

Transforming the Response to Domestic Abuse Consultation

OPCC Consultation



Introduction

On 8 March 2017 the Government launched a consultation on domestic abuse. The responses to this consultation will be fundamental in shaping the Government's response to domestic abuse, in terms of the upcoming Domestic Violence and Abuse Bill, and the national response more generally.

This consultation asks for thoughts on key areas (legislative and non-legislative) which, if acted upon properly, can truly transform the response to domestic abuse for victims and work towards preventing offending. The Government's proposed Domestic Abuse Bill will introduce new Domestic Abuse Protection Orders to improve the protection of victims whose perpetrators are not in prison. The Bill will look to make the necessary changes to finally ratify the Istanbul Convention, which will give victims stronger protections on an international footing. A Domestic Abuse Commissioner will be introduced, who, if given enough power, can lead the fight against domestic abuse, monitoring and ensuring accountability of the national response.

A range of non-legislative measures could also be on the horizon, ensuring everybody fully understands domestic abuse, victims are adequately supported and perpetrators are properly dealt with to stop reoffending. However, none of this can be done without the input of those working on the ground, who have the knowledge and experience to make these ideas a reality.

The Government consultation is a lengthy document comprising 65 questions. It is crucial that every person has a say on the approach to domestic abuse in this country, which is why I have tried to summarise this document into 28 key questions. I ask all interested parties in Northumbria to feedback your thoughts on those questions which correspond to the areas you are most knowledgeable in and passionate about, by **21 May 2018**. I will then ensure that your thoughts are reflected in a regional submission from my office.

In addition I have been and will be attending several events to ensure that the voices of those in Northumbria are heard by the Government. This includes the Home Office's own consultation event on 16 May, as well as events being held by other organisations seeking to submit a solid response to the consultation –Northumbria Law School (3 May), Sisters for Change (8 May) and RESPECT (17 May).

I urge you all to take the time to share your views on how we can truly transform the response to domestic abuse and bring about lasting change for victim-survivors and all those affected.

Dame Vera Baird QC

OPCC Regional Consultation

PART 1: LEGISLATIVE MEASURES

(a) The Statutory Definition

The government proposes to enshrine the definition of domestic abuse introduced in 2012 into law. No changes are proposed to the existing definition, other than the addition of economic abuse. The definition would therefore read as follows:

Any incident or pattern of incidents of controlling, coercive, threatening behaviour, violence or abuse between those aged 16 or over who are, or have been, intimate partners or family members regardless of gender or sexual orientation.

The abuse can encompass, but is not limited to:

- *psychological*
- *physical*
- *sexual*
- *economic*
- *emotional*

Controlling behaviour

Controlling behaviour is a range of acts designed to make a person subordinate and/or dependent by isolating them from sources of support, exploiting their resources and capacities for personal gain, depriving them of the means needed for independence, resistance and escape and regulating their everyday behaviour.

Coercive behaviour

Coercive behaviour is an act or a pattern of acts of assault, threats, humiliation and intimidation or other abuse that is used to harm, punish, or frighten their victim.

Q1: What are your views on the proposed DA definition and the proposal to enshrine it in legislation?

Q2: What actions, if any, are needed to embed the definition in front line practice?

(b) The Domestic Abuse Protection Notice and Domestic Abuse Protection Order

The government intends to replace the existing Domestic Violence Protection Notice (DVPN) and Domestic Violence Protection Order (DVPO) with a Domestic Abuse Protection Notice (DAPN) and Domestic Abuse Protection Order (DAPO).

The new DAPN will be closely modelled on the existing DVPN. The only change is that it will be linked to the new statutory definition of DA, thereby extending its application to cases involving abuse other than violence or the threat of violence.

The new DAPO will also be extended in this way. The other key changes linked to the use of DAPOs that are being proposed by the government are:

- (a) Making it possible for the police to apply for an order at any time (rather than only after a DVPN has been attained, as is currently the case).
- (b) Making it possible for people other than the police to apply for an order – such as the victim themselves, an associate of the victim (such as a family member), by a party to court proceedings and other relevant third parties (such as social care professionals, specialist DA providers, probation officers etc.)
- (c) Widening the routes available for attaining an order (e.g. during the course of any family, civil or criminal proceedings).
- (d) Making it possible to impose positive requirements as well as prohibitions (e.g. to attend a perpetrator programme) as a condition of the order.
- (e) Requiring those subject to an order to notify the police when their circumstances change (such as when they change address or form a new intimate relationship).
- (f) Making breach of such an order a criminal offence (as well as/instead of a contempt of court).
- (g) Making it possible to impose electronic monitoring as part of the order.

Q3: What are your views on these proposals for the introduction of new DAPNs and DAPOs?

(c) The Istanbul Convention

The Istanbul Convention cannot be ratified in the UK until the government satisfies the requirements that all state parties must abide by: ensuring extraterritorial jurisdiction over offences that are included in the Convention (enabling the UK to prosecute in the UK those who commit such crimes overseas) and ensuring sexual harassment is subject to legal sanctions (criminal or other).

The government is seeking to progress the ratification of the Istanbul Convention by taking the following action:

- (a) Extending the government's ability to prosecute a range of sexual or violence offences committed by its citizens outside the UK (extraterritorial jurisdiction) - in controlling or coercive behaviour offences, stalking and harassment offences, ABH and GBH offences, rape and sexual assault offences, causing a person to engage in sexual activity without consent offences and procuring abortion offences
- (b) Using the civil law remedy for harassment generally (i.e. the Protection from Harassment Act 1997) to satisfy the convention's requirement that sexual harassment is made the subject of criminal or other (e.g. civil) legal sanctions

Q4: What are your views on the government's proposals to extend extraterritorial jurisdiction for certain crimes and to use the civil law remedy for harassment for sexual harassment, in order to ratify the Istanbul Convention?

(d) The DA Commissioner

The government is proposing to appoint an independent DA Commissioner to provide public leadership on the issue and play a key role in overseeing and monitoring the provision of DA services. They are therefore consulting on the powers and duties that this commissioner could/should have and on the practical issues/difficulties that public bodies may experience in complying with these powers.

These proposed powers could include:

- Mapping, monitoring and publishing information on how individual areas are meeting the requirements of the National Statement of Expectations;
- Overseeing compliance with the Specialist Domestic Abuse Courts Manual ;
- Overseeing the Domestic Homicide Review Quality Assurance process;
- Providing recommendations to national and local government on improving the response to domestic abuse, with a duty on the responsible person/organisation to respond to these recommendations;
- Publishing findings in reports, which can be laid before Parliament;
- Requiring local statutory agencies to cooperate and provide information;

Q5: What are your views on the government’s proposed role description for a Domestic Abuse Commissioner?

PART 2: NON-LEGISLATIVE MEASURES

(a) Raising Awareness

The government want to raise awareness and understanding of DA so that it can be more easily identified and victims can be better supported.

Q6. Do you have any thoughts on how this can best be done amongst:

- A. Professionals?**
- B. Children and young people?**
- C. The general public?**

(b) Protecting & Supporting Victims (Funding Priorities)

The government is seeking to ensure that the funding they have available will be spent in those area of the VAWG agenda that are seen as a priority

Q7. What do you think is/are the priority area(s) for government funding on DA?

(c) Protecting & Supporting Victims (M-A Work)

The government are proposing that there should be more effective multi-agency working. One suggestion is that women-only services should have professionals linked to them – e.g. GPs, mental health and drug and alcohol practitioners.

Q8. What do you think about the government’s proposal regarding linking professionals to women-only services? Will this meet the need for greater multi-agency working in this area? Please feel free to share any ideas/best practice examples of multi-agency working in relation to domestic abuse.

(d) Protecting & Supporting Victims (Complex Needs)

The government wants to better support victims who face multiple barriers to accessing the support they need and women offenders/women at risk of offending, who have a history of domestic or other abuse.

Q9. How do you suggest the government can best support victims with complex and/or offending related needs?

(e) Protecting & Supporting Victims (No Recourse to Public Funds)

The Destitute Domestic Violence Concession (DDVC) is currently available to provide eligible individuals with a period of three months' leave outside the immigration rules with access to public funds in order to support them to amongst other things make an application for indefinite leave to remain.

The government proposes to review who may be eligible for support through the DDVC and to look at other ways to protect and support victims of DA with no recourse to public funds.

Q10. How do you propose the government can best extend support to victims of DA who have no recourse to public funds?

(f) Protecting & Supporting Victims – Anonymous Voter Registration

When an individual applies to register anonymously, they must include evidence that their safety, or the safety of someone who lives at the same address, would be put at risk if their name and address appeared on the electoral register. In the past this has not been easy for domestic abuse survivors.

In September 2017, the Government announced a package of legislative changes to make registering to vote anonymously a little easier. The changes aim to help survivors of domestic abuse to prove their safety is at risk by:

- Broadening the range of people able to formally certify that an applicant's safety is at risk (to include refuge managers, health professionals and police inspectors)
- Expanding the list of documentary evidence to include domestic violence protection orders (DVPOs), and Female Genital Mutilation (FGM) protection orders.

Q11. What do you think of the proposed changes to anonymous voter registration?

Q12. How else do you think the government can ensure victims' addresses/locations are protected?

(g) Protecting & Supporting Victims – The DV Disclosure Scheme

The Domestic Violence Disclosure Scheme (DVDS), or Clare's Law, is currently based on the police's common law powers and is underpinned by detailed guidance. Any disclosure under the scheme must be within the existing legal framework and, in particular, have due regard to established case law, the Human Rights Act 1998 and the Data Protection Act. The scheme provides a set of recognised procedures for sharing information with a victim or potential victim, regarding their partner's previous violent offences and spent convictions.

Her Majesty's Inspectorate of Constabulary and Fire and Rescue Services' (HMICFRS) domestic abuse thematic report in 2017 highlighted a number of concerns with the current scheme. They recommended that:

- Police forces need to raise awareness of the DVDS amongst victims
- They also need to ensure victims are linked into specialist domestic abuse organizations who can provide additional support and advice.

- There is a wider need to address the inconsistencies surrounding the use of the scheme by police forces, noting the low volume of disclosures and the discrepancy between the use of ‘right to know’ and ‘right to ask’ disclosures.

To address these issues, the government proposes to put the guidance underpinning the scheme into law. This would place a legal duty on the police to have regard to the guidance. The government believe that this would strengthen the visibility, and therefore use, of the scheme, resulting in more victims and prospective victims being warned of the dangers posed by a partner and thereby preventing further instances of abuse.

Q13. What is your view on the Domestic Violence Disclosure Scheme as it currently works? Do you have any case studies which demonstrate its effectiveness or non-effectiveness?

Q14. Do you have any suggestions on how to improve uptake of the scheme, if you feel this is appropriate?

Q15. Do you agree that placing the guidance underpinning the scheme into law will address issues with the scheme? If not, what changes do you propose to enable the scheme to work more effectively to protect victims?

(h) Protecting & Supporting Victims – Other

The government is making a variety of proposals around making victims safer online and protecting them against technology-based abuse. Proposals include raising awareness of the use of spyware or GPS locators on phone or computers by perpetrators.

Q16. What evidence of technology-based abuse are you aware of and what do you think we need to do to tackle this?

(i) Pursuing & Deterring Perpetrators (General)

Coercive and controlling behaviour was criminalised in 2015. Since then over 300 cases have been prosecuted.

Q17. Do you think there is further action the government could take to strengthen the effectiveness of the controlling or coercive behaviour legislation?

(j) Pursue & Deter Perpetrators (Witness Support & Special Measures)

The government has introduced a range of special measures to support victims through the criminal justice process. However, they are aware that these are not always used and victims continue to disengage from the criminal justice process.

Q18. The government are interested to know what else can be done to support victims through the criminal justice system. What are your views?

(k) Pursue & Deter Perpetrators (Family Court)

The government has worked closely with the Family Procedure Rule Committee to introduce new rules of court and a new practice direction relating to vulnerable persons involved in family proceedings. These new rules and direction require the court to consider whether a party’s participation in court proceedings is likely to be diminished by reason of vulnerability, or if the quality of the evidence of a party or witness is

likely to be diminished by reason of vulnerability. If so, the court must consider whether the person needs the assistance of a particular measure, such as a protective screen or a video link. The government has also developed fresh training for family court staff to help them identify and support vulnerable court users.

Q19. The government is interested to know what more the family court can learn from the criminal court, regarding the treatment of vulnerable people. What are your views?

(I) Pursue & Deter Perpetrators (Sentencing)

The government recently introduced new Sentencing Guidelines for domestic abuse offences. The guidelines outline the seriousness of domestic abuse and state that:

“The domestic context of the offending behaviour makes the offending more serious because it represents a violation of the trust that normally exists between people in an intimate or family relationship. Additionally, there may be a continuing threat to the victim’s safety, and in the worst cases a threat to their life or the lives of others around them.”

The guidelines apply to sentencing of all offences involving domestic abuse, making the offence more serious and therefore likely to lead to a higher sentence. They also highlight the need to consider the impact of the offence on children (by direct or indirect exposure to domestic abuse) or where contact arrangements with children as used to instigate an offence.

However, the government wants to do more to strengthen the law on DA. One suggestion is to create a statutory aggravating factor that would apply to all offences in sentencing, similar to those already in law for hate crimes (where consideration is given to the offender’s hostility towards the victim based on a particular protected characteristic). The aggravating factor could be drafted to include, for example, behaviour involving, or with particular impact on, a child. Under this approach, courts would consider any aggravating factors and increase sentences accordingly within the statutory maximum penalty available for the offence.

However, a statutory aggravating factor would require the domestic abuse aggravation to be established beyond reasonable doubt, which risks placing additional evidential burdens on the police and Crown Prosecution Service (where the factual circumstances are disputed) and increases the potential for more defendants to plead not guilty to the charges.

Q20. How else could the government ensure that the seriousness of domestic abuse is fully reflected in the sentencing of offenders and/or other court activities?

Q21. How can the impact of domestic abuse on children be more fully recognised and addressed in the criminal justice process? One proposal is to create a statutory aggravating factor – do you agree with this? Do you think there other changes or proposals that should be considered?

Pursue & Deter Perpetrators (Conditional Cautioning)

Currently the Director of Public Prosecution’s guidance restricts the use of conditional cautions for domestic abuse, saying they will rarely be appropriate (i.e. only in exceptional circumstances relating to the nature of the crime or the circumstances of the offender, and only with Crown Prosecution Service approval).

However, Project CARA has recently been piloted, where permission was given for wider use of conditional cautions for what are described as ‘lower-level, normally first-time domestic abuse incidents’. The pilot suggests that an effective rehabilitation programme delivered at an early stage to low-risk offenders can reduce harm and the prevalence and frequency of reoffending. The evaluation of CARA recommends that there should be more widespread testing of an effective rehabilitative approach for domestic abuse offenders to increase the evidence base.

Q22. What are your views on Government’s proposed rollout of conditional cautions with attached rehabilitation programmes for what they perceive to be ‘first time, low level’ domestic abuse offenders?

Pursue & Deter Perpetrators (M-A Offender Management)

The National Probation Service (NPS) and Community Rehabilitation Companies (CRCs) are both responsible for completing risk assessments and managing the risk offenders pose in order to enforce the sentence of a court. This includes the management of domestic abuse offenders, both in the community and in custody. In addition, some offenders may be managed by the police and the NPS under Multi-Agency Public Protection Arrangements (MAPPA), where the risk they pose makes this necessary.

The government are also proposing the introduction of new Domestic Abuse Protection Orders to provide police and courts with a new tool to place conditions on people who pose a risk of further abuse (as aforementioned). These conditions could include attendance on a perpetrator programme.

Q23. What are your thoughts on how serial and repeat offenders can be better managed, both within and out-with the criminal justice system?

Pursue & Deter Perpetrators (Programmes & Interventions)

Respect is a nationally recognised UK quality and safety standard which accredits organisations which offer safe and effective interventions with domestic abuse perpetrators. An example of such a programme is the ‘Drive Project’ which supports and challenges high-risk and serial perpetrators to change their behaviour. Another is the MATAAC intervention developed in Northumbria and now being piloted in 5 other force areas. Both of these projects offer respect-accredited 121 and group work interventions for domestic abuse perpetrators (and their victims). Both are available to perpetrators pre-conviction.

Post-conviction, there are also a number of programmes for domestic abuse perpetrators that seek to reduce their risk of reoffending. These programmes are accredited by the Correctional Services Accreditation and Advice Panel (CSAAP) and are targeted at perpetrators in custody and in the community. Two such accredited programmes are ‘Building Better Relationships’ and ‘Kaizen’. Building Better Relationships aims to reduce domestic abuse in medium to high-risk adult male offenders. Kaizen is being rolled out in custody for adult males who present a high or very high level of risk and who typically have convictions for either sexual offences, violent offences, or offences in a domestic abuse context.

Q24. The Government is interested in working with more perpetrators of DA to address their behaviour, either in prison or in community (e.g. as part of community order). What do you think is the best way to do this?

Improve Performance (General)

The government wants to improve the quality and accessibility of the national data currently produced on domestic abuse

Q25. What are the key issues here? What improvements would you like to see?

Improve Performance (Learning From Domestic Homicide Reviews)

Poor information sharing practices and a lack of understanding of/training on the signs of domestic abuse and its impact on adult/child victims are all common themes that emerge from DHRs. The government wants to ensure learning from Domestic Homicide Reviews (DHRs) is both understood and acted on. One proposal is that the new Domestic Abuse Commissioner could routinely collate, quality assure and share the lessons learnt from DHRs.

Q26. What do you think of this proposal? What else, if anything, could be done to ensure that the recommendations made in a DHR are fully acted upon?

Improve Performance (Sharing Best Practice)

The government is looking to identify effective practice in domestic abuse commissioning and service delivery.

Q27. What, for you, are the key issues in this area and what is needed to address them?

What's missing?

Q28. Is there anything else that you would like to mention but have not had the chance to raise?

Full list of questions

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