



Home Office



Ministry
of Justice

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Parliamentary Under-Secretary of
State for the Home Office

Alex Chalk MP

Parliamentary Under-Secretary of
State for Justice

Jess Phillips MP
House of Commons
London
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28 May 2020

Dear Jess,

Domestic Abuse Bill

We are grateful to you and all the other members who spoke and put in to speak at Second Reading on 28 April. It was pleasing to hear the cross-party support for the measures in the Bill, although we recognise that there were suggestions for making changes or adding new provisions. Given the unusual nature of the proceedings, there was even less time than usual to respond to all the points raised in the debate so we thought that it would be helpful to set out the Government's position on some of the issues raised ahead of Committee stage.

Response to Covid-19 pandemic

Understandably, many of those who contributed to the debate commented on the need for immediate support to victims of domestic abuse, and their children, in response to the evidence of an increase in abuse during the current lockdown. You will have seen that on 2 May the Secretary of State for Housing, Communities and Local Government announced the allocation of £76 million in funding to support the most vulnerable in society during the pandemic, including £28 million to support victims of domestic abuse¹. This is in addition to the £2 million we have provided to increase the capacity of domestic abuse helplines and online services during the pandemic; details of the allocation of the first £900k of this money was set out in the Home Secretary's letter of 30 April to the Home Affairs Committee.² The Home Secretary has also launched an awareness campaign, #YouAreNotAlone, to signpost victims and those concerned about their loved ones to support. This has reached millions of people and is having huge impact in driving awareness of help available to victims. We are working to ensure that this messaging is available at testing sites, providing people further opportunities to seek help.

¹ Details of the breakdown of the funding is available at: <https://www.gov.uk/government/news/emergency-funding-to-support-most-vulnerable-in-society-during-pandemic>

² http://data.parliament.uk/DepositedPapers/Files/DEP2020-0226/Priti_Patel_to_Yvette_Cooper_COVID19_Domestic_Abuse_funding.pdf

Homelessness: priority need for accommodation

Some members argued for all homeless victims of domestic abuse to be automatically afforded priority need status for accommodation under the provisions of Part VII of the Housing Act 1996. We are pleased that the Secretary of State for Housing, Communities and Local Government has announced that the Government will be bringing forward amendments to the Bill to this end³. As with the existing provisions in Part VII of the 1986 Act, this change will apply to England only.

Perpetrator programmes

Theresa May and Karin Smyth called for perpetrator programmes to be properly accredited. We fully recognise the importance of ensuring that domestic abuse perpetrator programmes are safe and effective. The Government continues to support the important work of Respect, who, through their service standards, are helping to ensure that programmes are delivered safely and effectively. HM Prison and Probation Service provide a range of accredited programmes, available in custody and the community targeted at convicted domestic abuse perpetrators. These programmes are accredited by the Ministry of Justice Correctional Services Accreditation and Advice Panel (made up of independent experts) who offer evidence-based advice on the development and implementation of effective criminal and social justice services and programmes. We recognise, however, that there are variations in approach across agencies and local areas in relation to work with perpetrators and want to improve consistency of provision. In particular, we want to ensure that a range of high-quality interventions are available to support the use of positive requirements as part of the new Domestic Abuse Protections Orders.

We have committed to provide £10 million funding in 2020/21 to support preventative work with perpetrators and are working closely with stakeholders to identify how this funding can be used to support high-quality interventions. Furthermore, the Domestic Abuse Commissioner will play a key role in holding local areas to account for the quality and safety of the services that they provide and in ensuring the effective commissioning of these services, including perpetrator intervention programmes.

Migrant victims

A number of colleagues raised the issue of support for migrant victims of domestic abuse, particularly those subject to a no recourse to public funds condition on their leave to remain. You will recall that in our further response to the Joint Committee on the Draft Domestic Abuse Bill, published on 3 March, we indicated that we would publish our conclusions of our review of the Government response to migrant victims ahead of Report stage. That remains the case, although you will recall that in winding up the Second Reading debate, I (Victoria Atkins) set out our intention, later this year, to invite bids for grants from a £1.5 million pilot fund to cover the cost of support in a refuge or other safe accommodation for migrant victims not eligible under the Destitute Domestic Violence Concession or other existing mechanisms. As we indicated in March, we will provide further details ahead of Report.

³ <https://www.gov.uk/government/speeches/communities-secretarys-statement-on-coronavirus-covid-19-2-may-2020--2>

Expert Panel on the Risk of Harm in the Family Courts

You, and the shadow Home Secretary, also asked about the timing of the report of the Panel of experts reviewing how effectively the family courts respond to allegations of domestic abuse and other harms in private law proceedings. Again, we addressed possible issues emerging from the Panel's work in our further response to the Joint Committee. In particular, we indicated that it was appropriate to await the findings of the Panel before responding fully to the Joint Committee's recommendation "that the provision for special measures in the family court's rules and practice directions is put on a statutory basis". Covid-19 has understandably slowed the publication timetable, but as the Lord Chancellor indicated in his opening speech, we intend to publish the report shortly and certainly no later than Report stage.

Prohibition on cross-examination in person in family proceedings

Sir Bob Neill and Sarah Dines called for the proper remuneration of experienced advocates appointed by the court to undertake any necessary cross-examination in place of the perpetrator.

We understand the particular skill and care that is needed in order to effectively carry out cross-examination of a vulnerable witness. We will be designing a full fee scheme for the purposes of the cross-examination provisions in the Bill, which we will be consulting on with the sector prior to implementation of the provisions. In order to ensure that these provisions can be implemented as smoothly as possible, the Ministry of Justice has formed a working group with all the operational parties who will be involved in delivering these provisions, and we are currently considering the guidance and regulations that will be needed to ensure these provisions operate effectively. We will also be producing statutory guidance on the role of the advocate appointed under the provisions to sit alongside the measures in the Bill.

Prohibition on cross-examination in person in civil proceedings

Fay Jones argued for the prohibition on cross-examination in person in family proceedings to be extended to civil proceedings. The Civil Justice Council made a recommendation to this effect in their report on *Vulnerable Witnesses and Parties*⁴ published in February. We have undertaken to consider the recommendations made in the report very carefully as we work towards improving the response to victims and vulnerable people in the civil courts.

Homelessness: local connection rules

Alex Norris also called for the removal of local connection rules for survivors who move across local authority boundaries to access housing. The Government's 2013 statutory residency guidance⁵ already makes clear that where local authorities adopt a residency or local connection test for social housing, we expect them to make appropriate exceptions

⁴ <https://www.judiciary.uk/announcements/civil-justice-council-proposes-better-assistance-for-vulnerable-witnesses/>

⁵

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/269035/131219_circular_for_pdf.pdf

for those fleeing violence or harm. Further statutory guidance issued in 2018⁶ extends this expectation to victims of domestic abuse who have fled to safety in a refuge or other form of temporary accommodation in another local authority district.

Local authority support

Liz Saville Roberts sought confirmation that population-equivalent funding will be made available to the Welsh Government from sums allocated to English local authorities for the purpose of the new duty to provide support to victims and their children within safe accommodation. We can assure you that the Government is committed to ensuring that English Tier 1 local authorities receive appropriate financial support to meet the new duty and we can confirm that the Barnett Formula will apply in the usual way, as set out in the Statement of Funding Policy.

Impact of domestic abuse on children

Nickie Aiken and other colleagues rightly raised the devastating impact that domestic abuse can have on children. It is vital that we support children who are affected by domestic abuse and the Bill expressly recognises this in the statutory functions of the Domestic Abuse Commissioner. One of the key functions of the Commissioner will be to encourage good practice in the identification of children affected by domestic abuse and the provision of protection and support. In addition, clause 66 of the Bill places a duty on the Home Secretary to issue guidance on the effect of domestic abuse on children. Alongside the Bill, we announced on the day of Second Reading that the Home Office had awarded £3.1 million to specialist services for children who have both been directly and indirectly affected by domestic abuse.

Parental alienation

Philip Davies argued for the definition of domestic abuse to be amended to include parental alienation. We agree that parental alienation can have devastating consequences on victims of domestic abuse and their children. The approach we have taken in clause 1 is to define domestic abuse by reference to different types of abusive behaviours and not by reference to the form in which those behaviours are manifested. The list of behaviours includes psychological or emotional abuse; parental alienation is one manifestation of psychological or emotional abuse and will undoubtedly come under one of those headings. Rather than setting out a list of forms of abuse in clause 1, we believe the better approach is to address parental alienation in the statutory guidance provided for in clause 66. We aim to publish a draft of the guidance ahead of Report stage.

Offence of coercive or controlling behaviour

The shadow Home Secretary raised the issue of post-separation abuse. Section 76 of the Serious Crime Act 2015 provides for the offence of coercive or controlling behaviour in an intimate or family relationship. Our 2018 consultation on domestic abuse sought views on how the offence was operating. Responses suggested amending the current law to include abuse perpetrated by ex-partners or partners who were no longer living with the victim. Respondents wanted the offence to recognise that abuse can happen even after the relationship has ended or partners have separated. We are carrying out a review of the

⁶https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/753667/Improving_access_to_social_housing_for_victims_of_domestic_abuse.pdf

effectiveness of the coercive control offence to ensure that it is fit for purpose and that it adequately protects victims from abuse. We expect to report the outcome of the review later in the year.

Vicky Foxcroft raised the so-called “carer’s defence”. Section 76(8) to (10) of the 2015 Act provides for a limited defence where the accused believes he or she was acting in the best interests of the victim and can show that in the particular circumstances their behaviour was objectively reasonable. The defence is not available where the victim fears that physical violence will be used. This defence is intended to cover, for example, circumstances where a person was a carer for a mentally ill spouse, and by virtue of his or her medical condition, he or she had to be kept at home or compelled to take medication, for his or her own protection or in his or her own best interests. In this context, the person’s behaviour might be considered controlling, but would be reasonable under the circumstances. For these reasons we considered the defence to be an appropriate one; it is a matter for the court to determine in any particular case whether the defence has been made out. We would add that a similar defence is included in the equivalent Scottish legislation (section 6 of the Domestic Abuse (Scotland) Act 2018) and prospective Northern Ireland legislation (clause 12 of the Domestic Abuse and Family Proceedings Bill).

Register of serial stalkers and domestic abuse perpetrators

Yvette Cooper, Stella Creasy and Liz Saville Roberts argued for a bespoke register of serial perpetrators. We are not currently persuaded of the case for such a register. Our focus is to make better use of existing systems such as the Police National Computer or ViSOR (the dangerous persons database), which already enables the police to manage risk and share perpetrators’ details across criminal justice and other relevant agencies. Serial stalking and domestic abuse perpetrators are already on existing systems such as ViSOR and can be managed through Multi-Agency Public Protection Arrangements (MAPPA).

Deputy Chief Constable Louisa Rolfe, the National Police Chiefs’ Council (NPCC) lead on domestic abuse, addressed this issue in her oral evidence to the Public Bill Committee which began examining the Bill in the last session. In her evidence on 29 October 2019 (Official Report, col. 27/28), she said:

“I am concerned that a distinct register, not embedded within established police systems such as the police national computer, the police national database or the ViSOR— Violent and Sex Offender Register — system, adds unnecessary complexity, cost and, most importantly, risk. The Bichard inquiry following the tragic deaths in Soham recommended that information about dangerous perpetrators should not be dispersed over different systems. That is why the PND system was introduced. There are established ways of registering dangerous individuals on the police national database. The disclosure and barring scheme system has access to that database, as do other agencies such as probation.”

“My concern about the domestic abuse register is in the logistics and practicalities. Where do we draw the line? Do we intend to add 2 million individuals to that register each year? What are the risks and implications if your perpetrator is not on the register because you have not reported to the police? Would that offer a false sense of security to victims? I would be the first to say that there is more to do to use the systems we have effectively, but I would worry about creating a list that might present as a quick fix but does not address the risk.”

This is persuasive testimony from the NPCC to which we should pay particular regard and focus our attention on improving the existing systems for recording and sharing information about domestic abuse and stalking perpetrators.

Role of employers

Theresa May, Dawn Butler, Tracy Brabin and Sarah Owen all raised the issue of the role of employers in supporting victims of domestic abuse in the workplace. We continue to support the important work of the Employers' Initiative on Domestic Abuse to mobilise employers to work together and improve the support available to employees affected by domestic abuse. We expect all employers to be particularly sensitive when dealing with a colleague who is experiencing domestic abuse. Whilst we are not considering providing an explicit entitlement to paid leave from employment for victims of domestic abuse, we believe that existing employment rights already cover a broad range of circumstances which would assist people in this situation, such as Statutory Sick Pay where the employee is suffering from physical injury or psychological harm. We believe there is greater value in making flexible working the default and making it easier for all employees to vary their place, times and hours of work, including employees affected by domestic abuse. We are looking at our approach to flexible working more widely and, as we said in our manifesto and in the Queen's Speech, we will look to encourage flexible working and, subject to consultation, we will introduce measures to make it the default.

Istanbul Convention

Joanna Cherry, Stella Creasy, Dawn Butler and Christine Jardine asked about the ratification of the Istanbul Convention.

In accordance with the Preventing and Combating Violence Against Women and Domestic Violence (Ratification of Convention) Act 2017, the Government publishes an annual report on progress towards ratification of the Istanbul Convention. The most recent annual report was published on 31 October 2019.

As set out in these reports, the UK already complies with virtually all of the Convention's articles, and in some cases goes further than them. We have significantly strengthened the legislative framework; introduced new protective tools; and issued a range of guidance and support for frontline professionals

It is the case that the law in each part of the UK needs to be compliant with the provisions of the Convention before the UK as a whole can ratify.

A key element of the Convention is making sure that ratifying states can use their national law to prosecute offences required by the Convention when those offences are committed by their nationals or residents overseas (Article 44). With one proviso, Part 6 of the Bill includes necessary legislative measures on extraterritorial jurisdiction for all three legal jurisdictions of the UK.

In relation to Northern Ireland, the Domestic Abuse and Family Proceedings Bill currently before the Assembly provides for a new domestic abuse offence which would criminalise psychological violence in Northern Ireland, as required by Article 33 of the Convention. That Bill also takes extraterritorial jurisdiction in respect of the new offence and so, together with the provisions of Part 6 of the Westminster Bill, will ensure that the law in Northern Ireland meets the requirements of Article 44.

Stalking – Northern Ireland

Gavin Robinson raised the interrelationship between the provisions in the Bill relating to extraterritorial jurisdiction and planned legislation in Northern Ireland to strengthen the law to tackle stalking. The Minister of Justice, Naomi Long, has announced her intention to introduce a Stalking Bill to the Assembly this autumn. The Bill will, amongst other things, provide for a bespoke stalking offence in Northern Ireland and take extraterritorial jurisdiction in respect of that offence. A similar approach has been taken in the Domestic Abuse and Family Proceedings Bill already before the Assembly which provides for a domestic abuse offence (criminalising coercive or controlling behaviour) and takes extraterritorial jurisdiction in respect of that offence.

Universal Credit

Split payments

Joanna Cherry, along with other members, called for fundamental changes to the way Universal Credit is paid, proposing a policy of split payments by default. We absolutely share the determination to support and protect victims of domestic abuse, but do not believe that introducing split payments by default is an appropriate way forward. We believe that most couples can and want to manage their finances jointly without state intervention. Evidence shows that the vast majority of couples keep and manage their finances together, so payments into a single bank account for couples fit with how couples organise their finances.

We recognise, however, that there are circumstances where split payments are appropriate. Split payments and ratios are currently determined on a case by case basis depending on household circumstances, this approach is designed to provide extra support to those who are experiencing hardship whilst maintaining simplicity for others. Where a customer discloses that they are a victim of domestic abuse in an on-going relationship, where suitable, the Department for Work and Pensions can make split payments available to provide them with access to independent funds. It is important that we allow the individual who is experiencing domestic abuse to decide whether they think split payments will help their individual circumstances. We will also signpost individuals affected by abuse to specialist support and work with them to ensure they are aware of the support and easements available under Universal Credit. These include special provisions for temporary accommodation, easements to work conditionality and same day advances. The Department for Work and Pensions has completed a significant training programme to ensure that its Jobcentre customer service managers and work coaches have the right capability, tools and local relationships to support customers who are experiencing or fleeing domestic abuse.

To help those looking after family members we support the main carer in any household receiving the Universal Credit payment. Last summer, we changed the claimant messaging on the digital application form to encourage claimants in joint claims to nominate the bank account of the main carer to receive their Universal Credit payment.

Advances

Joanna Cherry also questioned why Universal Credit new claim advances are not paid as grants to survivors of domestic abuse. The Department for Work and Pensions is committed to providing the best possible support for all our customers, including the most

vulnerable in society such as those who are, or have been, victims of domestic abuse. If someone has fled domestic abuse, we can support them by helping them to open a new claim and can put in place a rapid advance where needed, which provides quicker access to funds.

Advances are a mechanism for getting claimants faster access to their entitlement; allowing claimants to receive 13 payments over 12 months with up to 12 months to repay the advance. The Government has taken steps to help ease the burden of debt repayments, reducing the normal maximum deduction from 40% to 30% of a claimant's standard allowance and extending the repayment period from six months to 12 months. The Budget 2020 set out that, from October 2021, the maximum level will be further reduced, so that standard deductions will not exceed 25% of a claimant's standard allowance and the repayment time will be further extended to 24 months. Claimants can also ask for repayments to be delayed for up to three months if they can't afford them. The Department for Work and Pensions is committed to ensuring that more people are aware of advances and that repayment is manageable.

A policy of non-repayable advances would present significant risks and challenges, including fraud risks and delivery barriers.

Attempted murder: recovery of joint assets

Stephanie Peacock raised the issue of how the courts deal with the apportionment of family assets where a person has been convicted of the attempted murder of their spouse.

In homicide cases, there is a long-established principle in the law of England and Wales – the forfeiture rule – that prevents a person who has unlawfully killed another from profiting from that person's death. The rule was given full statutory effect in the Forfeiture Act 1982, which provided that as well as referring to a person who had unlawfully killed another, it also included a person who had unlawfully aided, abetted, counselled or procured the death of that person.

The position is different in cases of attempted murder. When the court decides the division of finances following divorce it has a duty to consider the conduct of each party if it would be inequitable to disregard it. Courts can and do therefore take very serious conduct into account along with other circumstances, and they have been known to award all or virtually all of the assets to the victim. For example, in the case of *H v H (Financial Relief: Attempted Murder as Conduct)* [2005] EWHC 2911 (Fam), the husband was serving 12 years for attempted murder of his wife, and the court awarded her the whole of the jointly owned house, its contents and all the bank accounts and insurance policies.

Women and girls in ethnic communities

Pauline Latham referred to the issue of women and girls in ethnic communities. We agree that it would be wrong, and potentially dangerous, for victims of so-called honour-based abuse to suggest that they should speak about and report abuse to their families and/or communities. The Home Office campaign to help victims of domestic abuse does not suggest, and has never suggested, that victims should do so. The campaign directs victims of so-called honour-based abuse and forced marriage to contact Karma Nirvana's helpline, directs those concerned about victims or potential victims of FGM to contact the NSPCC's FGM helpline, and also highlights Southall Black Sisters and Imkaan as organisations which can support BAME victims of domestic abuse. It also highlights the

organisation Chayn, which provides help and resources in a number of languages. The Home Secretary's letter of 21 April to all MPs about the problem of hidden crimes during the pandemic invited us all to share the information within it across our communities, but that was intended in the broadest sense of all our constituents, rather than particular people within particular ethnic communities. The Home Office has also awarded a grant of up to £10,000 to Karma Nirvana to run a communications campaign aimed at victims of these crimes.

In the debate, it was further suggested that the Government's Forced Marriage Unit (FMU) believes that there are girls with forced marriage protection orders who are abroad, waiting to come back to the UK, with one person in a safe house. I can assure colleagues that the FMU is still able to offer assistance to British national victims overseas, despite the pandemic. As an example, the FMU recently rearranged the repatriation of three victims back to the UK. The FMU has publicised the fact that it remains able to offer assistance during the pandemic.

We are copying this letter to all MPs who spoke at Second Reading and placing a copy in the library of the House and on the Bill page of Gov.UK.

Yours sincerely,

A handwritten signature in purple ink that reads "Victoria Atkins".

Victoria Atkins MP

A handwritten signature in black ink that reads "Alex Chalk".

Alex Chalk MP