¹¹⁵ If these reactions are not recognised and understood by those involved in the gathering of evidence, perceptions of the witness as reliable, credible and truthful enough to take a case forward, or determine an allegation of domestic abuse, may be seriously undermined. This is of equal importance in the civil and family courts as it is in criminal proceedings; finders of fact who are unaware of the role of trauma in undermining witness ability to provide a coherent and cohesive account of events may see this as evidence that an alleged incident or behaviour did not happen. It is therefore of the utmost importance that victims are able to access special measures in civil and family proceedings to alleviate some of the trauma associated with giving evidence and enable them to give a more detailed and credible account of events.

It is therefore positive that provision for special measures in the family courts will be put on a statutory basis and that a single, consistent approach will be taken across all criminal and civil, including family, jurisdictions. Whilst not enough in themselves to overcome all the difficulties in gathering and giving evidence, these measures will still certainly go a long way in terms of alleviating the stress of giving evidence and therefore making it more likely that victims will obtain justice and protection through the courts.

Cross-examination

For victims of domestic abuse the process of giving evidence is itself traumatic, but in the family courts, due to the removal of most private family law cases from the scope of legal aid following LASPO,¹¹⁶ there has been a sharp increase in the number of litigants in person (LIPs), with alleged abusers frequently being allowed to cross-examine, and intimidate, victims.¹¹⁷ During the second reading of the

¹¹³ Hunter (n45) 117-120.

¹¹⁴ See Bishop 2018 (n4) for a full explanation of the impact of trauma and dissociation on witness testimony.

¹¹⁵ See Ellison and Munro (n105) for a further discussion.

¹¹⁶ Legal Aid, Sentencing and Punishment of Offenders Act 2012

¹¹⁷ The practice of allowing cross-examination by LIPs is widespread, with studies conducted in 2015 and 2017 finding that a quarter of victims of domestic abuse had been cross-examined by the alleged perpetrator during family court proceedings (Birchall and Choudhry (n39); S Cobb, *Review of Practice Direction 12J FPR 2010 Child arrangement and contact orders: Domestic violence and harm – Report to the President of the Family Division* (Office of the President of the Family Division, 2016). Over half of the women interviewed by Coy et al (n43) reported that there had been stages where they either had to represent themselves (and therefore face the prospect of cross-examining their ex-partners) or face being cross-examined by them. See also Hunter (n45) 121-124.

Bill, Justice Secretary, Robert Buckland, recognised that '[f]ew things are likely to retraumatise victims more than being subject to direct cross-examination by their abuser in legal proceedings. Such an experience will inevitably cause immense stress and would of itself be a continuation of the abuse'.¹¹⁸ In particular, The All-Party Parliamentary Group on Domestic Violence heard evidence that this can amount to coercive control being 'played out in the court arena.'¹¹⁹ The issue of evidence-giving triggering traumatic flashbacks or episodes of dissociation, discussed above, it also more likely to happen under the extreme stress of being cross-examined by a perpetrator.

It is therefore extremely important that a prohibition on victims being cross-examined in person by perpetrators and alleged perpetrators in family proceedings where one party has been convicted of, given a caution for, or charged with certain offences against the witness (or vice versa).¹²⁰ There is also an automatic ban on cross examination in person where an on-notice protective injunction is in place between the party and witness are enshrined in the new legislation.¹²¹ In addition, s 31T prohibits cross-examination where there is evidence of domestic abuse. It could, however, be argued that this prohibition does not go far enough and that issues with cross-examination more broadly in the context of domestic abuse need to be addressed. In the criminal context, the author has previously recommended extending the limitations placed upon cross-examination of child witnesses and witnesses in cases of alleged sexual offences to domestic violence hearings.¹²² This is in recognition of the ways that trauma and dissociation impact upon complainant-witnesses when they are giving evidence and the ways that aggressive and intimidating cross-examination exacerbates issues around memory and recall. Juries can be unfairly biased by the presentation of evidence when cross-examination is aggressive and aims to intimidate witnesses and undermine their credibility.¹²³ In the family courts these issues may be less concerning as there is generally a less adversarial approach taken to cross-examination of victims and judges tend to intervene when questioning becomes inappropriate or difficult. However, it is still important to consider alternative ways of providing evidence. This is provided for under the Bill under s 31W which refers to alternatives to cross-examination in person where a party to family proceedings is prevented from cross-examining a witness in person by virtue of any of sections 31R to 31U. The court must consider whether there is a satisfactory alternative means for the witness to be cross-examined in the proceedings,¹²⁴ or of obtaining evidence that the witness might have given under cross-examination in the proceedings.¹²⁵ Recent submissions to the Harm Panel suggest that even in cases

¹¹⁸ Research revealed that victims of domestic abuse found the experience of being cross-examined by their alleged abuser hugely difficult and distressing, leaving them feeling traumatised and degraded. In some instances it felt like a continuation of the abuse (Birchall and Choudhry (n39); Coy et al (n44); Trinder et al (n4).

¹¹⁹ All-Party Parliamentary Group on Domestic Violence (n113), 14.

¹²⁰ S 31R DAB

¹²¹ S 31S DAB

¹²² Bishop (n4)

¹²³ For a full explanation of the impact of traumatic dissociation on memory, recall, and witness credibility, see Bishop (n4).

¹²⁴ S 31W(1)(a) DAB

¹²⁵ S 31W(1)(b) DAB

where both parties have representation, the adversarial approach can undermine the ability of both parties to present their case fairly and in a way that does not perpetuate further harm, and that the solution may be to abandon the adversarial approach altogether and adopt a more investigative or inquisitorial approach.¹²⁶ In recognition of the long-standing, systemic issues identified in the report, the government then announced a trial of a new, investigative approach to private family law children cases.¹²⁷ The outcome of this will likely determine the position taken on the approach to be used in future.

Alongside the difficulties outlined above in the discussion of each of the major provisions, another key concern remains which is that the Bill does not specifically recognise or address the additional challenges faced by migrant women who are victims of domestic abuse.

Migrant victims and no recourse to public funds

Immigration rules currently leave many migrant women who are at risk of the most serious and prolonged forms of abuse, exploitation and harm unable to access justice or protection if they have unsettled immigration status. This is due to the no recourse to public funds (NRPF) condition¹²⁸ and other policies that make up the Government's 'hostile environment' in respect of immigration matters, such as data-sharing between the police and the Home Office. These policies leave victims reluctant to report abuse to the police for fear of retribution from perpetrators and from the state in the form of enforced destitution, detention and deportation.¹²⁹ These circumstances enable perpetrator's to entrap women by using their immigration status as a means of exerting control. A victim's immigration status may mean that they are financially dependent on their husband, partner and/or extended family members and that they have no or limited access to an independent income. The abuser/s may also use a victim's immigration status to frighten them into silence and prevent them from seeking help.¹³⁰

The NRPF policy acts as a significant barrier to escaping domestic abuse as it renders a person ineligible for public funds if they are subject to immigration control. This includes the majority of welfare benefits, including income support, housing benefit and local authority housing, jobseeker's allowance (now all part of Universal Credit), as well as other benefits including disability living allowance. Public funds also includes local authority housing but it does not include legal aid and refuge accommodation and child benefit (where the child is British). However, without access to housing benefit and basic welfare benefits, in practice it is difficult for women to access refuge or other safe accommodation.¹³¹

¹²⁶ Hunter (n45).

¹²⁷ Ministry of Justice (n57) 3.

¹²⁸ s 115 Immigration and Asylum Act 1999

¹²⁹ Southall Black Sisters (n9).

¹³⁰ Baillot and Connelly (n46).

¹³¹ Southall Black Sisters (n9).

Southall Black Sisters (SBS) also highlight that supporting migrant women is resource-intensive and most refuges simply do not have the skilled or experienced staff needed to assist with complex immigration matters. For instance, in England in 2017, there was an average of just one vacancy per region for a woman with NRPF.¹³² Whilst vulnerable migrant women with children who face destitution should receive local authority support, evidence indicates that local authorities regularly fail to meet their responsibilities to vulnerable families, explained in part by a lack of resources in the context of austerity. There is also an absence of statutory guidance as to how to support those with NRPF and considerable inconsistency of practice amongst local authorities across the UK in respect of the support that is provided towards migrant women and children.¹³³

Domestic abuse victims can apply for settled status/right to remain in the UK through the ‘Domestic Violence Rule,’ (DV Rule)¹³⁴ which applies if a victim is in the country as the wife, partner or civil partner of someone who is British or has indefinite leave to remain in the UK and has experienced domestic abuse, including economic abuse. In addition, while waiting for their application under the DV Rule to be heard, victims can also apply under the Destitution and Domestic Violence Concession (DDVC).¹³⁵ If successful, they are entitled to public funds for 3 months while they submit their application. However, it is thought that not many victims know about the DV Rule.¹³⁶ Furthermore, whilst it is positive that physical violence is not required to apply for leave to remain under the DV Rules - coercive and controlling behaviour, including economic abuse, also meets the government’s definition of domestic abuse – not all victims who are migrants will be eligible to apply under the rules because they were not admitted to the UK, or originally given leave in the UK, as the partner of someone who already has the right of permanent residence in the UK.¹³⁷

Evidence gathered by SBS shows that the DV Rule and the DDVC taken together have proved to be a vital lifeline for abused migrant survivors who have spousal visas, helping to remove women’s dependency on their abusers for survival and shelter, preventing destitution, deportation and risk of harm when they exit abuse, and preventing abusers from weaponising immigration law and policy. This

¹³² Southall Black Sisters (n9) at para [17].

¹³³ Under Section 17 of the Children Act 1989 local authorities must provide accommodation and financial support to families for safeguarding reasons. SBS point out that single migrant women at risk of serious harm are not protected under s 17 since they are not entitled to support under this provision unless there are very exceptional reasons. See Southall Black Sisters (n ?) at para [18].

¹³⁴ *Victims of Domestic Violence and Abuse* (Home Office, 2018) https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/680977/victims-of-domestic-violence-v14.pdf (accessed 18 February 2021).

¹³⁵ *Destitute Domestic Violence (DDV) Concession* (Home Office, 2018) https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/679269/victims-of-domestic-violence-and-abuse-DDV-concession-v1_0.pdf (accessed 18 February 2021).

¹³⁶ *Unequal Regard, Unequal Protection: Public authority responses to violence against BME women in England* (Sisters for Change, 2017) https://www.sistersforchange.org.uk/wp-content/uploads/2019/03/83-SistersForChange_UnequalRegardUnequalProtection_Nov2017-1.pdf (accessed 18 February 2021).

¹³⁷ Home Office (n134).

is why they called for the extension of these rules to *all* abused migrant women, instead of just those on a spousal visa.¹³⁸ The organisation also called for an extension of the timeframe for the DDVC from three to at least six months, and the introduction of a comprehensive strategy on violence against migrant women and girls that addresses the multiple and intersecting barriers faced by migrant women in seeking protection.¹³⁹ The Refugee Council added to these calls, asking the Government to ensure ‘parity of esteem for all survivors, regardless of their immigration status’ and to replace the ‘hostile environment’ reporting policies (which leave survivors too terrified to report abuse) with a ‘firewall’ between public services and immigration officials, as well as guaranteeing sustainable funding for specialist service in every community, including specialist services for BME survivors.¹⁴⁰

None of these provisions appear in the final version of the Bill and it is regrettable that the Government seems to have deliberately left migrant NRPF women out of the Bill.¹⁴¹ An amendment to include provision for migrant women with NRPF was tabled in the House of Lords but regrettably the government did not accept it on the grounds that it would involve a charge on public funds.¹⁴² At the Second Reading of the Bill, Victoria Atkins MP announced £1.5 million for a pilot fund to cover the cost of support for migrant women with NRPF in refuge accommodation, stating that this pilot will be used “to assess better the level of need for that group of victims and to inform spending review decisions on longer-term funding.” However, more assessments of the level of need are not necessary, there is plenty of research already, and a further pilot indicates that the Government has completely failed to appreciate ‘the urgency and the seriousness of the risk of abuse and destitution that abused migrant women on non-spousal visas currently face’.¹⁴³ SBS further emphasise that the heightened vulnerability of abused migrant women with NRPF has been highlighted during the Covid-19 pandemic and that Government announcements for additional funding of approximately £38 million for the VAWG sector in the context of a reduction in refuge capacity and reports of rising domestic violence and related homicide do not explicitly reference the need to protect abused migrant women with NRPF.¹⁴⁴ As emphasised by SBS in their May 2020 submission, this Bill has been ‘years in the making and has been presented as a “once-in-a-generation opportunity” to support all victims of domestic abuse’ it is therefore deeply regrettable that the Government has declined to meet its equality and human rights

¹³⁸ Southall Black Sisters (n9) at para [24]

¹³⁹ See para [36-35] and annex 2 of Southall Black Sisters (n9) for a full explanation of what needs to be included in this strategy.

¹⁴⁰ Refugee Council, Domestic abuse bill risks being a ‘missed opportunity’ to support survivors with insecure immigration status (2020) <https://www.refugeecouncil.org.uk/latest/news/domestic-abuse-bill-risks-being-a-missed-opportunity-to-support-survivors-with-insecure-immigration-status/> (accessed 18 February 2021).

¹⁴¹ See, for instance, A Topping, Migrant women deliberately left out of UK abuse bill, say campaigners (2020) The Guardian, 6 July, <https://www.theguardian.com/society/2020/jul/06/uk-government-accused-endangering-lives-migrant-women-domestic-abuse-bill> (accessed 18 February 2021).

¹⁴² See Amendment 43 (HL Bill 190 Commons disagreement, amendments in lieu and reasons).

¹⁴³ Southall Black Sisters (n9) at para [38].

¹⁴⁴ Ibid at para [19]

obligations¹⁴⁵ by failing to take this opportunity to put protection for all migrant women on a statutory footing.

Conclusion

The wide-ranging provisions under the Domestic Abuse Bill have the potential to protect many more victims and prevent abuse from continuing and escalating. Enhanced protection orders, new measures for victims in the courts, obligations on local authorities, and the inclusion of children in the definition of victims, are all key changes that have the potential to drive large-scale change in policy and practice. However, important concerns remain. These can best be understood in terms of inadequate funding and allocation of resources reducing the effectiveness of the new measures and obligations, and more systemic issues around understandings of the dynamics and harm of domestic violence and abuse.

Whilst the legal duty on local authorities to provide refuge accommodation has the potential to save lives, this provision will be undermined if it is not matched with adequate and sustainable funding for specialist women's services and ongoing support for victim/survivors. In November 2020 the government announced almost £11m in emergency funding to support rape and domestic abuse services amid a rise in demand during the coronavirus pandemic. However, there is a need for a commitment to long term funding for these vital services and it grows increasingly important that the passing of this new legislation is not allowed to act as a distraction from the lack of government funding in this area.

On a deeper level, the legislation itself won't transform understandings of domestic abuse, in large part because of its gender-neutral approach and the fact that it does not place coercive and controlling behaviour at the heart of the wrong of domestic abuse. This means the improvements in responses and protections for victim/survivors in the civil courts, police and criminal justice system, and statutory and non-statutory agencies that are set out in the Bill can only go so far. Whilst the Commissioner may help improve understandings and awareness, this must be across all agencies, both within civil, family and criminal justice systems, but also beyond, so that understandings and awareness are transformed in all sectors of society. As the Commissioner has no *powers* and can only make recommendations and produce reports, it is unclear how much of a difference her work will make in this area and will be something that academics and legal practitioners working in this area will need to keep a close eye on.

It is for these reasons, as well as those outlined in more detail with regards each of the major provisions, that it is recommended that the Bill is welcomed with cautious optimism. The Bill does have the potential to save lives, increase safety, protect children from the ongoing impact of growing up with violence and abuse, and improve the protections available for victim/survivors in the family courts and

¹⁴⁵ Particularly under Article 3 of the ECHR which prohibits inhuman and degrading treatment.

beyond. At the same time, those working in this area must remain cognisant that there is still much to be done if the response to domestic violence and abuse is to be truly transformed. Moving away from the gender-neutral approach and situating coercive control at the heart of domestic violence and abuse would enable identification and prevention of the root causes of this issue. It is therefore disappointing that this once-in-a-generation opportunity does not provide the groundwork for the far-reaching systemic change that is needed.