

Order of the Day

1. Domestic Abuse Bill 2019 – In Committee of the Whole Council

The President: We move to Item 1 on our Order Paper, the Domestic Abuse Bill 2019.

10 We are at this session this morning going to hear oral evidence as a Committee of the Whole Council. This is before we consider the clauses stage, Committee of the Whole Council this morning.

Written evidence laid before the Committee

The President: First I invite the Clerk to lay any written evidence before the Committee.

The Clerk: Thank you, Mr President. I lay before the Committee the following papers:

(a) An email of 5 February 2020 09:23 from Tamasin Wedgwood
<http://www.tynwald.org.im/business/vp/Documents/2020-PP-0021.pdf>

(b) An email of 5 February 2020 09:47 from Tamasin Wedgwood, with attachment
<http://www.tynwald.org.im/business/vp/Documents/2020-PP-0022.pdf>

(c) An email of 10 February 2020 20:22 from Dr Eileen Vizard, with attachments
<http://www.tynwald.org.im/business/vp/Documents/2020-PP-0023.pdf>

Procedural

The President: Thank you.

15 Now, Hon. Members, for each witness this morning there is a lead Member of the Legislative Council who has taken responsibility for inviting the witness and giving them advance notice of the questions they may be asked.

20 Our video conference facility, at present, only allows the witness to see three of us, me and the Members to my immediate left and immediate right, and therefore I have invited the mover of the Bill to sit in one of these seats, Miss August-Hanson, and the lead MLC for each witness to sit in the other seat.

EVIDENCE OF
Ms Rachel Horman,
Solicitor, Watson Ramsbottom Ltd and
Chair of Paladin National Stalking Advocacy Service

The President: Now, I would like to welcome, as we start, with Rachel Horman, who joins us by video link. Good morning.

25 **Ms Horman:** Good morning, thank you for having me.

The President: The lead MLC is Mrs Lord-Brennan, and she is sitting next to me.

Ms Horman, could I ask first of all, for the record, for you to identify yourself and then go on, if you wish, to make any opening statement.

30 Thank you.

Ms Horman: Yes, my name is Rachel Horman and I am a solicitor in Lancashire in England. I specialise in family law in the main, in particular in relation to domestic abuse, coercive control and stalking. I have practiced in this area for 20 years now.

35 I am also the Chair of Paladin, which is the National Stalking Advocacy Service, who represent and advocate on behalf of high-risk stalking victims throughout England and Wales.

The President: Thank you very much.

40 Would you like to make any further opening statement before I call on the Hon. Member to ask the first question?

Ms Horman: Not at this stage, no.

The President: Thank you very much.

45 In that case, I invite Mrs Lord-Brennan to ask her first question.

Mrs Lord-Brennan: Thank you, Mr President, and thank you very much, Rachel, for agreeing to talk to the Legislative Council today to help our consideration in the Domestic Abuse Bill as part of this Committee.

50 First of all, turning to the topic of stalking, could you explain what risks are presented with not including stalking in this Bill?

Ms Horman: Yes, that was one of the first things that I noticed about the Bill, that I was surprised that it did not contain stalking.

55 I think Northern Ireland this morning have announced that they will include stalking and that they will have a stalking law, it is something that they have been talking about for quite some time. And in England certainly we have noticed that when we had the Stalking Law from 2012 it certainly led to an increase in reporting and we found that before then the only legislation we had in England and Wales was harassment, and I understand that you also have a criminal offence of harassment. But in my view, that is very different to stalking. I think if you were to be
60 faced with two people, one with a conviction for harassment and one with a conviction for stalking, I think you would be more concerned about the stalker, and quite rightly, because they are two very different crimes.

65 Harassment, really, was often used to deal with much lower level type behaviour, things like disputes between neighbours about the size of a hedge, for example, and that kind of thing, whereas stalking is very different, it is very dangerous and often leads to homicide. So I do think they need to be treated very differently and named very differently. I think most people who are being stalked would not really call it harassment. Stalking is about fixation and obsession whereas harassment is not.

70 The other thing that I think is important is that there is a distinction in terms of sentencing with regard to the two crimes because stalking is far more serious than harassment. When you look at domestic violence homicides, in virtually every single one, there has been stalking in the run up to the homicide. So if we can sort out the stalking we can effectively prevent the homicides, in my view, and I think that is really important.

75 So I would encourage you to consider having a specific offence of stalking because I think it switches on the Police's mind to that behaviour when you use that word and I think it is important that we call it what it is.

80 The other thing about it is that your current Bill, whilst I realise some elements of it could cover stalking-type behaviour, that would only be for people who were associated persons that had been connected to each other in a domestic violence context. It would not cover strangers stalking, and that again is something that is massively on the increase and again can go on for many years.

85 We have seen with the advent of Twitter, I am sure you yourselves have had some experience of unwanted contact on Twitter, and perhaps threats or being followed etc., that is on the increase. And with the case in England of Jo Cox, which I am sure you are aware about, I think it is something that really should be on the agenda to look at protecting people who are not associated with their stalker, and it may be a stranger but it is still very unwanted.

90 The newsreader, Emily Maitlis, for example, has been in the news recently, she has been stalked by her stalker for over 20 years, and he has been in and out of the criminal justice system, but it has a huge impact on her life. So I think that if there is not any legislation to deal with that then that would be a big gap for me and, as I say, potentially it could lead to homicide.

Mrs Lord-Brennan: Okay.

95 And so specifically in the context of the Domestic Abuse Bill, could you give any examples of how the inclusion of stalking within the particular context of domestic abuse and this Bill might have some benefit, and perhaps include some examples of the link as you see them between stalking and domestic abuse and related offences?

100 **Ms Horman:** Well, again obviously with my experience as a lawyer is in relation to England and Wales, but the law in England and Wales, the way it is worded, is that stalking is an offence that can happen after separation, it cannot happen during a relationship. During a relationship that would be classified as coercive control, so stalking really is about the behaviour afterwards.

105 I noticed that within your Domestic Abuse Bill there is provision for prosecutions to take place for 10 years after separation. So if they have been in a relationship 10 years ago, up to 10 years ago, then I can see that your legislation can protect them but it still does not name the problem, which is stalking. So I think many people will feel that it does not help them, because I think it is important that we help victims connect with the law by using the same words that they do for the problems that they are experiencing.

110 And what we see with stalking, with it being about fixation and obsession, this is not something that stops two years, three years, even 10 years after separation, in many cases it goes on for longer than that. So for your legislation to stop the protection at 10 years, I do not fully understand that, and I think that there would be a lot of, mainly women – because it does affect women more than men – who would fall outside of that and would be at risk if you do not include it.

115 **Mrs Lord-Brennan:** Okay, so it is do potentially with that post-separation behaviour (**Ms Horman:** Yes.) and also helping victims name what is happening and more closely connect with the law. Thank you.

120 The next question is around stalking protection orders; in terms of the UK I am not sure how long they have been a measure that is available for, are there any issues that exist with them as you see them or could they be improved?

125 **Ms Horman:** We have only had them for a few weeks so it really is too early to say. I think provision on the whole was quite brave and very different to many things that we have had before in England and Wales, so on the whole I am in support of it.

I am concerned that these protection orders may be used instead of prosecutions, and I think that would be a huge mistake and potentially again would put victims at risk. By having a stalking protection order it does not give the perpetrator a criminal conviction, they do not have a criminal record, so to some extent it becomes invisible. Clearly, it will be on the Police

130 computers but it cannot be classified as a criminal record, and I think it is important that
perpetrators are held to account with prosecutions and convictions. So I think they need to be
used as well as convictions.

Certainly in England and Wales, we have huge issues at the moment with bail, because bail
was very much reduced a couple of years ago, so I think that these orders will plug the gap until
135 the bail is hopefully changed back to offer more protection than in the very short period it does
at present, which tends to be around 28 days, which is not long enough.

So I think they are useful, I think it is good that the breach of them is a criminal offence
because I think that is important. But, like I say, I think it really is about the Police using them in
addition, and to some extent I have seen cases with ... Obviously I cannot comment on current
140 usage of these because they are too new, but in terms of the previous domestic violence
protection orders we have had, I have seen several cases where they have been used instead of
criminal prosecutions, and I do really think that that would be a mistake.

The current stalking protection orders as well only cover stalking, so in England and Wales
that would not cover a situation where the parties have been in a relationship up to that point,
145 because that behaviour would not be classified as stalking. I realise that in England and Wales
we are looking at bringing in ... by domestic violence protection orders. But I would have liked to
have seen them combined to some extent at this point because the legislation is different. For
example, on the stalking protection orders the minimum period is two years, and I think that is
really useful because I think sometimes these orders are too short generally. If we look at things
150 like non-molestation orders, that are used in the family courts, they used to be granted when I
first started practicing, they were under a different name, but they were only granted for three
months and it just was not long enough. Now, on average, I would say they are probably around
six months, but really I do think the minimum of two years is really useful because it is a
minimum, it can be longer. And I think it signifies the seriousness of this issue and that does not
155 just go away overnight, after separation. The domestic violence protection orders, as drafted in
the Bill, do not contain a minimum and I do think that is a mistake.

Mrs Lord-Brennan: Okay, thank you very much.

In terms of the definition of stalking, could you make some comment as to whether it should
160 be defined, is it easy to define that behaviour?

Ms Horman: Well, at Paladin, my charity, we have a definition that we work with, and I will
just give you that definition: it is a pattern of unwanted, fixated and obsessive behaviour which
is intrusive and causes fear of violence or serious alarm or distress.

165 Under English law it is not defined, and there was a lot of discussion at the time about
whether it should be or should not be, and I think it is right that it is not defined because
otherwise it cannot keep up with the changes in technology that stalkers use to carry out their
behaviour.

Ten years ago the types of technology we were using were completely different to the ones
170 we use now and the ones that stalkers use now. I mean, we could not even comprehend 10 to
15 years ago the types of technology ... even the smart heating type technology we have in our
homes that are used by stalkers, smart TV is used by stalkers, stalkers being able to switch on
the camera on your mobile phone remotely so that they can actually see what you are doing and
listen to what you are doing. I think 15 years ago we would never have imagined that that was
175 possible. So I think if we start to narrowly define stalking it will be a mistake and very quickly it
will become out of date.

The other thing about it is that stalkers will look at that and will work their way round it, and
really we want the legislation to be as wide as it is possible to protect as many people as possible
from this behaviour, which is very different in every case.

180 Stalking is targeting against that victim and they will target what that victim holds dear, so it will be very different from one person to another. It might be that for somebody the main thing in their life is their job, the stalker will target their employment.

I had a client once who said to me that she had separated from a partner; she reported to me that she had been to the Police to report a fight, she was absolutely terrified. Her ex-partner she felt was stalking her, and the incident that made her terrified was the fact that she received through the post a brochure from the North Yorkshire Tourist Board, that was it, it just had her name and address on the envelope and inside was that brochure. Most people would not be distressed by that, but for her it meant so much. And with stalking you have to look at the context to it and you have to delve down into it rather than just looking at that specific incident in isolation. What that meant to her was very serious, her ex-partner had been very violent to her all through their relationship, he had stalked her many times he told her, 'If you ever leave me I will find you, I will kill you, and I will bury you on the North Yorkshire Moors', and on the front of the brochure was the North Yorkshire Moors, so to her that was a very clear threat to kill, and it had been sent to her from him, it also meant that he had found her address. So without delving down into that it may seem innocuous, and when she reported that to the Police you can imagine, unfortunately, she did not get a very good response initially from it. It takes time sometimes to look at why victims are scared.

So I think the more we define it the fewer victims we will help, so I do think it is a mistake. I think what is important with all of this – with the whole Domestic Abuse Bill, both with yourselves and in England and Wales – the most important thing is to dedicate resources to training because it does not matter how many laws we have, if the Police and the judiciary and the CPS do not understand – of course they understand the law – but if they do not understand the dynamics of stalking, the dynamics of domestic abuse and in particular, I think, coercive control and stalking. I think generally the Police and judiciary they do understand physical abuse now, and they understand that if somebody walks into a police station with a black eye generally that will be taken seriously. It is the non-physical incidents, I think, which are treated far less seriously. They are completely minimised and I think the risk is totally misunderstood and actually stalking and coercive control are the things that really we should be more worried about than the black eye because coercive control is seven times more reliable as an indicator of homicide and potential homicide, than physical abuse. So I feel that the whole system obsesses about physical abuse and totally ignores coercive control and stalking, and that is where we go wrong. And until we can get people within the criminal and family court system to understand that then none of this will have any impact.

We do have stalking legislation in England and Wales, and it is being used to some extent, but it is not being used anywhere near enough, and I think that is down, in part, to training and in part down to attitude with the Police because these crimes affect women way more than men, and I think that also needs to be recognised. That it is a crime of misogyny quite often and the impact on women is huge – two women a week are still being murdered – that statistic has not changed over the last 30 years, yet we have put more resources into domestic abuse, we have had a raft of legislation, but that statistic remains the same. My view is it is because people do not understand coercive control and stalking, and they are the real red flags, and nobody understands that.

Mrs Lord-Brennan: Okay, thank you very much.

225 Turning next to the specifics of the Bill, how might clause 5(1)(e) be improved?

Ms Horman: I think I have partly mentioned this previously, haven't I? This is the section with regard to the connection between the people within a relationship and within that your legislation states that they will be connected people if they have been in a relationship within the last 10 years. Again, my issue would be what happens if it was 11 years? Are we seriously going to say that that person is excluded from protection? And if somebody is still being stalked

after 10 years, because that is what that behaviour is, I know you do not call it that, but they are being terrorised after separation and at 11 years we do not do anything about that, that cannot be right. To me, that seems wrong and I think it would put women at risk and men, but mainly women.

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With stalking it is not uncommon for these cases to go on for over 10 years. I know that might feel as though it beggars belief but it is true. Stalking can go on for many years, usually because it has not been nipped in the bud and there has not been enough of a robust approach taken to it, but nonetheless it does go up for over 10 years, and I think it would be wrong to exclude it there.

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And again, as I have said before, I do think it is important that we call it stalking because I think there is more of a connect then, not just for the victim to describe what is happening to them, but also for people like the Police, because at the end of the day the Police go out to these incidents, and we do criticise them a lot, but they have to deal with dozens and dozens of different crimes. Domestic abuse, stalking and coercive control is something that they will be dealing with a lot so I think that there should be priority attached to training in relation to that. There is a call to the Police in England every 30 seconds about domestic abuse, so it is something that we would be foolish not to put resources into.

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But I think it is wrong to exclude over 10 years.

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Mrs Lord-Brennan: Okay.

Turning next to the patterns of behaviour, do you think the Bill is sufficient in addressing patterns of behaviour or could it be improved?

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Ms Horman: Well, obviously the domestic abuse crime element does not mention pattern of behaviour. The way it is currently drafted would allow a one-off incident to be prosecuted.

To me, domestic abuse is a pattern of behaviour. I do not think I have ever dealt with a case in over 20 years where there has just been one incident. Domestic abuse is a pattern that is the essence of it, and certainly with coercive control that is described as a pattern of behaviour.

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I think that there is a risk if you do not ask for it to be made into a pattern of behaviour in law, there is a risk that these incidents will be dealt with in isolation, and that is a real problem. The stalking legislation in England requires more than one incident because otherwise all that we are doing is dealing with the individual incident, which on their own may seem like nothing, it might be classified often as criminal damage or different, usually quite low-level incidents, but it is only when we join them all together, at Paladin we call it joining the dots, and then looking at them, not in isolation, but all together. And when you look at the totality of the behaviour then you really get a flavour for the impact on the victim and the total obsession and obsessive nature of the perpetrator, and only then will it be taken seriously, because if you prosecute incidents in isolation you just do not get the impact of the reality of the situation for the victim.

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There will be incidents every day or several times a day, and to just pick one out in isolation I think misses the point.

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Mrs Lord-Brennan: Okay, thank you.

Turning now to a matter to do with cross-examination, based on your experience, do you have any comment on clause 43 and 44 in respect of cross-examination?

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Ms Horman: Yes and I have similar comments about the Bill in England and Wales. This is a real problem, particularly in the family court with the victim being cross-examined by perpetrators about sexual offences which the victim alleges the perpetrator has carried out against them.

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Can you imagine anything worse than being cross-examined in detail about the detail of a rape by your rapist? To me, it is almost as bad as the rape itself. You are putting the victim through another ordeal. I think giving evidence in court in any situation is stressful, but to give

285 evidence about that type of incident, when your perpetrator is sat in front of you and is not only
sat in front of you but asking you the questions, I think it is a horrific prospect and it does need
to change.

Quite rightly, this Bill does attempt to change that, I say attempt because again, just like the
one in England, there are too many provisos with it, in mind view, that if they have got an
injunction in England or if they have got a conviction or a caution then it cannot happen,
290 otherwise it is very much discretionary. Well, we have had a discretionary bar already; judges
can prevent it from happening and often do prevent it from happening now, but not always. And
the problem is this is why we need the legislation, to legislate for the judges that do not see it as
a problem and that continue to allow this to happen. Because if judges use their discretion, in
my view, correctly, and viewed it for the serious thing that it is it would not be happening at all
295 and we would not need this legislation, so to me I would prefer to see it drafted in the way that
if an allegation has been made there should not be any cross-examination at all by the alleged
perpetrator, it just should not happen.

Again, my fear around this is that if we have got a case where there has been physical
violence or very serious sexual violence it will happen less often. But when we have got cases
300 where the allegations are around stalking or coercive control that just is not seen as serious by
many judges and I think that that will fall through the net, unless it is changed in terms of how it
is drafted.

Mrs Lord-Brennan: Okay, Thank you.

305 I am going to try and get through the rest of the questions because I am conscious that we
have got another person that we are hearing from at 11.15 a.m., and I want to make sure that
this Committee covers as much that it can do this morning.

I will move on to the next question now, which is do you have any insight on the prevalence
of an appropriate legal intervention for behaviour which might be classed as domestic abuse for
310 those under age 16?

Ms Horman: Yes, under age 16 domestic abuse is something that people did not really think
about until quite recently.

315 Studies have shown that it is far more prevalent than we imagine and happening more and
more. And I think that, again, technology plays a big part in this. I think when teenagers at school
start dating there is an expectation now that the girl sends her boyfriend a naked picture of
herself, and that is almost the norm now. And then obviously that can be used to control her in
different ways: with threats of sending it around, showing it to the parents, that kind of thing,
putting it on the Internet which happens all the time.

320 The age of criminal responsibility is 10; I do not see why it should be any different in a
domestic abuse situation. I think it is the stalking protection orders that do not cover under 18s
and I think they should, because I do not see a distinction between any other crime.

Mrs Lord-Brennan: Do you think that the notices and orders that are present in this Bill
325 should therefore apply to under-16s then, as a way of protection alongside the offence also
applying potentially?

Ms Horman: Yes, I think the stalking protection orders should be used because there is no
reason not to. They do not even give the defendant a criminal conviction, so to me there is
330 absolutely no reason why they should not be used at all.

Mrs Lord-Brennan: And moving on to the approach that is known as Clare's Law, which is
clause 45 of our Bill, are there alternatives to this approach that might have better impact, in
your view?

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Ms Horman: Yes, I think the right to ask is not enough, and I think there needs to be a requirement on the Police to tell. And whilst Clare's Law does allow the Police to tell, it does not place a requirement on them. By the time somebody is contacting the Police and asking for information about their partner it is too late because it means they have already experienced abuse, in my view.

What we need to do is make sure that the Police are going out there and that the Police are actually telling these women about the risks that they are placed at and the history that their partner has.

Mrs Lord-Brennan: Okay, thank you very much.

Moving to the wider context now, you obviously had a lot of experience to do with the UK Bill, this is still a Bill over there it has not been progressed. Could you comment on the UK Bill, and were there aspects that you hoped would go further or that you perhaps consider are not ideal?

Ms Horman: Yes, absolutely lots of things that I think could have been in it, I will try and be as quick as possible.

We were disappointed that there was no serial perpetrators register. It is something that Paladin have campaigned for, and it was recommended that it should be in the Bill. This would place serial perpetrators of stalking and domestic abuse on the similar register to sex offenders because stalkers and domestic abuse perpetrators tend to be serial perpetrators. They do not just stop; they will go on and find a next victim and a next victim. So we think that is really important, and we were disappointed about that.

I also think that it is bizarre that we do not have any hate crime of misogyny. We have hate crimes against race, religion and sexuality but you can be as awful as you like about women, because they are women, and nothing happens. And this is a crime that is on the increase, you only have to go on Twitter as a woman to see that. There are certain police forces, like Nottingham, who have trialled that, but it is not an aggravating factor and it is not a hate crime, so I think that that was a missed opportunity.

I also think there needs to be more recognition around the fact that domestic abuse itself is an act of misogyny, and in particular coercive control. Dr Evan Stark, who invented the term coercive control, actually said that it was something used by men against women and men use their position in society, it enabled them to do it effectively and that it was a component of coercive control but that seems to have been lost really, so I think that that that would be a shame.

As I mentioned before, there needs to be compulsory training otherwise these Bills will not have the effect that we want. There needs to be training for the Police, the CPS, the judiciary both in the criminal court and the family court, otherwise nothing will change.

In my view, we need to see much more robust sentences. It is a fact still that stranger crime, a stranger assault, is sentenced far more robustly than a domestic abuse assault, when it should be the reverse, because actually it is an aggravating factor that it is a breach of trust in a domestic abuse relationship.

I also think there needs to be an overhaul in relation to the family court and a presumption against contact where there are allegations of domestic violence, until it is fully investigated. And again, I think the Children and Family Court Advisory and Support Service (Cafcass) needs to be included in that list of people who need training on coercive control and domestic abuse.

I could go on, but I know you are pressed for time, but I would say they are my highlights but there are a lot. It was not the Bill it was promised to be.

Mrs Lord-Brennan: Okay, thank you very much, Rachel.

I will just ask one final question, is there anything else that you would wish to bring to the attention of this Council, aside from what you have already highlighted, to aid our consideration and the ultimate impact of this legislation especially in terms of protecting victims?

390 **Ms Horman:** I will not repeat the things I have already said because I think a lot of those are relevant.

I would ask you to consider things like revenge porn. I do not know if you have legislation in respect of that. Things like what are colloquially referred to as 'upskirting', where photographs are taken up women's skirts and then published on the internet, quite often, I think that is a huge factor. But again, I would say I think you do need an offence of stalking. And the only thing I can think of is the training element – it will fail without it.

Mrs Lord-Brennan: Okay, thank you very much.

400 **The President:** Thank you, Mrs Lord-Brennan.

I will give Hon. Members an opportunity in the few minutes we have left to put a question to the witness.

I will start with the mover of the Bill, Miss August-Hanson.

405 **Miss August-Hanson:** Thank you very much.

I will come to a question, but just as a brief outline, we are looking at stalking offences at the moment in terms of Home Affairs here on the Isle of Man, it is due to go into the justice reform legislation. We also have a sex offences piece that is coming forward as well, which updates the 2003 legislation from the UK, which includes things like upskirting and revenge porn, as it is put as well, it is a popular term.

410 What I am wondering is something, I think, that perhaps a lot of Legislative Council Members have made mention of, do you think that it is appropriate to put stalking into this piece of legislation when you have stalkers that perhaps are not personally connected and have never been personally connected to the victim?

415 **Ms Horman:** I think the way that the legislation is drafted would have to ... Obviously I have not seen your stalking Bill. Certainly the way that coercive control, domestic abuse and stalking are defined within England to Wales there is a clear cut-off point. Stalking starts at separation; the same behaviour before, during a relationship, would be coercive control. And I think the way that the Domestic Abuse Bill you have is drafted, it confuses that to some extent in terms of the way it is understood certainly in other jurisdictions, because it allows the domestic abuse prosecution to go on for up to 10 years. I am not sure why it was settled on 10 years but there is some confusion there.

420 So it would make sense, in my view, to put it in because even the stranger stalking work tends to be done hand-in-hand with domestic abuse services. Within the Police it will be the police officer that deals with stranger stalking and domestic abuse stalking, and two thirds of stalking is domestic abuse related anyway. So I think to kind of have a completely separate Bill just in relation to stranger stalking, to me there is no need for that, I would put them in the same place, but obviously that is a matter for you.

430 **The President:** Thank you very much.
Mrs Poole-Wilson.

Mrs Poole-Wilson: Yes, thank you very much, Ms Horman.

435 Just one question on cross-examination provisions, you said you were concerned that there are too many restrictions – too much discretion, sorry, I think you said. In our Bill we say that discretion can be exercised to prevent cross-examination by the individual where the court

believes the significant distress condition will be met. Do you have any view on whether
440 outlining in detail in guidance the sorts of things that the court should bear in mind when
assessing that would assist the judiciary to make the best decisions about not allowing cross-
examination, understanding what significant distress looks like and where it can come from, to
pick up the issue of coercive control as well as physical abuse?

Ms Horman: Well, it should do, but from my own experience in England and Wales it does
445 not. We have practice direction 12J in the family court, which sets very detailed guidance around
coercive control and how family cases should be dealt with: that is routinely ignored. So my
concern would be that, again, if we leave it to discretion it will continue to be ignored.

If it is brought in with compulsory in-depth training for all the judiciary then perhaps, but
450 certainly if we compare it similar guidance in England and Wales, if you allow it to fall to
discretion it will not happen.

Mrs Poole-Wilson: Thank you.

The President: One final last question, Mrs Maska.
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Mrs Maska: Thank you, Mr President.

Thank you, Rachel, it has been very helpful. I do not know if you are aware, but we have no
homelessness legislation on the Isle of Man and I wonder how aspects of our legislation relating
to domestic abuse and suitable protective accommodation, how important might that be in
460 supporting victims that are in a vulnerable position, given their accommodation?

Ms Horman: Extremely important, particularly for women. Women are classified in England
and Wales as homeless if they are suffering domestic abuse, so it enables them to get ... I am not
465 saying it is a magic wand, but they certainly get to the top of the list. It assists them in obtaining
housing so I think that that is vital because women just will not report and will not leave if they
have nowhere to go. It is okay setting in motion prosecutions etc., but where is the woman going
to live? Refuge provision is still not adequate enough, certainly in England and Wales, I would
imagine you have a similar issue, it seems to be the case everywhere.

So I think that these fundamental things are really important because we have got to think
470 about the practical effects on victims and can they afford to live, do they have somewhere to
live?

I would also like to see more use of councils and housing associations evicting perpetrators.
In England and Wales there have the ability to do that under the tenancies, they hardly ever use
475 it, and they expect victims to go out and get their own court orders, which is wrong.

The President: Thank you.

Ms Horman, I would like to thank you very much for giving your evidence to Legislative
Council this morning, it has been most helpful and we are most grateful to you.

Thank you very much.
480

Ms Horman: Thank you, goodbye from me.

**EVIDENCE OF
Dr Eileen Vizard CBE,
Consultant Child and Adolescent Psychiatrist, Whittington Health, and
Honorary Senior Clinical Lecturer, University College London**

The President: We now move on to our next witness, who has been called by Mrs Lord-Brennan, and this is Dr Eileen Vizard CBE.

Good morning, I hope I have pronounced your name correctly.

485

Dr Vizard: That is fine. I hope you can hear me.

The President: We can hear you very well. Thank you very much for joining us.

Dr Vizard, welcome, can I ask you for the record, please, just to identify yourself and your role and invite you to make any opening statement.

490

We have until 11. 45 a.m. to put questions and to hear your evidence.

Thank you very much.

Dr Vizard: Thank you very much.

495

Just to explain who I am and what I think my role here may be, I am a consultant child and adolescent psychiatrist. I have been working with cases of physical abuse, child abuse, child sexual abuse, adult and juvenile sex offenders and that group of individuals who are involved also in domestic violence, I have been doing that work for nearly 40 years. I recently retired from my clinical face-to-face practice with clients five years ago, but I remain very active as an academic in the field: teaching, training and writing papers etc., and very occasionally being asked to give evidence in interesting situations like this, so that is my role.

500

I have read the Domestic Abuse Bill. Of course, I am not a lawyer, unlike the previous speaker, so I really cannot speak with any confidence about actual legal matters but I have been acting as an expert witness in both criminal and in family proceedings for a long time, so I have some understanding.

505

As far as opening statements go, I did make an arrangement, but I do not know if this will work for you, with Jonathan King, the Clerk, because matters seemed to me as a non-lawyer to be quite complex, it could be useful to identify some questions that you might wish to consider putting to me, plus any other questions, or if you do not like the sound of that I am completely happy not to bother with the questions. You may have been given a copy of the list of three questions or if not...? Okay, so that is fine.

510

The other thing – sorry to bother you with all these preliminaries – I did ask, I believe it was not possible technically – there is a very good two-minute YouTube video which is at the top of the list of the references which I sent. I sent through a list of references for the whole area, knowing you would not be able to look at them for some time, but this reference is number one.

515

The reason I had hoped we might concurrently somehow be able to have a quick look at that is that in that very brief video it gives an excellent idea of the impact on the child's body of chronic toxic stress, as it is called, which is a feature in ongoing domestic violence, or as they call it now intimate partner violence. So, I imagine it is probably too late for that to happen, although if you were able to have a look at it for two minutes it would inform quite a lot of what I am going to say.

520

The President: I understand Members of Council have seen the video, they have watched it so we will be able to talk about it.

525

Dr Vizard: All right, great, thank you very much for doing that.

We could relate back to that video perhaps, if necessary, in going through. So that is really all I have got to say.

530 **The President:** Thank you very much indeed.
Mrs Lord-Brennan, your witness.

Mrs Lord-Brennan: Thank you, Mr President, and thank you very much, Dr Vizard.

535 I very much appreciate the additional references and the background information; these
have been shared with members of this Committee for the Bill. I think most Members have had
chance to watch the short video, and thank you for that primer for context for discussion this
morning.

540 I have in front of me the questions that had been discussed, along with the Clerk, so the first
one is are the maximum penalties in the Bill proportionate to the impact on the mental and
physical health of victims from intimate partner violence?

Dr Vizard: Yes, I have been through the Bill and I have it here, but you may need to refer me
to a particular page, if we are going to be talking about specific points.

545 I have looked at the penalties and in some ways they seem adequate but in other ways I have
got concerns about all sorts of things here. I am not certain whether, presumably before the
sentencing, there is any legislation or provision for an adequate risk assessment of the alleged or
known perpetrator of domestic violence to be fully assessed. Now, I may have missed this, that
is completely possible, in the Bill. But as far as I am concerned, until that person, usually a man,
not always, is assessed by appropriately trained persons to look at the potential risk for further
550 violence, they remain a potentially dangerous person and therefore able to inflict further
damage on the victim.

There was one point – and I may be slightly going away from the maximum sentence issue at
the moment – that worried me about this, and that is on page 17 of the Bill, under clause 12,
breach of notice, there is section (2) which is stating that basically a police officer can arrest the
555 person without a warrant, if they have got reasonable suspicion that an abuse may have
occurred and they can be held in custody. And then we go on subsection (4) where it is stated
that:

If the person is brought before the court as mentioned in subsection (3)(a), the court may remand the person.

560 Remand in custody, I assume that means, so that sounds like a sensible thing to do but I think
what worries me is whether in making that decision at what point there is any assessment of the
individual concerned. There is quite a bit more one can say about individuals who perpetrate
domestic violence and you can get more information on that in the reference list I have
provided. But basically, if this is a chronic and continuing problem, which is very often the case,
when these cases come before the court, then it is pretty well inevitable that what the assessing
565 person is going to find is not just one personality disorder, but perhaps two in their mental
health. So if this is an assessing psychiatrist, for instance, mental illness is frequently found but
in addition to that these so-called personality disorders, I am sure the panel is very familiar with
all of that. These are things which, taken together and looking at other risk factors, may mean
that the person who is being given a sentence poses a particular risk to victims on release, or if
allowed out on bail before trial, without assessment. That would worry me a lot because the
570 level of risk needs to be assessed and written down.

And, as you will know, the level of risk posed is often directly related to the past history of
offending. So one of the things that needs to be done during any risk assessment is to identify
the number of previous convictions, if there are any, there may well be, or the number of
reports of previous domestic violence for where, let's say the victim was so terrified to testify
575 that the trial collapsed. All of that needs to be taken into account in a risk assessment.

I am sorry if this sounds incredibly obvious, but I am afraid it often does not happen, and
then an opportunity is missed to identify mental health problems in the perpetrator which may

be treatable. There may be interventions to ameliorate the effects of the mental illness or personality disorder. But it cannot be done by just looking at the person, there needs to be an expert or an expert team who will make that assessment.

580

I wanted to make that point because it strikes me that I do not see where it fits into the sequence of events, but you may be able to reassure me in a sense that there is provision for an expert risk assessment to be undertaken pre-trial and, if necessary, to inform the sentencing process later.

585

Mrs Lord-Brennan: Okay, thank you very much.

Moving on to the second question then, that focuses on a slightly different area.

Dr Vizard: Yes, sorry to interrupt you because I know you are trying to move on, but will you deal with that issue about the need for the assessment later, will it come into your consideration later on, or you do not want to say?

590

Mrs Lord-Brennan: Everything that the Committee hears today will come into consideration. Elements of this will likely fall into other activities of Government, things like domestic abuse strategies. So it may not be that it is something we directly fix in the legislation, but it is incredibly helpful and beneficial to have these matters particularly flagged with us, for the record.

595

Dr Vizard: Okay, thank you.

600

Mrs Lord-Brennan: So the second question is under the Bill children aged 10 and upwards would be able to commit the new offences of domestic abuse and controlling or coercive behaviour. Would a higher minimum age be appropriate from a medical or mental health point of view?

605

Dr Vizard: Right, well you may well be able to see within this question that there is an allusion anyway to the age of criminal responsibility, which is 10 in the Isle of Man, like the mainland. I understand that you may move on at some later point to consider the age of criminal responsibility, which I am sure would be a good thing because really there is much to say on this.

610

I have included a separate section, for your interest, at the end of the list of references on the age of criminal responsibility. Particularly the first paper by Dr Tim Bateman, criminalising children for no good purpose, it is easy to read and it is reliable evidence.

But coming back to the second question, yes, I think there is a lot of complexity here because one of the problems with this very low age of criminal responsibility – lower than many other places, and certainly lower than the average age in Europe. Lower than the Democratic Republic of Congo actually, as was noted in a Woman's Hour recording – what it means is that developmentally any child is not fully grown up at age 10. I do not honestly think there is anyone who would argue with that. But there are people who take a very narrow view which is that it is just about knowing the difference between right and wrong, and that most children at age 10 know that. And I will come to this point here about the domestic abuse.

615

620

In the letter that I wrote initially, some time ago, with 33 other people to the *Times*, and in a more recent letter, just after Christmas, that we wrote to the *Times* again, we made the point that that is not the core conceptual or legal issue which needs to be considered with children from 10 years upwards who are facing charges. The core issue, these days, is does that child – in terms of their human rights – have the capacity to participate fully and fairly in their own trial? Can they instruct a solicitor? Do they have sufficient attention span to sit still for more than a couple of minutes and engage in eye contact and think? All these questions arise in relation to the question of competence, and whether a child of 10 can be said to have that degree of competence to run their own trial, conduct their trial fairly and understand grown-ups talking

625

630 fast, in technical terms. The short answer is of course they cannot, not fully, and certainly not when they are in the hot seat of being charged with some offence or another.

The same issue about mental capacity arises also when we think about children aged 10 and upwards being charged with a variety of offences, not just the very serious ones like murder or rape, but also crimes like alleged domestic violence, where there may have been a process of
635 targeting, intimidating, grooming and abusing a person emotionally as well as physically over quite a long time.

Now, my long experience in working with children, juveniles, who sexually abuse and physically harm other children and young adults, has assured me that children learn how to groom and intimidate potential victims very early on if they are living in a home where there is
640 an adult undertaking domestic violence against a carer – let's say a father physically abusing a mother.

There is research, which I will not say too much about because I know time is limited, but it is referenced under the name of Prof. Skuse, published several years ago now, which showed that children, boys in particular, who witness or experience or they are in the middle of trying to
645 protect a mother from abuse, if they are in that situation for long enough, those boys are at specific risk, a statistically valid risk, of going on to become a sexual aggressor, a sexual perpetrator.

Now, what has that got to do with domestic abuse? I think it has got a lot to do with it because it tells us that the environment in which that child is growing up is a risk-filled
650 environment, and that child is having experiences and witnessing experiences which are basically training him and teaching him, how to go about frightening, grooming and abusing women, and other vulnerable people.

So I would just quickly come to the two minute clip that you all saw, the video clip. I hope this was helpful because what I think it does for me, whenever I use it in teaching, is it shows me
655 what a state these children must be in. We as psychologists and doctors will categorise cases: suffered physical abuse, suffered sexual abuse, saw domestic violence, we will tick those boxes, but we do not often think how that child and their body is reacting. And those children who are showing, often, other signs that have been described over 50 years ago by Henry Kempe, such as frozen watchfulness, they are frozen watching the abuse, they are helpless to do anything, but in
660 their bodies the hormones are charging around and putting them into flight mode, as you saw on the video, but they cannot go anywhere, they can go nowhere. And so there is a horrible potential for feedback to their own brains, physically, so that their brains become aligned to the violence that they are seeing they become, if you like, desensitised to it on the one hand and on the other hand up for it, ready to fight as and when.

I know it is a complex situation, but what I am saying is that these children become groomed
665 themselves to undertake domestic violence, unless they are removed from the home. So it is quite possible that when they then start to sexually experiment, let's say, and have peer relationships with others, that they will undertake that behaviour. And indeed we know from other studies that young teenagers can and do undertake this kind of coercive control in a
670 chilling way.

I can see we are running out of time, just to say, I feel that we should be looking – or you should be looking, hopefully – and the mainland should be looking at a higher minimum age for prosecution because then those children could be decriminalised. It would need to be dealt with, of course, offences have been committed, but that is another discussion. It would at least
675 remove them from a situation where we know perfectly well that once they are convicted of something and sent to any custodial disposal, for instance, that trains them further in delinquent behaviour.

I do not know if there is any scope in this Bill, or if you are considering looking at the age of criminal responsibility on a separate occasion to take into account the plight of these young
680 children who are charged with these offences, but it is something for you to consider, I know.

Mrs Lord-Brennan: Thank you very much indeed, that is helpful to have that highlighted so clearly for us about the complexity.

685 The final question is what are the environmental and family risk factors for the perpetration of teenage intimate partner violence and child to parent abuse? And can you suggest any amendments to this Bill which would go towards mitigating those risks?

690 **Dr Vizard:** Well, as I understand it I think you have heard three readings of the Bill and it is more or less done and dusted ... or amendments would be difficult to include, that is what I understood, but maybe that is wrong?

Mrs Lord-Brennan: Just for clarity, we have not yet had the clauses stage for this Bill, and it would be at the clauses stage at which amendments are moved.

695 **Dr Vizard:** I see, okay, thank you, I did not understand that.

Some of the risk factors or environmental risk factors for the perpetration of intimate partner violence I think I have rather covered in the previous answer.

700 But I am just looking at page 38 of the Bill, aggravation of offence where the victim is under 18, and I would just like to add here – I do not know what could be added to the Bill – but it follows on from the last point I made about the impact on child victims, specifically in impairing their normal, emotional cognitive and also their moral development. I realise there is not time for a full discussion of these points, they are complex. But often children who have been groomed into committing offences, like domestic abuse and other offences, have really lost their moral compass. And when you interview them or attempt to provide therapy for them, as I have done, this is a starting point because they have never had the correct example of someone who will say to them that is the wrong thing to do: it is the wrong thing to be hitting a woman, you need to be speaking if there is a dispute etc. These things do not happen, and so these children may grow up without that moral compass, without the hard wiring in their heads which actually we all have, rather wonderfully this is all occurring during childhood, our brains are wired up.

705 I am sure that the panellists have heard about neuroscience from other people presenting, but what we do know is that it is a work in progress and it can include good rewiring of a child's brain so that new skills are acquired, social skills etc. and it can include removal of un-neat bits of the brain that are not necessary for normal development.

715 But with these children, as I have said several times now, constantly being exposed to domestic violence, and then perhaps criminalised by an early charge for an offence which, let's face it, they may well have done, but they are then criminalised, they are put somewhere where they have that label round their neck for their lives, and that label and that knowledge that they are now a criminal does have a very detrimental effect, in my view, on their development and with the emphasis on their moral development.

720 **Mrs Lord-Brennan:** Thank you.

The President: Thank you very much.

725 There is a brief opportunity for final questions. The Member in charge of the Bill I invite first, Miss August-Hanson.

Miss August-Hanson: Thank you.

730 And just to put a little bit of clarity around thinking and perhaps also to give you a bit of an insight on how things kind of work here on the Isle of Man, there would be a much wider question about criminal responsibility which, given our links to the UK and human rights legislation, we could not kind of just make that jump without communicate with the UK, it is quite linked, the criminal justice system in certain ways, and that would be one of those.

735 **(Dr Vizard:** Right.) Also, we do have quite a decent rehabilitation programme that is offered by the probation service as well. The psychiatric reports, the courts would ordinarily hand these out, if they are concerned, and that would be from the probation service.

I have just got a quick question for you in relation to mental illness and domestic abuse, if that is all right. **(Dr Vizard:** Okay.) Do you think that domestic abuse should be seen as a symptom then, of mental illness?

740

Dr Vizard: No, I do not. I would not consider it to be a symptom of anything.

I would consider it to be a pattern of behaviour which has resulted from, as I have just been explaining, a childhood exposed to that kind of behaviour, so I think it is the other way round actually.

745

As you remember from the video clip, children and the people who are brought up in a consistently frighteningly violent environment develop mental illness problems. We know, not surprisingly if you had to live with a large, terrifying adult beating your mum up and nothing happened, that post-traumatic stress symptoms are common. There are also issues to do with depression and anxiety. And, there has not been a chance to say anything about this, but in a very small minority of offenders, and the panel will be aware of this, there is a psychopathic tendency with callous-unemotional traits, and there is good evidence that that tiny minority have a genetic link for their psychopathic behaviour. All these risk factors are going to trigger patterns of particularly serious offending in that subgroup.

750

So it is complicated, but I do not think we could see domestic violence itself as a symptom of mental illness. It is rather the other way round: that vulnerable individuals who allow themselves to be in a risk-filled environment may be at risk of perpetrating domestic violence.

755

I hope that makes some sense.

The President: Thank you very much.

760

Finally, Mrs Poole-Wilson.

Mrs Poole-Wilson: Thank you.

Thank you very much, Dr Vizard, one question, as this Bill itself is not probably the right vehicle to address the wider question of the age of criminal responsibility, do you have any views on whether it is appropriate to include a defence in this Bill, in that if a young teen has offended and committed domestic abuse, as defined by the Bill, do you think there is any merit at all in it including a defence where it is possible to show exactly what you have described, that the factors leading to that behaviour were actually as a result of being groomed or brought up in an environment where that explains the behaviour?

765

770

Dr Vizard: Yes, it is a very interesting question.

One can see that somebody having a go at that, if you like, as a defence with a young child defendant, I think as they get older there might be more scepticism about the relevance of the upbringing.

775

I cannot say from a legal point of view, but the fact is from a mental health, medical and psychiatric point of view, all the evidence about the early childhoods of these, usually men, who perpetrate domestic abuse, sexual abuse or violently abuse, all the evidence is the same, that they tend to come from these disturbed backgrounds and that these are factors that feed into their behaviour.

780

Now, the answer to that I suppose, if I were defending, if I were on the other side, I would be saying, 'Yes, well, so what?' These are a minority of offenders from terrible backgrounds; there are far more people who have lived through terrible backgrounds who do not do this kind of thing so it cannot be used as a defence. And it is perfectly true that the majority of people who have terrible backgrounds do not go on to be perpetrators.

785 Indeed there is a big issue as well, just to mention it, children who are abducted from tribes, let's say in Africa, and coerced to become child soldiers, this is the most terrible kind of child abuse which goes on for years, they are forced to do dreadful things. In the limited follow-up studies of these children, who are children on the move, they become refugees, many of them are terribly disturbed, they are terribly wound-up – just as we saw on that video clip – they are
790 in a state of constant fight but there are a minority of these children who have had exactly the same awful experiences who show resilience. This is an issue that we have not had a chance to discuss this morning, these are inherent qualities. So it seems in individual children they can go through ghastly experiences and yet pull themselves together enough.

795 One way we know that they may be resilient is if they have what you might call an internal narrative of their own life: they can allow themselves to remember bad things that were done to them, who, when and why, they can remember the good things, they can remember, I do not know, the countries that they have been dragged through etc. So they have a storyline and that seems to have a big impact on developing resilience. Children who are so frightened and so fragmented by consistent domestic abuse, for instance, do not have a storyline. They cannot
800 understand what has gone on in their childhood and, as I said earlier, they do not have the moral compass to say, 'Well, that was a nightmare, I am not going to do it to other people.' So there is a sort of logic developing if we think about resilience.

The President: Thank you very much.

805 Sadly, we must bring this very interesting evidence to a conclusion.

Dr Vizard, on behalf of Legislative Council I would like to thank you very much for your very valuable evidence and contribution to our deliberations this morning.

Thank you very much.

810 **Dr Vizard:** Thank you, it has been a pleasure.

**EVIDENCE OF
Mr Mark Brooks,
domestic abuse campaigner and
Chair of ManKind Initiative**

The President: Now we should be turning to our next witness, Mr Mark Brooks.

Mr Brooks: Hello, can you hear me?

815 **The President:** Yes, you are coming through loud and clear. Can you see us okay?

Mr Brooks: Yes, I can.

The President: Thank you very much for joining us, Mr Brooks. You have been invited as a witness by Member of Council Mrs Lord-Brennan.

820 Could I invite you, first of all, to identify your role, just for purposes of the record, and invite you to make any opening statement?

Mr Brooks: Thank you very much, and it is a real pleasure to be here today.

825 My name Mark Brooks and I am the Chair of the ManKind Initiative charity. Our role is to support male victims of domestic abuse across the UK. We have been in existence for nearly 20 years. A part of our work is that we provide a helpline for male victims, and also we provide training and support to governments, agencies and other organisations to help them support male victims as well.

830 **The President:** Thank you very much.

Mr Brooks: In terms of my opening statement, what we have been undertaking – in terms of being part of UK government consultation on the domestic abuse and advising not only the government in terms of the Home Office of the UK government but also other agencies – is to make sure that the Domestic Abuse Bill is gender inclusive. What I mean by that is that it gives equal priority to individuals based on their individual level of risk and need and also with regard to the severity of the crime that is undertaken against them. That must be the primary factor for any legislation.

840 Issues such as the gender of any victim or their race or sexuality are important aspects, but they must be secondary to the fundamental issue that domestic abuse is a crime against an individual, and that sits squarely with how the law and legislation, certainly in the United Kingdom, has been formed since 1215, in many respects, since the signing of the Magna Carta, and is very much in line with the British Constitution.

845 So it is all about equality for individuals but also taking into account their gender, sexuality or race when it comes to actually providing different types or appropriate levels of support. This is why it is really important that any legislation and also supporting guidance is actually gender inclusive, that it recognises all victims as equal and also makes sure that approaches take that into account but also take into account specific issues such as their gender where it is appropriate.

850 That is my opening statement.

The President: Thank you for those helpful remarks.
I now invite Mrs Lord-Brennan to ask the first question.

855 **Mrs Lord-Brennan:** Thank you very much, Mark, for agreeing to talk to the Legislative Council today, and also I think you have indicated that there is some written evidence that you would also be able to provide.

860 There were just two questions for this morning – and I think I have been conscious of time throughout the whole session, so the first question is: in your view, does the Bill cover the pattern of behaviour element sufficiently?

Mr Brooks: The proposed Bill does cover the pattern of behaviour sufficiently, except perhaps it could be extended.

865 One of the areas that we have been particularly concerned about is the lack of recognition of parental alienation as a form of domestic abuse. Parental alienation is where the actions of one parent mean that their children turn against the other parent, and it is based on wilful behaviour. It is certainly an issue that is being recognised more and more in the family courts in the United Kingdom as a particular problem. The reason that is an issue of domestic abuse is because it acts as a controlling and coercive type of behaviour which is deliberately used to threaten, harm and control the other parent. This is obviously in relationships which have broken down and the two adults are now separated, but for us that is a clear example of domestic abuse and it needs to be recognised explicitly as such.

875 **Mrs Lord-Brennan:** Thank you very much, that is helpful.
The second question is: does the Bill cover coercive and controlling behaviour sufficiently?

Mr Brooks: The Bill does cover controlling and coercive behaviour sufficiently, and I think I am particularly pleased in the way that the legislation looks at partners who have separated and are no longer in the same household.

880 Just for background on that, there is tension in the United Kingdom on domestic abuse
legislation when it comes to coercive or controlling behaviour. What I mean by that is that in
England – and Wales, where the legislation was devolved – coercive or controlling behaviour is
only classed as a crime when the perpetrator and the victim are still living within the same
household. The problem with that is that when a couple splits or a relationship ends, nearly all of
885 the time one of the people in a relationship will actually leave that household, and therefore the
coercive or controlling behaviour legislation in England and Wales does not cover that situation
where somebody in the former relationship has now left the household.

In Scotland, they introduced a domestic abuse law last year that came into effect in April
2019. They covered coercive or controlling behaviour but the important thing was that it did not
890 actually put in that the victim and the perpetrator have to be living in the same household. So
the Scottish law is far stronger and better than England's. A number of organisations are wanting
to make sure that the Domestic Abuse Bill in England and Wales actually mirrors that in Scotland
because that is stronger. Having looked at the proposed Bill on the Island, it actually more
mirrors the Scottish version than this version in England and Wales. So we are really pleased
895 with that.

I hope that that longwinded explanation was clear.

Mrs Lord-Brennan: Thank you very much, Mark.

900 **The President:** Thank you very much.

I now invite the Member in charge of the Bill on behalf of the Department of Home Affairs,
Miss August-Hanson, for her question.

Miss August-Hanson: Thank you very much, Mr President, and thank you for the evidence
905 that you gave.

You have mentioned the Scottish 2018 Act which came into effect last year. What did you
find particularly interesting about the Bill as a whole, and how does that interesting element
compare with the UK draft legislation?

910 **Mr Brooks:** I think that the main issue in Scotland, in terms of being ... What I liked about it
the most was firstly around the fact that it covered that aspect I just spoke about, but also it
continues to reflect that domestic abuse is a crime against the individual and not a crime against
a gender.

I know that there has been a lot of pressure, especially in England and Wales and also in
915 Scotland, to actually have a statutory definition of domestic abuse that is gendered, which in
effect is trying to place a higher priority on female victims than male or LGBT. It obviously has to
be ... *[Inaudible]* condition which gives a higher priority to one set of victims based on their
gender rather than the severity of the crime or the act and also ... *[Inaudible]* before the General
Election what is in the guidance. So, both in Scotland and in England and Wales there will be
920 statutory guidance. My concern will always be about not what the law says; it is how it is actually
applied in practice, and therefore it is really important that that statutory guidance reflects a
flavour of the actual act, and places and recognises female, male and LGBT+ victims as equals
and in equal need of support based on their level of risk and need.

It is really important to understand the language on that, because if the guidance suggests
925 that a higher priority or more recognition should be based on female victims, that actually
reinforces a cognitive bias in the system that does not recognise male or LGBT+ victims in the
same way.

So that would be my point, really: it is not so much about the law as about how it is applied.

930 **Miss August-Hanson:** Thank you.

The President: Thank you.
Mr Crookall.

935 **Mr Crookall:** Thank you, Mr President.

Thank you, Mark, for your time this morning. You broke up for a few seconds there, so if you want to repeat some of that, maybe, in answer to this ...? But was there anything else in the Scottish Bill in particular that you think maybe we should take account of from our point of view?

940

Mr Brooks: Not that I know of, for me; not that I have seen. I have not seen anything more that you should take account of.

Mr Crookall: That is fine, thank you.

945

The President: Does any other Member wish to ...? Yes, Mrs Maska.

By the way, you will not be able to see these disembodied voices, (*Laughter*) you can only see three of us, but we have Mrs Maska.

950 **Mrs Maska:** Thank you, Mr President.

Good morning, Mark, and thank you for your evidence so far. Just by way of clarification, really – you touched on guidance and the language and the tenor of guidance as it interprets the statute when it becomes law: would you say it will be absolutely vital that the guidance comes in and is available at the same time as the Bill is enacted?

955

Mr Brooks: I am just thinking about the sequencing of that. I suppose the devil will be in the detail, in terms that it depends what is in the guidance.

In my opinion, I think if you bring in the Bill and if the guidance is then part of a consultation, that potentially could help better than if the guidance comes in straightaway. So, perhaps once the Bill is passed, in a period between the Bill passing and its enactment I would suggest there was a consultation on actually the guidance, because if there are issues with the guidance that are not interpreting the Bill correctly, then it may be too late to change the guidance.

965 **Mrs Maska:** Thank you, I understand that and I think the plan is that there will be consultation on the guidance as it is drafted. I am keen that on its appointed day the guidance is available so that the Police and other agencies have a framework in which they can operate. Would you say that is important?

970 **Mr Brooks:** Yes, I would.

Mrs Maska: Thank you very much for that.
Thank you, Mr President.

The President: Thank you.

975 Are there any other Members who wish to ask questions of Mr Brooks? No.

In that case, Mr Brooks, I would like to thank you very much for your time this morning. It has been very helpful indeed to the Legislative Council to have your evidence. Thank you very much indeed.

980 **Mr Brooks:** Thank you very much, my pleasure.

The President: We are running slightly ahead of time and at this point I will suspend the sitting just for a few minutes while we rearrange the furniture to take our next witness, who is here in person.

*The Council was suspended at 12.09 p.m.
and resumed its sitting at 12.13 p.m.*

**EVIDENCE OF
Ms Jane Gray,
Manx advocate, representing the Isle of Man Law Society**

985 **The President:** We resume now with our next witness, who is Jane Gray, at the invitation of Mrs Poole-Wilson.

Ms Gray, can I ask you first to identify yourself and your role for the public record? And I understand you would like to make an opening statement before questions.

990 **Ms Gray:** Yes, thank you. My name is Jane Gray. I am here in my capacity representing the Law Society.

I do welcome this opportunity to appear before you this afternoon and I thank you for the areas and the questions that have been raised and have been put to me, some of which I will not be addressing here in person. However, I will, on behalf of the Law Society, provide written evidence, which I can submit to the Legislative Council, the aim being within 10 days to provide this.

The President: Thank you.

1000 Sorry, I am having a little trouble hearing. Can we turn up the speakers?

The Clerk: The short answer, Mr President, is we do not have amplification at this end of the Legislative Council Chamber, so we might just have to –

Ms Gray: I am quite happy to stand.

1005 **The President:** Yes, as long as we can all hear you and whatever is most comfortable for you.

Ms Gray: My name is Jane Gray. Some of you here will know me already. I am here in my capacity of representing the Law Society and I welcome the opportunity to appear before you and thank you for giving me this opportunity.

1010 I also welcome the questions that have been raised by a number of the Members of the Legislative Council in respect of the Domestic Abuse Bill. There are some that I will hopefully be able to answer today in person. However, there will be other questions which I will need to refer back to the Law Society and I would ask and request that that evidence be supplied in writing, with the aim that that will be submitted within the next 10 days in order to provide this.

1015 **The President:** Thank you very much.

I invite Mrs Poole-Wilson to put your first question, please.

1020 **Mrs Poole-Wilson:** Thank you very much, Mr President – and thank you for being with us today, Jane, to give evidence.

If I could start, please, with the cross-examination provisions which are in Part 4 of the Bill, so beginning on page 40 of the Bill – and I should preface my questions for you today on the basis

that I welcome the inclusion of these provisions in the Bill, so my questions are really to do with how they will work in practice.

1025 Unfortunately I recognise, as you were in court, you were not able to hear the evidence from our first witness this morning, Rachel Horman, who is a solicitor practising in Lancashire. She gave comment this morning that she questioned whether the cross-examination provisions are actually too restrictive in their current form. The reason she raised that is because she said they are restricted to situations where an individual has already been convicted of, or given a caution or charged with a specific offence; or situations where an injunction is in place; and thirdly, she was saying that in other cases she questioned whether the provisions are not drafted widely enough to be applied in all situations where they should be applied.

1030 In particular, if I could ask you about the significant distress condition, which is one of the situations where a court might decide to stop cross-examination by one party directly against the other, I think Ms Horman's point was do our judiciary and courts etc. sufficiently understand all the circumstances that could give rise to the significant distress condition, so the impact of coercive and controlling behaviour and how that could give rise to significant distress condition?

1035 So, my question for you is: what would be your view on that perspective? Do you think that the Bill as drafted provides sufficient leeway for our courts to take the decision to prevent cross-examination in all suitable cases? And do you have any comment on what would help to deliver that in practice, whether detailed guidance or practice rules, or indeed training for our judiciary?

Ms Gray: Thank you for that question. I would state that it does provide sufficient leeway in respect of how it is currently drafted.

1045 The family courts here on the Island are mainly primarily set by a First and Second Deemster. They are very much aware of the issues that can arise within the family courts. We also have a number of panel Deemsters who have also practised in this area of law and certainly would be aware of these provisions.

1050 I would also state it would assist those who are interpreting this legislation and bringing it into practice within the family courts that there would be some detailed guidance provided. It always assists, in respect of a new piece of legislation, for that guidance to be issued.

Are there any other questions?

1055 **Mrs Poole-Wilson:** No, that was very helpful. I do not know whether you want to make any comment on training as well around understanding how to apply this significant distress condition in practice.

1060 **Ms Gray:** I think, with any piece of legislation that is new, if there are any offers in respect of training that has got to be a good thing. That makes it very clear then what the legislature has set down to do here and that it is interpreted in the correct light and exercised in those respects.

1065 You notice that the solicitor you have mentioned who gave evidence this morning was quite concerned that it might be too restrictive. Given that the family courts are very much aware of these issues – the same courts will have been hearing evidence in respect of non-molestation occupation orders, so they will be very much aware of this in respect of the quality of the evidence given and the distress that may be caused by the victim giving evidence and then having been cross-examined by the perpetrator.

Mrs Poole-Wilson: Thank you.

1070 My next question is also in relation to what is 53D, which is the new provision that would be inserted to allow the court to give a direction for prohibition of cross-examination in person.

There are two conditions where the court has discretion to prohibit cross-examination in person. One is, as we have already touched on, that the quality condition or the significant distress condition is met; and the other is that it would not be contrary to the interests of justice

1075 to give the direction. I wonder if you could comment on the inclusion of that provision that it would not be contrary to the interests of justice to give the direction.

Ms Gray: Well, we are looking at evidence in general. If there is an offence possibly or allegedly committed, the other party does then have an opportunity to put their case to the witnesses and to the complainants. So it is looking as to what is going to be fair within these proceedings – both sides have to have an equal footing in respect of matters particularly that would carry criminal sanctions if that person was found guilty.

1080 So we have the point where it is at the discretion of the Deemster within those – and do not forget he is the one conducting that case, he is the one hearing the evidence, he is seeing the witnesses and he would be the best person to exercise that discretion. The fairness of proceedings is something that he would have to consider if the victim was allowed to be cross-examined by the perpetrator – whether the proceedings would be fair to allow that to take place.

1085 But there is also a second limb to this in allowing the alleged perpetrator to be able to put his case to those witnesses, and this piece of legislation is stating that in fact he can be denied that right, but it is also qualified and backed up later within those sections that state that he will be given an opportunity to instruct an advocate and it is only after a period of time, if he has not then been able to instruct an advocate, that the court will then appoint one on his behalf.

1090 The other point which I also believe has also been incorporated into this Bill is looking at the legal aid provisions and access to justice in respect of instructing an advocate. It does state there that provisions should be put in place for that to take place, and it would seem that, looking at this Bill, there are provisions in place to allow those funds for instructing an advocate to be paid both on individual instruction by the alleged perpetrator and also in respect of appointment by the courts.

1095 And so that balances out both aspects in respect of fairness of proceedings: fair in respect to the victim, as she or he is not then going through that process of having to be cross-examined by the alleged perpetrator; and also allowing the perpetrator to be able to put their case to the witnesses within the court.

Mrs Poole-Wilson: Thank you, and in talking further about the court appointing an advocate I think you have answered my further questions.

1100 I wonder if I could just clarify, please: obviously the party who is refused the right to cross-examine in person would have the ability to appoint an advocate. In your view, what might stop or get in the way of an individual being able to appoint their own advocate if they wished to?

1110 **Ms Gray:** The main point which would stop, in my view, somebody instructing an advocate is the question of funds. Generally, in the larger percentage of the cases coming before the court, people do not necessarily want to be representing themselves. The court's process can be very harrowing, it can be very stressful, and if they can have an advocate there who is advising them along that process, who can be in court, who can talk for them, they will opt for that each and every time. In the majority of cases the only reason they may not have an advocate present is because they are not eligible for legal aid or financial means tests.

1115 Just looking at domestic violence and the family law cases in England, it is reported that in 25% of cases people are litigants in person, and this is due to legal aid restrictions as to why that increase has taken place. At the moment we do have a very good legal aid system here, and I do not know what the percentages are of litigants in person here but I should imagine it is not as high as in England.

Mrs Poole-Wilson: Thank you.

1120 My final question is: the threshold, which is in 53F(5), for the court to appoint an advocate if for any reason the party does not appoint their own advocate, is that it is necessary in the

interests of justice for the witness to be cross-examined by an advocate appointed by the court. I do not know whether you have any comment on that threshold, that it must be necessary in the interests of justice?

1130 **Ms Gray:** There may be a minority of persons who could be quite obstinate and think, 'No, I do not need an advocate, I am going to do it myself – whether there is one available, I am going to do this myself.' I think in those situations you may find that there may be some ulterior motives as to why that person wants to do that, and that is what we are trying to prevent here within this Bill. And so it would be in the interests of justice, in respect of fairness of
1135 proceedings, that the court therefore instructs an advocate on that person's behalf so you do not end up in that situation where somebody is going to be able to cross-examine the alleged victim.

1140 **Mrs Poole-Wilson:** Thank you.

The President: Thank you.
Mover of the Bill, Miss August-Hanson, questions?

1145 **Miss August-Hanson:** I have no questions for Jane, although I do think that she is quite fantastic and do very much appreciate her having already talked to me behind the scenes about this piece of legislation before now. I think that you are covering an awful lot of what we talked about already and the queries that I had, so I just wanted to thank you for that. Thank you.

1150 **The President:** Mrs Maska.

Mrs Maska: Thank you, Mr President.

I know Jane is going to look into some of the queries that I have regarding homelessness legislation, or lack of it, and I understand we are going to receive written evidence on that from some of your colleagues in the Law Society.

1155 **Ms Gray:** Well, I can certainly try, but in respect of homelessness that might not necessarily be the forte area in respect of the Law Society. There may be other Government Departments that may be able to answer those questions and provide that information better than the Law Society can, but we would certainly try and do what we can.

1160 **Mrs Maska:** Thank you for that.

I understand that, as we have the law at present, the remedy available to a victim is mainly in the matter of an injunction ordering an alleged perpetrator not to molest or enter the home etc. I am wondering, in terms of the climate at the moment, is this often used? And is it effective?
1165 And in your view, does the draft Bill offer a much better remedy to those victims – and perpetrators, possibly, in terms of supporting and listening to both sides?

1170 **Ms Gray:** I would absolutely agree that this does offer a much broader view and scope in respect of domestic violence. There is no comparison, I would say, between this Bill and the current non-molestation legislation that we have at the moment. This is far broader in scope and covers far more areas than could possibly be covered under the current legislation.

Mrs Maska: Thank you.

1175 The other matter that is of particular interest to me is clause 5(1)(e). The provision is that the 'personally connected' people must have been in an intimate personal relationship with each other within the last 10 years.

1180 We have heard evidence this morning – and I have also learned from research I have done and spoken to people from off the Island and on – that the potential for domestic abuse may exist and a pattern of behaviour may exist for much longer than 10 years, the persons involved may not necessarily be living in an intimate relationship or in the same household and that the relationship and the abuse can go on for much longer than 10 years.

1185 I have also understood that in the United Kingdom some of the spearheading that is going on to address capturing the domestic abuse scenario is finding that people are coming forward who never had realised that they were in the situation of domestic abuse, and so there may well be quite a larger number than we expect because people just realise that they have been in this abusive situation or relationship for a long time.

1190 I am wondering what your view might be on the limitation of within the last 10 years and whether that period of time maybe needs to be reconsidered and maybe the subject of an amendment.

1195 **Ms Gray:** Yes, I would note that in the similar legislation in the UK there is no restriction there in respect of years. Again, that is something that could be left to the courts in respect of intimate personal relationships. My submission is, I would state, that it is better to leave it open rather than to restrict it. You are going to catch more, as you say, if you do not have those restrictions.

Mrs Maska: I had understood that possibly it was almost imposing a statute bar, when maybe that was not the intention.

1200 **Ms Gray:** Well, yes, because if it falls outside of the 10 years then there are certain situations where that is not going to be exercised.

1205 **Mrs Maska:** Thank you very much.
Thank you, Mr President.

The President: Thank you.
Does any other Member wish to ...? Yes, Mrs Sharpe.

1210 **Mrs Sharpe:** Thank you, Mr President.
For clarity, I would just like to state that I am a Member of the Department of Health and Social Care and political lead for Children and Families Division. Of course the Department has been consulted on this Bill and is in support of this Bill, but in addition to this fact I would like to ask you a couple of questions in my capacity as a Member of the Legislative Council.

1215 We have heard earlier this morning some witnesses' opinions on the subject of age thresholds detailed in the Bill, so in terms of age thresholds I have two questions for you, Ms Gray.

1220 Firstly, in the Bill in front of us DAPNs and DAPOs may be given to those aged 16 and over. I wonder if you could talk us through your thoughts surrounding the concept of applying domestic abuse protection notices (DAPN) and domestic abuse protection orders (DAPO) to the 16- and 17-year-old age group, in terms of advantages and disadvantages for this cohort and those who have responsibility for them.

1225 **Ms Gray:** In considering that question we would need to make ourselves aware that these 16-year-olds would fall under the jurisdiction of the juvenile courts. The sentencing in respect of the juvenile courts is different to that of the adult courts. Often, because they are juveniles, the magistrates are quite restricted in the types of sentences that can be imposed. There are different criteria, in respect of whether custody should be imposed or whether that young

individual should be held on remand, than there are in the adult court. It has to be only in exceptional circumstances that a juvenile would receive custody.

1230 The most common form of sentencing in juvenile courts is probation orders, because even community service orders, even though they are legislated for, cannot be put into practice because I understand we do not have the structure to be able to supervise community service orders for juveniles. So that gives you one indication there.

1235 Legal aid also works slightly differently, in that if the young person is living within the home, then the household income as to which the financial threshold is based is going to be on the whole of the household income, so that is going to fall on the parents. Obviously, if the child is in the Department care, then that point is not going to be triggered.

1240 Just looking at these provisions within the Bill, they do carry custodial sentences if the order is breached, and that will inevitably create a criminal conviction for that child which may have an impact on that child going forward. It is looking at how are we looking at the abuse that these children have suffered and what are we going to do for those children who mainly possibly have grown up within family homes where domestic violence has been present.

1245 I just heard the tail end of evidence by Mr Brooks – sorry, maybe just before Mr Brooks spoke – in respect of children being so fragmented that there was no moral compass. It is something that, in my view, ought to be borne in mind in respect of this type of Bill. It is not uncommon for children to exhibit some form of abuse where that is all that they have ever known and that is all they have seen their parents exercise. And so I would say just to be aware of that – that a 16-year-old is classed and defined as a child and not an adult, and often children do behave slightly differently from adults because their brains have not fully developed, and considering what their background and the circumstances are as well.

1250

Mrs Sharpe: Thank you. That was very useful.

1255 My second question is that in the Bill in front of us there is an absence of a lower age limit within the definition of domestic abuse in clause 4 – again, I would be grateful if you could talk us through your own thoughts surrounding the concept of not having a lower age limit, in terms of the advantages and disadvantages for (a) children whose age falls between the age of criminal responsibility and under 16, and (b) young people aged 16 and 17.

1260 **Ms Gray:** Sorry, you might just need to clarify a little bit more your question in respect of a lower age limit. Do you mean in respect of the complainant or the victim?

1265 **Mrs Sharpe:** If we take the scenario of child against parent abuse, or young person against parent abuse, could you talk us through your thoughts surrounding our not having a lower age limit in this Bill, as opposed to the current draft UK Bill which is in existence, which does have a lower age limit applied to the offence of domestic abuse?

1270 **Ms Gray:** I am not sure that really I can answer that question as fully as you may have hoped I can. It may be something that I will have to put into writing after getting further information in respect of my colleagues, if I may do that.

Mrs Sharpe: Thank you. That will be fine.

The President: Thank you.

Mrs Poole-Wilson.

1275

Mrs Poole-Wilson: Thank you, Mr President.

Just following on from Mrs Sharpe's question there, an amendment was made when the Bill was before the House of Keys because originally there was a lower age limit in the Bill. Both the victim and the perpetrator had to be aged 16 and above within the definition of domestic abuse,

1280 and by virtue of that it is my understanding that no one then could be prosecuted for the domestic abuse offence or the coercive controlling offence because they would not be within the definition of domestic abuse that was set out at the beginning of the Bill.

Now that age criterion, for both perpetrator and victim, has been removed in the House of Keys, so there is no age limit at all. So it seems to me, if my understanding is correct, that the offences in Part 3 of the Bill ... the perpetrator could be prosecuted provided they are above the age of criminal responsibility, the age of 10. We also have the preventative measures of the DAPN and the DAPO, but they are only applicable to individuals aged 16-plus. This was a question that was articulated in the House of Keys as to if there is no age limit around the offences themselves and prosecution, is it appropriate to have an age limit in terms of any intervention, like an order or a notice, and say that is only for 16-plus.

If I understood you correctly, in your evidence earlier about DAPNs and DAPOs you were highlighting some of the challenges with applying those to 16- and 17-year-olds anyway, and some of the challenges are the powers of the juvenile courts, the ability to actually supervise, through probation or otherwise, such a notice or an order, the issue of legal aid and so on. So I wondered whether, when you have had a chance to consider this and perhaps take further evidence, you could also give us the Law Society's view as to the workability and practice of using DAPNs and DAPOs for the 16- and 17-year old cohort, or indeed people younger than that, and whether or not you think they should be perhaps a last-resort tool – that perhaps the provision to apply them is still in the Bill but to be used only if there is no alternative intervention – and perhaps what other alternative interventions exist currently or might be possible. Clearly there is interplay with domestic abuse and the broader child protection regime that currently operates, and I think it is about trying to ensure that these work well with existing child protection laws and practices.

1305 **Ms Gray:** Yes. Thank you.

The President: Thank you very much.
Any further questions? No.

In that case, thank you very much, Ms Gray, for your contribution to the work of Council this morning – it is most appreciated – and thank you for your helpful evidence.

Thanks to witnesses and staff

The President: Hon. Members, that concludes the end of our public proceedings today, this Committee of the Whole Council taking evidence this morning on the Domestic Abuse Bill.

I would like to thank all the witnesses who have given evidence and also our staff for making possible technically the taking of evidence by video link. I think that has been extremely helpful and this will undoubtedly assist Council in our consideration of the next stage of the Domestic Abuse Bill, which of course is the clauses stage, which is scheduled to take place in two weeks' time, on 25th February.