Joint Committee on Human Rights inquiry into the Draft Domestic Violence and Abuse Bill
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This response is submitted on behalf of:

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"Does the draft Domestic Abuse Bill adequately protect the rights of victims and perpetrators?"

We welcome the draft bill for its potential to strengthen the government's response to domestic abuse. However, for the UK to be fully compliant with the Istanbul Convention we believe the government has a duty to ensure that both new and existing legislation and laws are effective in practice and that all victims of abuse, in whatever context they experience harm, are adequately protected and given unfettered access to justice.

It is in this context, that we seek to highlight three key areas where more is needed to ensure that the draft domestic abuse bill adequately protects the rights of (domestic) abuse victims.

1. Addressing the needs of victims with insecure immigration status/no recourse to public funds

The Istanbul Convention specifies that victims of VAWG must be protected from abuse regardless of their immigration status. We raised in our response to the Government's consultation concerns about a group of women for whom support, protection and access to justice was being limited by their immigration status. These included:

(a) THE NEED TO EXTEND ELIGIBILITY TO THE DESTITUTE DOMESTIC VIOLENCE CONCESSION (DDVC)

For a woman with insecure immigration status, any leave to remain is conditional on being able to maintain themselves (and any dependants) without recourse to public funds. The only safety net is to apply for the DDVC which allows access to public funds for three months.

But eligibility is limited to migrant women in the UK with leave as the partner of a British Citizen or of someone with permanent leave to remain. Thus undocumented migrant women, refugees, asylum seekers and other groups are excluded

We recommended that the government extend the DDVC to all VAWG survivors with insecure immigration status and that the period of funded support should be extended from three to six months.

The government has accepted the need to consider this but a timeframe and mechanism for undertaking a review are urgently required.

It has refused to extend the period of funding from 3 to 6 months on the grounds that '*the vast majority of applications for indefinite leave to remain made on the basis of suffering domestic abuse are resolved quickly and well within three months'*. This has not been the experience of local specialist services and takes no account of the potential impact of trauma on a victim's ability to take steps to secure protection for themselves and their children.

(b) ENSURING ADEQUATE REFUGE PROVISION

For migrant women without children, the 'no recourse to public funds' rules means that they are unable to claim housing benefit to access a refuge For those with dependent children, there is sometimes limited financial support from Children's Services.

We recommended that the government urgently address how to resource refuge accommodation for migrant women but the response has simply been that DDVC can 'help fund alternative accommodation away from their abuser'. We therefore reiterate our concern and the ongoing plight of asylum seekers who are unable to access refuge services when they need to flee their (HO funded) accommodation (despite three years of stakeholder discussions between specialist services and the Home Office (ROW, 2018)

(c) PRIORITISING SAFETY OVER ENFORCEMENT

Both locally and nationally there has been evidence that women reporting domestic and/or sexual violence have been subjected to of immigration enforcement action. They have been denied access to justice and clearly many more women will be too afraid to speak out.

We recommended that the government develop 'firewalls' between critical public services and immigration control so that the safety of women was given higher priority than immigration status.

(D) EXTENDING LEGAL AID ENTITLEMENT

VAWG and other specialist services can provide countless examples of UK immigration law and policy being used by perpetrators to control their victims. This includes men who use their role as a visa sponsor to threaten visa cancellation and deportation and men who abandon their wives overseas and ask the Home Office to revoke their leave to remain for alleged marital breakdown.

Without legal aid (or a successful application for 'exceptional case funding') to obtain advice and assistance, such victims are left unprotected and without legal redress.

2. Protecting Victims of Domestic and Sexual Violence Within The Criminal Justice System

The Gillen Review recommends that complainants in sexual violence cases, many of which are integrally linked with domestic abuse, should receive independent legal advice and representation (ILR) to represent their interests where their medical/other personal records or previous sexual history experience may be brought up. Independent representation for specific purposes is already available in Ireland, suggesting it is no threat to the adversarial system. The case for ILR is also being built in Scotland, the former Labour Government put ILR into its manifesto in 2005 and the Stern Review advocated its importance in 2010.

We support this recommendation and are piloting the use of qualified solicitors as 'Sexual Violence Complainants' Advocates' (SVCAs), funded by the Home Office, in Northumbria.

The arguments in favour of ILR focus on how complainants in sexual violence cases are routinely required to 'consent' to extensive disclosure of their personal records (financial, medical, educational etc.), regardless of when the offence occurred and the age of the complainant, and to accept that any information found to show something adverse to their character, however irrelevant to the issues in the case, can and will be disclosed to the defence.

Aside from being Inconsistent with the Criminal Procedure and Investigations Act 1996 which authorises merely requires the pursuit of all 'reasonable lines of enquiry' and sharing of only 'relevant' information, this over-disclosure is simply not required in any other kind of case but sex and domestic abuse cases, which are closely linked in that partners or ex-partners are frequent defendants in sex cases. One has to ask why it is required at all. It is capable of contravention of complainants' Article 8 rights to privacy and confidentially, which rights are not considered at all in the current process. Sexual offence complainants are asked to sign a 'Stafford statement', usually at the end of their video-recorded interview, which provides blanket consent for the police to obtain and disclose to the CPS and defence, <u>any</u> material held by third parties. This is highly unlikely to be valid consent, in particular given the timing of it being required and the lack of information which accompanies the request. It is currently the subject of an ICO investigation.

The case of *R (B) v Stafford Combined Court [2007] 1 All ER* provides that complainant should be entitled to a representative to voice any objections to disclosure of their personal material to the defence, in court. The use of Stafford statements is intended to get complainants, wholly unaware of those rights, to sign to oust them by agreeing at the outset to disclosure of anything in the

possession of any organization mentioned on the Stafford statement. An example of a Stafford statement is enclosed. If a complainant does not sign, the CPS will usually, however strong the case, simply end the prosecution, with no regard to any argument under Article 8, thus potentially infringing the complainants human rights as well as jeopardising the public by risking the abandonment of sound cases of serious sexual offending.

3. Addressing Concerns regarding the New Domestic Abuse Protection Order

We support the creation of the DAPO recommending that the victim's wishes should lie at the heart of decision making, emphasising the need for automatic referral to support services, and the need to address the cost of applying, monitoring and enforcing orders. But there are further issues:

(a) THE ABSENCE OF LEGAL REPRESENTATION FOR VICTIMS

As Rights of Women (ROW) have highlighted, victims of domestic abuse are not necessarily involved in prosecutions though IDVA services can have some input on their behalf in the Specialist Domestic Abuse Courts,

It is therefore not clear how the government's reassurance that 'it will be a requirement in legislation for the courts to take the victims wishes into account' can be put into practice. It is similarly unclear how that will be achieved in third party applications to the family court where there is not even the potential for IDVA involvement.

(b) THE NEED TO ADDRESS THE CURRENT LIMITATIONS ON LEGAL AID

These are already well documented as a human rights issue, but the introduction of a new order with the availability of positive requirements and the advent of third party applications raises other issues. ROW have highlighted that the availability of orders with positive requirement is likely to result in more contested hearings, where the defendant may receive legal aid (because of the impact on freedom of movement) but the victim may not. There are also concerns that third party applications without prior consultation with the victim could result in her being named as a respondent alongside her abuser but without the legal aid which the abuser will be able to access.

There are obvious threats here to victim agency and choice requiring a review of current restrictions on legal aid for DA victims lest they undermine both the rights to safety and to secure justice.