



Northern Ireland
Assembly

Committee for Justice

OFFICIAL REPORT (Hansard)

Domestic Abuse and Family Proceedings Bill:
National Society for the Prevention of Cruelty to Children
and Barnardo's Northern Ireland

18 June 2020

NORTHERN IRELAND ASSEMBLY

Committee for Justice

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Members present for all or part of the proceedings:

Mr Paul Givan (Chairperson)

Ms Linda Dillon (Deputy Chairperson)

Mr Doug Beattie

Ms Sinéad Bradley

Ms Jemma Dolan

Mr Gordon Dunne

Mr Paul Frew

Miss Rachel Woods

Witnesses:

Ms Michele Janes

Barnardo's Northern Ireland

Mr Neil Anderson

NSPCC

The Chairperson (Mr Givan): I welcome Neil Anderson, the Northern Ireland head of services for the National Society for the Prevention of Cruelty to Children (NSPCC), and Michele Janes, head of Barnardo's Northern Ireland, who are attending via the StarLeaf broadcasting facility. The session will be recorded by Hansard and a report published in due course. I invite Neil Anderson and Michele Janes to give us a brief outline, and then we will move to questions from members.

Mr Neil Anderson (NSPCC): I am with you, Chair. Neil Anderson from NSPCC.

Ms Michele Janes (Barnardo's Northern Ireland): I am here: Michele Janes, from Barnardo's Northern Ireland.

The Chairperson (Mr Givan): I think that we are having you folks through the audio, as opposed to visual, so that is fine. Who wants to go first?

Ms Janes: I am happy to go first. Neil, are you OK with that?

Mr Anderson: Go ahead, Michele; I am fine with that.

Ms Janes: Thank you, Chair, for the invitation to speak to the Committee on the Domestic Abuse and Family Proceedings Bill. My name is Michele Janes, and I am head of Barnardo's Northern Ireland. Barnardo's is the largest children's society in Northern Ireland, with more than 40 services, delivering support to about 12,000 children, young people and their families every year. We work in a trauma-

informed way across a diverse range of areas, including mental health and well-being, child sexual abuse, children who are looked after or leaving care, disability, refugee integration and family support.

As we said in our written evidence, we sincerely welcome the Bill. Barnardo's has significant experience of supporting families affected by domestic abuse, and the Bill represents progress in addressing the many ways in which abuse can occur and its lasting impact on victims, including recognition of the harm caused by coercive control.

There are a few points raised in our written submission that I would like to highlight, particularly the impact of domestic abuse on children, young people displaying harmful behaviour and implementation.

Domestic abuse is considered to be an adverse childhood experience (ACE). ACEs can have a negative impact on a child's development, affecting their long-term physical, emotional and mental well-being. Too often, children are the hidden victims of domestic abuse and coercive control, but the Bill could provide an opportunity to rectify that by recognising children as victims and responding to the harm caused to them.

We welcome the inclusion of aggravation where a child is involved, outlined in clause 9. However, we believe that that could be strengthened and expanded beyond what a child sees or hears or whether they were present during an incident. It is important that the legislation reflect that a child can be aware of and be impacted by domestic abuse in the home, even if they do not see or hear the moment in which it occurs. Children can pick up on a parent's distress or be impacted by a parent's compromised capacity for parenting in a context of fear. The impact of domestic abuse is felt throughout a household and can often follow a cycle. The most stressful period in a household where there is domestic violence can be in the time leading up to an explosion, where an act of domestic abuse or control can occur at any time.

Furthermore, in instances of coercive control, the person displaying controlling behaviour often exhibits that control over the household, rather than over one person, so the impact is felt by more than person B. In cases of separation, which can be high-risk periods for victims of domestic abuse, contact visits with children can often be used as a means of continuing a pattern of abuse or exerting control. As a result, access visits can become stressful and potentially traumatic experiences for children. That can impact on other areas of a child's life, including their mental health and capacity to engage in education. We are concerned that clause 11 does not capture that.

We believe that it is important that the legislation recognise the impact of domestic abuse on children, so that the guidance and support services flowing from this law will respond to the child's needs. Our concern is that, when children are regarded as witnesses rather than victims, their voices will not be heard and their trauma will not be addressed.

You will see in our written evidence that we welcome that the Bill recognises teen relationships and increasing aggravation where the victim is under the age of 18. That is in clause 8. We know that young people can be victims of domestic abuse and coercive control, but they do not always identify as such and, therefore, may feel isolated from support, perhaps because they do not recognise themselves in the images portrayed around domestic abuse victims or because the abuse does not happen in a family home but rather in an online or even a grooming context, but the harm is real. Inclusion in this Bill sends a clear message that the law will recognise their experience and respond to their needs with appropriate support. However, we share concerns raised by many other organisations that this clause could be used to criminalise young people.

As outlined in our written submission, we firmly believe that children who display harmful behaviour should be treated as children first and foremost, so a tailored response is appropriate here. We know that, sometimes, young people who harm others have already suffered abuse and trauma too. We need to develop greater understanding of why children behave in this way, including greater recognition of the impact of trauma and ACEs on the development of this behaviour to effectively prevent the escalation of this behaviour and prevent further victims while also responding to the harm caused. Trauma-informed approaches, not criminal sanctions, are the most appropriate and effective response to young people who exhibit abusive or harmful behaviours in intimate relationships.

Before closing, I would like to highlight some points around the implementation of this legislation and the importance of cross-departmental working on the latest initiatives. The legislation is really welcome. However, it must be supported by effective guidance, resource and support for victims,

including children, who may require trauma-informed, child-centred support to address the trauma that they have experienced.

Training and education for professionals is also a key component of effective implementation and culture change. There is much crossover with other programmes of work, including the Gillen review into the law and procedures in serious sexual offences, as well as health-led initiatives, such as child protection and mental health. There are also links to the Children's Services Co-operation Act (Northern Ireland) 2015 and the children and young people's strategy. A greater understanding of the reality and impact of domestic abuse on all victims, including children, across first responders, the judiciary, as well as health, education and other sectors can only improve implementation of the legislation and, ultimately, help prevent domestic abuse.

Connected to that point, we believe that providing consistent, well-informed relationship and sexual education (RSE) and sexuality education in all schools could play a role in educating young people about healthy relationships. We believe that whole-school approaches to well-informed RSE in schools is an important aspect of challenging myths and stereotypes from a young age and raising awareness of raising awareness of domestic abuse amongst all ages.

I hope that those comments have been useful, in addition to the written evidence that we have submitted in which we provided comments on the relevant clauses. I am happy to take questions from members.

The Chairperson (Mr Givan): Thank you very much, Michele. Neil?

Mr Neil Anderson (NSPCC): The NSPCC in Northern Ireland welcomes the Bill, and we welcome the opportunity to give evidence to you today on the Domestic Abuse and Family Proceedings Bill. You have the NSPCC's written submission, and I will take the opportunity here to make comments about specific clauses in the Bill.

In clause 1, we welcome the creation of a specific offence of domestic abuse for Northern Ireland. We also welcome the inclusion of coercive and controlling behaviours in the definition of abuse behaviour at clause 2. However — this is a key point for us — as currently drafted, the offence can apply to individuals of any age. That contrasts with the Domestic Abuse Bill currently before Westminster, which states that the offence being created applies where:

"A and B are each aged 16 or over".

We agree with that. We believe that the Northern Ireland Bill should be amended to include a similar age threshold so that children under 16 cannot be convicted of the proposed offence. We would prefer to see the damaging behaviours and the harmful effects of abuse, where both A and B are under the age of 16, dealt with through a robust and comprehensive safeguarding and child protection response within the domain of health and social care, rather than a criminal justice response.

Clauses 8 and 9 deal with aggravators relating to children. We welcome the policy intention behind these provisions in attempting to recognise the impact that domestic abuse has on children, and we welcome the fact that judges will be able to consider the impact of domestic abuse on children in sentencing. We welcome clause 8, which is on aggravation where the victim is under 18. We note that our position about the offence not applying to children under the age of 16 would also have to be considered in the context of this clause.

We welcome clause 9, which is on aggravation where a relevant child is involved. This is a welcome step forward in that it considers the impact of domestic abuse on children. However, to truly bring the impact of domestic abuse on children to the fore in the drafting of this legislation, we believe that more could be done to capture this in the definition and description of the offence through clauses 1, 2 and 3.

Referring briefly again to clause 2, there is a "reasonable person" test of what amounts to abusive behaviour, and we believe that a reasonable person test should be inserted into clauses 8 and 9 with regard to considering the impact of abuse on children. That is so that children should not be submitted to intrusive assessments, questioning or cross-examination to determine the impact of abuse on them. It should be a reasonable person test.

Clause 11 provides for an exception where there is responsibility for children, and we consider this to be an awkward exception in the legislation. As presently drafted, the definition of the offence allows for the possibility of an adult committing an offence of domestic abuse against a child. However, clause 11 states that A, an adult, does not commit an offence towards B, a child, where A has parental responsibility over B. This, we understand, may well be because the prosecution of other offences against a child by an adult are deemed more appropriate, but the exception appears to sit somewhat awkwardly alongside the earlier definition of the offence. So, if not in the legislation then in associated regulations and guidance, it will be necessary, in our opinion, to carefully explain the purpose of the exception and be explicit about the alternative measures that are deemed more appropriate.

Clause 12 deals with the defence on grounds of reasonableness. The clause is open to very wide interpretation and potential misuse. Again, if not in the legislation, in associated regulations and guidance, it will be necessary to explain carefully the circumstances in which such a defence might apply.

I will make three general comments to finish. We believe that there should be a statutory duty on health and social care trusts to deliver support services. We advocate this, and we would like to see it included in the legislation. The Domestic Abuse Bill at Westminster includes such a duty on local authorities.

I will comment on calls for the creation of a commissioner for domestic abuse. NSPCC Northern Ireland supports calls made for the introduction of a domestic abuse commissioner. Such a role, we believe, would provide leadership and scrutiny in tackling domestic abuse, and it would be vital that the functions of the commissioner sufficiently address the needs of children affected by domestic abuse. Having said that, I will add the balancing challenge that perhaps now is the right time to consider how there could be efficiencies made through the clustering of commissioner functions such that each does not exist as a separate entity, duplicating support services, premises, costs and organisational overheads.

Finally, I will make a brief comment on Part 2 of the Bill, which deals with family proceedings and cross-examination. We completely support provision that prevents those who engage in abusive behaviour from having the opportunity to cross-examine their victims directly. The family courts should be a place of safety, where the protection of children and adult survivors is put first and their fears are listened to and respected.

Thank you, Chair and members of the Committee, for the opportunity to present. I end my comments here.

The Chairperson (Mr Givan): Thank you, Neil. That was very helpful, and, Michele, likewise. I have a couple of questions. We will probably have to debate the issue around the age at which the offence is applicable. Neil, you said 16, and that is in line with what exists in GB. Will you elaborate on what the concern is? I think that you have dealt with it very well in articulating your position, but why would it need to be 16? Is this debate more around the age of criminal responsibility? Obviously, that is the age of 10. I am just trying to understand how the argument advanced on domestic abuse relates to the Bill. Do you want to give a bit more commentary about that?

Mr Anderson: The best way for me to do that is to exemplify the concern that we have, by bringing into life party A and party B, at a certain age. Of course, it indirectly brings into play the age of criminal responsibility, but it sets another limit within our parameters. To exemplify this, take a child of 13 and one of 12. This is not for a moment to play down the seriousness, or the possibility, that there could be an abusive relationship between those two children. We raise the question, "Is this really what we want to do with the legislation? Do we want a 13-year-old and a 12-year-old to be dealt with, in relation to the domestic abuse that is real and exists, through the criminal justice system as opposed to a robust child protection safeguarding perspective?" That would keep it within the domain of health and social care. The NSPCC firmly believes that children of that age should be dealt with through a robust safeguarding and child protection response, rather than criminal justice.

Ms Dillon: Thank you both, Michele and Neil, for your presentation. Thank you, Neil, for that explanation of the age limit. That is something I had not heard commented on to date. It is much appreciated.

A couple of issues have been raised previously by Victim Support. One is the need for effective guidance. The guidance is something the Committee needs to consider. It absolutely has to come alongside the Bill, and we need to see in it the explanation for certain clauses.

You said that clause 12 is open to misuse. That has been raised by all the witnesses, so we need further explanation of that.

You say that the statutory responsibility of the trusts, for funding services, needs to be put into the Bill. Is that something that does not happen at the moment? Are there gaps in relation to that? Is there another way of dealing with it, or is it something that you absolutely think needs to be included in the Bill? Neil, I think you raised that point,

Mr Anderson: In all our analysis of the challenges we face in a social care setting, domestic abuse, time and again, comes up as the biggest need, the biggest danger. In Northern Ireland, it is the top issue of concern. For that reason, we believe that there has to be a statutory duty to ensure that funding and services follow that duty. There is a gap in the support for and the delivery and creation of services to support families and children in settings of domestic abuse. In looking at the Westminster Bill, we noted that a comprehensive duty will be placed on local authorities. We do not have local authorities here, but the closest equivalent, for the holding and the delivery of that duty, are the health and social care trusts. That would be a strong addition to the legislation.

Ms Dillon: Michele, as regards clause 9, how far would you go? I accept what you say about the lasting impact on everybody in a home, whether or not they witnessed the actual incident of domestic abuse. Could you expand on how that could be dealt with or implemented? I am not sure how it would be dealt with legally. There could be some difficulties about that. If you have ideas about it, I would appreciate a wee bit of expansion.

Ms Janes: Are you asking how you could know or prove that a child had directly witnessed domestic abuse?

Ms Dillon: I wonder how you would legislate for it. How would the impact on the child be assessed when it came to court?

Ms Janes: There are lots of ways of looking at its impact on a child. I am trying to think of a case. The detrimental impact can be seen in children's mental health and in their development. I have had experience of children whose development has been delayed. Although they have not been there to see the domestic abuse take place, the fear of the parent and the impact of the parent's ongoing fear has compromised the parent's ability to respond to the child, and that has had an impact on the child's development. You can see that impact in their education, development and behaviour. You are right: it will be very difficult to prove in court. I am not sure how you would legislate for it. I feel really strongly about it. We see children who are impacted by domestic abuse every day, and just because they were not there when person A assaulted person B or during the incident, that does not mean that they are not impacted.

We work closely in our family resource centres with parents who have been victims of domestic abuse. We are often asked by trusts to assess a parent's capacity to protect their child, having been a victim of domestic abuse. The trust will have already seen that a child is maybe failing to thrive or that there may be stunted development. Evidence will, therefore, be available from experts, be they social workers or people who are involved in education or the wider sector. To legislate for that, you would have to go wider than simply the child having to see or hear what is going on. It is more than that.

The Chairperson (Mr Givan): Michele, we are struggling to pick you up. Hopefully, Hansard will have got all that response so that we can look at it. You might be on a hands-free device. We might have to persevere.

Mr Anderson: Chair, may I comment briefly on that question?

The Chairperson (Mr Givan): Yes, Neil, go ahead.

Mr Anderson: I will keep it brief. It is very challenging to try to capture all that. I want to go back to comments that I made earlier. Clause 2 includes what is called a reasonable person test for assessing the relevant effects of domestic abuse, or what amounts to abusive behaviour. The insertion of that to

clause 9 — perhaps it could go into clause 8 as well, but it should definitely be in clause 9 — would be helpful in making it not something that has to be about objective assessments, questioning and things like that but what a reasonable person would expect to be the impact of abuse on a child.

Ms Dillon: That may well be the solution, Neil. I appreciate you coming in on that. Thank you very much.

To make my last point, Victim Support raised and we have discussed Operation Encompass. Should that be included?

Mr Anderson: I completely agree with Victim Support on its emphasis on the importance of that operation. The question that always troubles all of us in looking at these issues is this: where is the right place to put it? There is an important need for it to be highlighted and included, if not in the legislation, perhaps in the guidance or the regulations that go alongside the Bill. It is sometimes difficult to see exactly where in a Bill to put something like that.

Ms Dillon: Yes. We have suggested that we write to the Department and ask. We were told in a previous session that there was a legislative gap in being able to implement it, so we need to find out what that is. We will tie that down and see how we can move it forward. Thanks very much to both of you for your presentations.

Miss Woods: Thank you both for your presentations. A lot of my questions have been asked, so I will not labour too much on it. My question is to both of you. Do you think that the legislation covers effectively the experiences of children in our care system?

The Chairperson (Mr Givan): Michele, do you want to take that first?

Ms Janes: The legislation needs to apply to all children. If we get into separating and making differences, there is a risk that we will start to exclude some children if we say, "Children in care should have it like this, and children who are not in care should have it like that". This legislation needs to apply to all children and be implemented in a way that makes sure that it is accessible.

Mr Anderson: Similarly, the NSPCC viewed this as legislation applying to all children. We have not seen the need for there to be specific differentiation in clauses for children in care. I agree with what is behind the question that there will be additional challenges for children in care, perhaps when things proceed to court proceedings and hearings and situations like that. At that stage, it is critical that children are treated as individuals and special measures are put in place to support them with their individual needs, but I do not see those special measures for court proceedings necessarily being part of this legislation. It is a very important question, and it is very important that children are dealt with as individuals.

Miss Woods: The rest of my questions, which were on the age of criminal responsibility, have been raised. I have quite strong feelings about that. Do you think that the low age of criminal responsibility will have an impact on the legislation being effective on the children and the child aggravators that are in it?

Mr Anderson: I will go first on that, seeing as I commented mostly on it. The NSPCC's position is that the age of criminal responsibility at 10 is too low for a start. We are greatly concerned about the legislation being implemented as it is, sweeping up, as I described, for example, potentially very young and vulnerable children. I am not for a moment making light of the real possibility of very damaging abusive relationships between children of that age, but it puts this challenge back to all of us: do we really want those children to be put through the criminal justice system? I say no to that.

Ms Janes: I completely agree with Neil. We also think that the age of criminal responsibility is too low in Northern Ireland, and we share the concerns that that catch-all could lead to the criminalisation of young people where the young person carrying out the abuse is also a young person. We feel very strongly that criminal sanctions should be avoided wherever possible in that scenario and that child-centred, trauma-informed approaches are the most appropriate and effective response to young people who exhibit abuse behaviour in an intimate relationship whilst the harm that is caused to victims is also acknowledged.

Mr Frew: I hope that you can hear me this time. My question is for both of you. I think that you both raised the wording of the clause 12, which is "Defence on grounds of reasonableness". It is a consistent theme now that that wording needs to be tightened up. I was struck when I read clause 11, which is "Exception where responsibility for children". Do not get me wrong: I support a clause on that as such, but it strikes me that the wording of that is quite clumsy when it says:

"A person ('A') does not commit the domestic abuse offence in relation to another person ('B') by engaging in behaviour that is abusive of B".

First of all, if it is abusive, it is harmful. I almost take umbrage at the word "abusive" there. If you look at clause 12, on reasonableness, you see that it does not use language like that at all, and, if you look at clause 2 and the reasonable person test, you see that it is not used. I do not really want anybody to engage in abusive behaviour. What are your thoughts on that and the use of the word "abusive" in clause 11?

Mr Anderson: I will start with that. In my comments on clause 11, I used the word "awkward": "clumsy" is another word that I would freely apply to it. It is poor; it jars with me. Even the thought that there needs to be an exception for abusive behaviour against a child by an adult just because the child is under 18 and A has parental responsibility for B jars with me. There is something awkward, jarring and clumsy about all of it, and I really think that the whole clause needs to be looked at again. I am not an expert in drafting legislation, but perhaps this clumsy clause could be alleviated somewhat if the age threshold issue that I talked about earlier was dealt with. I am not sure, but it may be alleviated by that. At the very least, it needs to be explained in more detail, and it needs to be explained what other offences would apply if the domestic abuse offence is not to apply.

I will not go on for long about the defence on grounds of reasonableness, but I will simply say again that it is so wide open to interpretation that anything could be argued by the accused to have been a response to something that was reasonable. Anyone could mount a defence under that. It needs to be tightened.

Ms Janes: I agree with you, Neil. We are concerned that, while the Bill closes the legislative gap to provide for adult victims of domestic abuse, it will not extend the provision to children. I wondered whether it was about the whole equal protection conversation that we urgently need to have. We support the calls for protection from assault for children, but we recognise that that is not what the Bill is trying to do, although we hope that it will be addressed in future. I agree; the wording is awkward, and I am worried that omits coercive control of children as part of the control of a household.

On clause 12, as we said earlier, there needs to be much more clarity, and language is really important in providing that clarity on what it would look like in practice. The defence could be open to abuse, as Neil said, so the guidance needs to be developed to clearly outline the parameters of the defence. There would then need to be robust monitoring of the implementation. I completely agree that there are concerns with the language, and I agree with Neil that the wording is clumsy and that we need to refine it if it is to be implemented well.

Mr Frew: I agree with you about the clumsiness of the language. I certainly believe that we need a clause to protect parents. What I take umbrage at is the use of the word "abusive" in that clause, because, if you look back at the descriptor of abusive behaviour, you will see that it is violence and behaviour that is directed at B that is threatening. As a parent, I threaten my children all the time that I will withhold pocket money and all of that type of thing. That is where we have to be very careful. There has to be a reasonableness for parents to control children by whatever means are deemed reasonable in a domestic setting. There is a danger, with a domestic violence Bill, that we could do damage or violence to that principle. What are your thoughts on that?

Mr Anderson: I am probably struggling a little with your concerns with the use of the word "abusive" in particular. It may help if the drafting of that relates more closely and clearly to the definition of what is abusive behaviour in clause 2. It may help to allay your concern if the drafters of the legislation could link it more clearly to what is meant by "abusive" and the behaviour behind it. From the NSPCC's point of view, I totally understand your concerns about not wanting to, let us say, criminalise parents for reasonable parenting. My concern probably comes from the other side of the spectrum. Clause 12, in particular, leaves it wide open for someone who has committed a very serious assault on a child to, with this legislation, claim a defence of reasonableness because it is so loosely defined.

Mr Frew: That is somewhere where we do not want to be with regard to this legislation allowing that absurd rationale around reasonableness. It is a constant trend we hear from all witnesses: clause 12 on reasonableness will need to be tightened. There has to be some aspect of rewording in clause 11 to remove the terminology around abuse *[Inaudible.]* parents in controlling their children. I worry that we could end up in a place where, even if it does not criminalise them, it puts a really bad label on parents who are trying to do their best for their children. Do not get me wrong: if it is unreasonable chastisement, if it is violence, it should be criminalised. *[Inaudible]* that line around giving the parents the right to *[Inaudible.]*

Ms Janes: Chair, I am having real trouble hearing. I do not know if it was just Paul's mic again.

The Chairperson (Mr Givan): We could pick Paul up there too, although he is a bit faint compared with the others. Although I know, Michele, that your line is not as good —

Ms Janes: No, it not good.

The Chairperson (Mr Givan): — as Neil's in coming through, so apologies. I am not a technical wizard when it comes to what is going on here, so we will do our best to persevere.

Ms S Bradley: It is clauses 11 and 12 that are coming to light during this session, and I, too, have serious questions about clause 11. It is about hearing the debate at both ends. Maybe Parenting NI will need to bring another perspective to that. On Neil's recommendation, I noticed that he said that he was opposed to it and that, maybe, *[Inaudible]* might go some way to alleviating the difficulties there. Was your recommendation complete removal? What are you saying, Neil? I am not really sure.

Mr Anderson: If the intent is, as Paul said, to build in some protections for reasonable parenting, I just do not think that this does that at all. It is too wide and simply appears to remove the potential offence of domestic abuse against a child purely because A has responsibility for B. It does not do a good job of differentiating thresholds of behaviour, what that behaviour is and the harm that is done to the child. It seems to be a blanket removal of the offence in those circumstances, and that, again, in clauses 11 and 12, raises a serious concern that we could be talking about the very serious assault of a child by an adult but those clauses would let them slip through.

Ms S Bradley: I take your point, as well, that it is about intent. It certainly needs tidying up. An explanatory note might throw a bit more light on it. It is just the one that is shining out through this session —

Mr Anderson: Yes.

Ms Janes: Yes.

Ms S Bradley: — so *[Inaudible]* explore it further. Thank you.

The Chairperson (Mr Givan): No other members have indicated an interest. I thank Neil and Michele for their evidence. It has been very helpful and will give us plenty of food for thought. On behalf of the Committee, I thank Neil and Michele. It is very much appreciated, as is the work of your organisations.