



Legislative Buildings
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Isle of Man
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LEGISLATIVE COUNCIL

4th May 2020

Mr Jonathan King
Clerk to Committee Social Affairs Policy Review Committee
Legislative Buildings
Finch Road
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Dear Clerk and Committee Members

Domestic Abuse Bill 2020

The consideration and scrutiny of the Domestic Abuse Bill 2020 (January–March 2020¹) by the Legislative Council identified a number of matters pertaining to government progress with tackling domestic abuse that are outside the pure legislative consideration or resolution.

The two years leading up to the introduction of the Bill into the branches and previous work streams and commitment made served as context for the need for Bill but also indicated a lack of progress on efforts started.

To put it simply: it appears that many words had not translated into action. Various matters had been initiated and committed to, but not completed.

Whilst the progress of the Bill is very positive, especially the creation of the domestic abuse offence, it was recognised during the passage of the Bill through the House of Keys and the Legislative Council that legislation alone would be insufficient.

Critically, in some key areas a lack of policy development was apparent. This was most apparent relating to attempting to deal with Child to Parent abuse and Teenage Intimate Relationship abuse. These areas are complex. They require cross departmental intervention and carefully thought out and articulated policy. This lack has made legislating challenging, since legislation is only one tool in addressing domestic abuse. Further comment is made below.

The purpose of this letter is to draw the attention of the Social Affairs Policy Review Committee to some items that became apparent in the Legislative Council consideration and sittings.

As the Bill will soon return to House of Keys, and domestic abuse is both increasing and in focus due to the COVID-19 measures, it seems like a sensible time to do this.

¹ LegCo First reading: 28th January 2020 – continuation of clauses & 3rd Reading on 24th March 2020.

With the Bill nearing completion, it must remain an ambition to ensure that the non-legislative aspects to domestic abuse make real progress before the end of the current administration.

After our 3rd reading, it was felt by a few LegCo Members that a sensible next step would be to write to the SAPRC and also include a table of commitments and assurances sought (an overview document that was prepared for Third Reading in LegCo, as a reference point and to aid preparation). In light of the need for further attention on key areas, this was, and may still be, an effective aide memoir. The table, submitted with this letter, was also provided to the department in the final stages of the Bill in March 2020, and may be a helpful reference point, as Government moves forward.

It might also be helpful to note that Legislative Council took evidence² from a range of experts, both from on and off island via video link, in person and in writing.

This, along with other modes of examination, research and written evidence helped inform the need to take account of some of the points of note and suggestions below.

This process highlighted, amongst other matters, the psychological impact of abusive households on children, mental capacity of children to go through criminal proceedings, the age of criminal responsibility, the link between domestic abuse and stalking and the issue of parental alienation, a matter brought to our attention when we heard from the Chair of a charity that supports male victims of domestic abuse, who had previously submitted evidence to the Houses of Parliament.

Overall, this was quite a thorough examination focusing specifically on the Bill, how it might work in practice and to identify any issues.

Suggestions/points of note for SAPRC

1. The impact of **domestic abuse on children** was raised a number of times through sittings, and is now being recognised in the UK Bill & government approach.
2. **Lack of finalisation of government approach/Strategy on Domestic Abuse:** At the time of the passage of this Bill, it appears that various work by government had been started, including a Domestic Abuse Needs Assessment³, Joint Strategic Needs Assessment, a Strategic Needs Analysis and Domestic Abuse Pathway, but it appears these have not progressed into a finalised approach, let alone implementation.

²Video link evidence was heard on [11th February Hansard](#) Experts included: Off Island: Rachel Horman, Chair of Paladin Stalking Charity and Domestic Abuse Lawyer, Dr Eileen Vizard CBE, Consultant Child and Adolescent Psychiatrist, who also submitted [written evidence](#), Mr Mark Brooks, domestic abuse campaigner and Chair of ManKind Initiative, which supports male victims of Domestic Abuse. On Island: Jane Gray, Manx Advocate, representing the Isle of Man Law Society. Separately in writing included: Hazel Smith, on behalf of Law Society, Director of Prosecutions Chrissie Hunt.

³ At one stage, in a note to Members in 2018 from Public Health, following a “round table” on Domestic Abuse it was recognised that “To develop a Coordinated Community Response all points of contact needs to be considered. This will includes plans to tackle prevention, early intervention, treatment and rehabilitation, protection and legal action. A shared narrative and purpose needs to be developed not only in health and social care, and the criminal justice agencies, but also from employers, the third sector, schools, housing providers, benefits, religious groups and other community leaders”. There appears to be good work started, but it does not seem to have progressed.

Such analysis and detail work, as per a JSNA, is important in a government response, but an approach must be finalised, published and brought into action.

The need for a Domestic Abuse Strategy has been recognised but this remains absent and will likely need to be cross-departmental, with a clear multi-agency approach.

I note that there has been some developments regarding tackling domestic abuse given momentum by the need to deal with the increase in calls during the COVID-19 measures and emergency.

In the absence of a finalised and published government approach to Domestic Abuse, there has not been:-

- a) A policy frame of reference for the Bill
 - b) Implementation of other initiatives that make a difference in tackling domestic abuse.
3. **Training:** has been highlighted time and time again as being vital in tackling domestic abuse.
4. **Child to Parent Abuse/Teenage Intimate Relationship Abuse**
- a. Are complex and **need distinct policy** and cross-government response consideration.
 - b. Have been highlighted as areas of concern in approach both by Public Health and the Head of Children and Families, with particular reference to the removal of the age 16 years lower age limit for the offence. **It is important that the view of other aspects of government is understood and taken into account.**
 - c. Had been addressed in the Bill in House of Keys by Government amendment to remove lower age limit on Domestic Abuse offence, meaning the offence would apply to those under 16 years - essentially widening the domestic abuse offence to the age from which criminal responsibility applies (age 10). Elsewhere in the UK, there are calls to [change the age of criminal responsibility](#), but that was clearly outside the scope of our consideration, and is not just applicable to a domestic abuse offence.
 - d. In February and March 2020, a proper policy in dealing with these issues could not seem to be articulated by DHA regarding expanding the offence to teens/children, in order to establish the fuller picture, taking into account other possible interventions and interaction with other parts of the Bill (specifically the Domestic Abuse Protection Notices and Orders).
 - e. Evidence taking, consideration and discussion with other departments revealed **significant concern with applying the domestic offence and the process that goes with that to minors⁴** because
 - (i) There are issues with the capacity of teenagers, and added to that psychological impact if they have grown up in an abusive household. This can lead them to become abusive in turn, and experience other issues, because of this psychological trauma⁵.
 - (ii) since there are issues with compatibility re the [UN Rights of the Child](#)

⁴ Especially since an assault offence *could* already apply, so the appropriateness for the extended offence should be well explained and put into context as to what it is trying to achieve and solve.

⁵ Dr Vizard, raised the point of Toxic Stress on the Developing Child and submitted this link to Council <https://www.youtube.com/watch?v=rVwFkcOZHJw> in order to show “*the dramatic effect on the body of a child of being in a constant state of ‘high alert’, which is what happens when children are exposed to Domestic Abuse and unable to escape.*”

- (iii) related preventative civil remedy measures which are included in the Bill to prevent, protect and de-escalate (that is, the Domestic Abuse Protection Notices and Orders) are not available for under 16s nor is an equivalent provided for.
An alternative, something called ABCs, which had previously been in operation, which might serve as the “warning shot” to change behaviour, was raised, but not developed.
- (iv) The Bill, in including the offence to under 16^s appeared to cross over and undermine existing legal provisions under the Children and Young Persons Act and also the policy of Children and Families Division of DHSC. LegCo Members heard representations directly to this effect.

It became clear (albeit late in the day in legislative consideration) in a meeting attended by LegCo Members, DHA and representatives from Children and Families, that proper discussions between DHA and DHSC had not previously taken place on this matter, neither in the development of the Bill or particularly as to the implications of the removal of the lower age limit, about which some key stakeholders, both within and outside government, were also not aware. It is noted that some attempts to consult had been made, but a proper discussion and collaboration over approach, is what was needed.

How to approach this issue?

Whilst it is accepted that some intervention should be in place for Child to Parent Abuse (and indeed Teenage Intimate Relationship Abuse) it must be questioned whether the extension of a domestic abuse offence for young people, those aged 13, 14, 15 years old and theoretically younger, is the correct way to go about handling – even if it were to be the case that other aspects of the government system, modes of intervention, support or policy are not working properly for such difficult cases, perhaps for resourcing or other reasons.

Matters relating to Child to Parent Abuse and Teenage Intimate Relationship Abuse need to be handled carefully with proper cross departmental thought and policy and ways for early stage intervention and de-escalation, rather than the extension of the domestic abuse offence.

Whilst the issues that pertain to teenage intimate relationship abuse (which could of course be those aged 16 and 17 and living together) and also parent to child abuse, they clearly need addressing in a way which does not simply extend the lower age limit of an offence as a blunt tool. More thought is needed, as to what would be appropriate to deal with these circumstances and ages.

Further, attempted remedy for issues or concerns with the effectiveness of other policy and interventions, from social care etc. should not, in my view, be by way of creating an offence.

This should, in my view, be approached with significant care and caution and proper justification, whilst the conflict with existing law, such as relates to children and families, should be recognised and taken account of.

A joined up approach is needed.

It should be noted that, at the point of writing and indeed at the point of considering the Bill, the UK Domestic Abuse Bill maintained a lower age limit of 16 years for the domestic abuse offence, after a [UK joint committee on the draft Bill](#)⁶ considered that the proposed age of 16 years was appropriate.

5. **The link with the Justice Bill & Stalking**

Key aspects missing in our current legislation and Bill relate to stalking. Government have decided to bring these aspects in with the aforementioned upcoming Bill, after resisting inclusion in the Domestic Abuse Bill via proposed amendment.

However, if the Justice Bill does not progress, assurance has been secured from the DHA to bring further amendment to the Domestic Abuse Act. It might be worthwhile to note that some other aspects of the Justice Bill, relating to bail, have been brought in by emergency regulations. [The evidence given](#)⁷ to Legislative Council emphasised the importance of stalking provisions.

6. **Post legislative scrutiny should be carried out for the Domestic Abuse Bill.**

7. **Minster for Justice** – Overall the need to have a robust and well advised responses, including training for the judiciary, good prosecution guidelines, joined up holistic support and Guidance would support the case for a Minster for Justice, to ensure that these aspects, as well as others that go along with the Domestic Abuse would have a **clear line of oversight and policy setting across multiple agencies**, for an area that is clearly not only linked to one department, but also links to justice system and the police.

It has been problematic in some ways that the Domestic Abuse Bill has evolved purely from within Home Affairs, when it is a significant piece of social legislation, and the other aspects – such as policy and strategy remain missing. As such, it feels unusual for a significant piece of legislation to be “standalone” in tackling something so pressing and serious for people that requires action beyond legislation.

I recognise that there have been some indicators of action very recently due to COVID-19.

The enclosed table summarises some of the issues and outstanding matters where assurances have been sought and in a number of cases, provided.

I hope this provides a useful reference for the Committee and indeed Tynwald Members.

Yours faithfully

Kate Lord-Brennan MLC

Encl. Assurance and Guidance Preparation for Sitings
cc. HoK Members/LegCo Members

⁶ Page 15

⁷ Page 2

Prepared for LegCo Continuation of Clauses and Third reading, March 2020

	Matter	Assurance Required from DHA
Commitments/Assurance already given		
1	<ul style="list-style-type: none"> • Guidance will be drafted and consulted upon • Timing: around the end of 2020 • Bill will not be implemented without the guidance sufficiently already in place • Guidance will be laid before Tynwald. 	
2	<p>From 1st & 2nd: "Clause 47 deals the fundamental issue of guidance to all parties in how they should exercise their functions under the Act. (this clause is) fundamental to how the Act would be made to work in practice."</p> <p>From First reading: "In terms of enforcement in the Courts, guidance and training, it is planned that there will be.</p> <p>Guidance that will be drafted quickly, as soon as the legislative manager has the time to do so for the Courts, for the Police, and a number of other providers and organisations. We do need to learn from the UK approach to enforcement as well, I think that is quite important."</p>	<p>Confirmation that this is still the case, and clarity as to what Guidance will be provided by DHA, the AG's or Courts or commitment to establish clarity as to who (which part of system) will do what.</p> <p>Below may help with establishing that clarity, based on specific areas.</p>
3	<p>Guidance to Courts so that agencies know what Bill is and how To use. This commitment was given by TB at DA 2019 briefing.</p>	<p>That such guidance will be drafted and laid before Tynwald (or confirmation of otherwise).</p>
4	<p>How DAPOs interlink with other proceedings. The Department envisages that this be taken forward in guidance.</p>	
5	<p>What evidence would be made available to the Court in relation to coercive and controlling behaviour</p> <p>"Guidance in particular would assist with evidence, the issue of how evidence of coercive and controlling behaviour might be established and might be considered by a Court" JPW.</p> <p>Re: How pattern of behaviour that predates the Bill might be taken into account in a future criminal case?</p> <p>2nd reading response: "The Legislation and Policy Manager will be considering that when drafting the Department guidance that will go with the Bill or the Act. He has been made fully aware of the issues and concerns and does consider that surely in an offence such past evidence will be very, very highly important.</p>	<p>Don't think assurance is needed from DHA, KLB has explored with Head of Prosecutions.</p> <p>As this relates to course of conduct/pattern of behaviour, KLB will explain exchange with Head of Prosecutions for benefit of record in sitting (in relation to not moving aggravated factor amendment previously on OP).</p> <p>KLB has confirmed with Director of Prosecutions on these points - it would be DoP that will issue relevant Policy/Guidance (not DHA).</p>

6	<p>Guidance re Accommodation</p> <p>Potential issues around occupation/tenancy/housing/benefits/potential that DVPN won't get issued if nowhere for perpetrator to go or other accommodation issue.</p> <p><i>Re Orders:</i> <i>Mrs Lord-Brennan: It is just a query to do with the Orders that the Hon. mover has just referred to. There was quite a lot of detail, or potential detail, explained there that is not so specific as to be included in the Bill. Is it envisaged that there is to be guidance on these particular matters and how they might be applied? That is my question. Thank you. The President:</i></p> <hr/> <p><i>14 C137 RHC Miss August-Hanson: Thank you, Mr President. 510 Yes, it is envisaged that it will be in guidance.</i></p> <p>Also MM comments.</p>	<p>That Guidance will be issued re Domestic Abuse and matters relating to accommodation, based on cross-departmental working and liaison with the Police.</p>
Commitments/Assurances sought		
7	<p>Approach from government re DA- Strategy, MARAC, training etc., noting absence of how government plans to handle DA and various commitments given/work started then not coming to fruition.</p> <ul style="list-style-type: none"> • This is important so that various matters, relating to DA can be worked through • Cross-departmental implementation group (confirmed in Tynwald Dec 2017) • JSNA 2019? Not published. <p>Approach needed to support victims, perpetrators and children. MM's comments.</p>	<p>Commitment that there will be DA strategy and MARAC forthcoming, building on initial work in Domestic Abuse Needs Assessment - when?</p> <p>What is happening? Will it involve Public Health and Safeguarding?</p> <p>In respect of above – commitment to pick up again with Public Health, Police, and Safeguarding board, further to meetings in 2018.</p> <p>Commitment to establish milestones and accountability.</p>
8	<p>Training for Police (& Courts) is recognised as a key element, especially for evidence of C&C for prosecution.</p> <p>Police Trainer John Trott: It is recognised that without training and enforcement, legislation is woefully ineffective</p> <p>Comment from Law Soc.</p>	<p>Commitment that training provision for Courts and Police will be looked at.</p> <p>Recognition that funding mechanism needs to be agreed and lines of activity established.</p>

9	Children and DA & harm	<ul style="list-style-type: none"> - Commitment to keep an eye on UK legislation in this respect - Take account of this matter in strategy & support. - Track and seek to ensure the changes in Family Court Rules - Welfare and Wishes of a child must be considered in line with the Practice Direction on Domestic Abuse (does this exist?)
10	<p>Prohibition of Cross Examination in person: Court assessment/victim protection/identifying significant distress and policy/timing when cross-examination in person would be prohibited.</p> <p>See evidence session Rachel.</p>	That there will be Guidance and training re: for Cross Examination in Person – to include what significant distress looks like and where it can come from, to pick up the issue of coercive control as well as physical abuse and for it to be made clear for benefit of public that these protections are in place and the circumstances they may apply and how they will work.
11	DAPNs under the DA Bill and Prohibition of Cross Examination in person.	<p>That intention is that the provision to include Domestic Abuse Protection Notices as appropriate in these provisions (as well as Orders and Injunctions).</p> <p>I.e. someone would not be exempt from being subjected to cross examination in person in family proceedings where there was only a Notice in place, not an Order. This is very much a timing matter.</p> <p>This assurance has been agreed with Minister as alternative to amendment in Bill.</p>
12	Re: Stalking and Harassment It was known from the start that needed to include in Bill.	That if provisions are not brought in Misc. Justice Bill, they will be brought in via separate amendment Bill by April 2021.
13	Progress of UK DA Bill & related Guidance	Commitment to track to identify if any further changes are appropriate for our legislation or Guidance and if needed introduce by way of short amendment Bill or by way of other legislation.
FOR NOTING ONLY		
	<ul style="list-style-type: none"> • Dealing with families and children in the Courts in cases of domestic abuse • Assessing Risk of Harm (private law cases). 	Relevant to review of Family Court Rules & other evidence submitted – No DHA assurance needed.
	<p>How will Orders interplay with other proceedings : Decision making powers of Courts and Family Proceedings (contact and supervision).</p> <p>In UK Guidance and Practice Direction to Courts has been under review.</p>	Also relates to above. No DHA assurance needed.