



Northern Ireland
Assembly

Committee for Justice

OFFICIAL REPORT (Hansard)

Domestic Abuse and Family Proceedings Bill:
Public Prosecution Service

2 July 2020

NORTHERN IRELAND ASSEMBLY

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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
Miss Rachel Woods

Witnesses:

Ms Caroline Conway	Public Prosecution Service
Mr Ciaran McQuillan	Public Prosecution Service

The Chairperson (Mr Givan): I welcome from the Public Prosecution Service (PPS) Ciaran McQuillan, who is the assistant director and head of the serious crime unit, and Caroline Conway, who is the principal public prosecutor in the policy unit and the domestic violence policy lead. You are both very welcome to the meeting. As normal, it will be recorded by Hansard, and the transcript will be published in due course. Ciaran, I will hand over to you to provide an overview of the submission, and then we will move to Committee members' questions.

Mr Ciaran McQuillan (Public Prosecution Service): Thank you very much, Chair. Good morning. Thank you to Committee members for inviting us to speak today. I am an assistant director in the Public Prosecution Service. I am joined by my colleague Caroline Conway, who is the domestic abuse policy lead in the PPS. If you are content, I will first address how the PPS deals with cases of domestic violence and abuse and then discuss some of the provisions in the Bill. Caroline and I will then both be available to address any questions that you may have.

In the past financial year, the Public Prosecution Service has issued just over 8,000 decisions in cases involving domestic abuse. Cases involving domestic abuse generally account for nearly 20% of the PPS's caseload each year. That is a striking statistic, given the wide range of high-volume offences that we deal with, such as road traffic, drug and public order offences. At the Public Prosecution Service, we regard allegations of violence and abuse in the domestic context as extremely serious. The domestic nature of the offences is, in our view, a significant aggravating factor. Domestic violence often involves an abuse of the trust that individuals should be able to rely on in their own home and family. Victims know and often live with their abuser. They may have children together. Domestic violence in that setting presents a continued threat to the victim's safety and, in the worst cases, to their life. The safety of children and others may also be at risk, and we are conscious of the indirect impact of domestic violence on the children who witness it or are aware of it and of the wider societal impact.

For many years, we have worked with our colleagues in the criminal justice system and with voluntary and community groups to improve how cases of domestic abuse are dealt with. Since 2017, we have been in discussions with the Department on the Bill. The decision made to bring it back before the Assembly and your early focus on it are indicative of the importance of the issue.

The way in which the Public Prosecution Service and the wider criminal justice system deal with cases involving domestic violence is constantly evolving. We have worked closely with the Departments of Justice and Health to develop our practice in the area of domestic abuse and with the criminal justice inspectors in their thematic reviews of domestic violence and abuse. From the first inspection report in December 2010 through to the follow-up work to that report and the more recent report in June 2019, Criminal Justice Inspection Northern Ireland (CJINI) has set out important strategic and operational recommendations that have helped to inform how the PPS deals with domestic violence and abuse cases. We have looked at how we can use all the tools at our disposal to effectively prosecute such cases, especially in the face of the well-known issue of victim disengagement.

In 2017, we argued a case before the Court of Appeal in which we had used body-worn video and other evidence from police to secure a conviction in the absence of the victim. The Court of Appeal endorsed our approach, and body-worn video, police observations and other independent evidence have been used successfully in many cases since that ruling to bring perpetrators of domestic violence to account.

In 2017, we also developed new guidelines for prosecuting cases of domestic violence. To support the new guidelines, training was delivered to all of our prosecutors and relevant administrative staff across the service. It included detailed guidance in respect of dealing with cases involving reluctant witnesses and particular groups such as ethnic minorities, male victims and LGBT communities.

The most recent CJINI inspection acknowledged the progress that the Public Prosecution Service had made in prosecuting cases of domestic abuse over the last nine years and offered further strategic and operational recommendations to help to improve the service provided to victims. Over the past nine months, the Public Prosecution Service has built on its strong working relationship with the Police Service of Northern Ireland (PSNI) to develop a prosecution team approach for cases involving domestic abuse. Changes have been made to the way in which evidence is shared with the PSNI in cases involving domestic abuse. Prosecutors increasingly use evidence-led prosecutions to take forward cases where a victim of domestic abuse has withdrawn their support for proceedings.

The PPS is working closely with the judiciary, the Department of Justice (DOJ) and the PSNI to introduce a pilot domestic violence court in Belfast. Through collaborative working, it is hoped that cases in the pilot court can reach conclusion within 12 weeks of the date of the incident, the primary aim being to reduce victim attrition rates through advocacy support for the victim and reduced delay.

To reflect the changed landscape that the Bill will herald, the PPS is scoping the introduction of specialist domestic violence prosecutors. Domestic violence specialists will receive comprehensive training on the provisions of the Bill, including those relating to coercive and controlling behaviour and victim attrition, and they will be trained to recognise the patterns of abusive behaviour and to identify serial perpetrators.

We welcome the introduction of the domestic abuse offence in clause 1. That will allow the PPS to take forward cases that previously would have fallen short of a criminal offence and will help to protect victims from psychological abuse or other coercive and controlling behaviour.

Clause 3 acknowledges the impact of abusive behaviour on victims. Through the many cases of domestic abuse received by the PPS, we see evidence of the different ways in which individuals react to different situations. We see evidence of how people can become hardened to the abuse that they face. Clause 3 would ensure that perpetrators cannot take advantage of a victim's resilience or acceptance of an abusive situation that has been of the perpetrator's making.

The definition of behaviour in clause 4 will assist in prosecuting covert and evolving ways in which perpetrators conduct their campaigns against victims. We will be able to use the clause alongside offences in the Communications Act 2003 to combat the increasing use of digital platforms to abuse victims.

We welcome the introduction of the child aggravator clauses. Clauses 8 and 9 will focus the minds of everyone dealing with these cases on the wider impact of domestic abuse and adverse childhood experiences.

The defence contained in clause 12 has attracted some comment during the passage of the Bill, and I note the comments from Sarah Ramsey this morning. Statutory defences are a concept familiar to criminal practitioners, and we are confident that the courts will have no difficulty in ensuring that clause 12 works in a way that is fair to everyone: victims and defendants.

The automatic eligibility of victims of domestic abuse for special measures will also be an important tool that the PPS can use to assist victims and improve their experience in the criminal justice system.

Beyond the current Bill, we note the commitment to go further in subsequent legislation. We note the comments this morning on stalking, specialist domestic courts, domestic abuse protection notices and orders and a stand-alone offence of non-fatal strangulation, which is a common and distressing feature of many domestic abuse cases. Those are all important issues that need to be addressed, but we understand the Department's view that the current Bill is not necessarily the most appropriate vehicle for them.

We will embark on a large programme of training and technical change to ensure that the Bill is effectively implemented. We will work with colleagues in the criminal justice system on this. We will also work with our partners in the voluntary sector to ensure that we remain focused on the needs of those most affected by domestic abuse. We will also update our domestic violence policy in line with the new legislative provisions, and we will consult on all changes.

The Bill provides an opportunity to tackle the stain of domestic abuse on our society. We hope that it will deliver an effective criminal justice response that helps victims whilst retaining the rights of those accused. We recognise, however, that dealing with domestic violence and abuse is more than a criminal justice matter, and we hope that the Bill plays its part in raising awareness of the impact of domestic abuse not just in the agencies that deal with the cases but in society more widely. We are happy to take any questions.

The Chairperson (Mr Givan): Thank you very much, Ciaran. That is very helpful. I will go straight to comments on the definition. We touched on this earlier. Do you want to elaborate on your thoughts on the question that I put to the Bar Council about the definition being so broad? Does it need to be more clearly defined to make sure that it becomes effective legislation that, ultimately, the PPS can take forward in cases?

Mr McQuillan: The definition that we use in dealing generally with domestic abuse and violence comes from the Department of Health and Department of Justice seven-year strategy on domestic abuse. The Bill is quite detailed in how it takes you through the elements of the offence and leads you through the legislation and assists prosecutors, defence representatives and, indeed, the judiciary, I think, in having certainty about the sorts of cases that will be brought under it. A number of steps and elements need to be shown for any prosecution to go forward. There is, as mentioned in our response and by other contributors this morning, the statutory defence at clause 12. I think that, when you go through the Bill, although there are examples given, for instance, of the types of behaviour, there is enough certainty in the different elements of the Bill that it can be effectively implemented by everybody in the criminal justice system.

The Chairperson (Mr Givan): If clause 12 were to be removed, what would be the response from the PPS?

Mr McQuillan: We feel that clause 12 is an entirely appropriate clause. It is not unusual for legislation to contain a statutory defence as well as defining the offence. We have experience of that in other cases and in other legislation. It is right that the burden of proof is on the prosecution. We have to discharge that, but our role is to have regard not only to the concerns of victims but to the rights of defendants. We think that clause 12 is worded in a way that the courts and legal practitioners can work with, and, as I said, it is something that we are familiar with.

I will clarify the clause 12 defence: it is clear that evidence has to be adduced. It is an evidential burden that [*Inaudible*] on the defendant, so evidence enough to raise an issue must be adduced first. That evidence can be adduced as part of the prosecution case or of the defence case: it can be raised if a suspect is interviewed or if the defendant gives evidence. That provides opportunities for cross-examination. It is not that it will not be tested, but, when that evidence is adduced, the burden shifts back on to us. That is consistent with the jurisprudence and the legislation that exists for many offences, so we are comfortable with it.

The Chairperson (Mr Givan): Would it be unusual law if it did not include clause 12?

Mr McQuillan: There has been a view, particularly since the Human Rights Act, that the evidential burden of disproving any defence falls back on the prosecution, so more and more legislation contains such provisions, even if they are not all worded in exactly the same way. It is entirely in line with other legislation.

The Chairperson (Mr Givan): We talk about blended learning, but, given the complex nature of blended relationships in society, has the PPS any concerns about how wide it will go and the relationships that it will capture?

Mr McQuillan: No. Like Sarah Ramsey, who spoke earlier, we recognise that it attempts to reflect the nature of modern family life and the fact that there are wider groups involved than was the case previously. It reflects the approach in other legislation and the approach taken in England and Wales, so we do not have any concerns about the scope.

The Chairperson (Mr Givan): The Human Rights Commission has indicated that it should go even further to include live-in carers in a private home and guardians. Maybe I am putting you on the spot, but we might want to follow that up. We will hear from the commission after this session, but I noted from its submission that it thinks that the scope should go further. I do not want to press you on it now, but I am happy that we get another view, if that is an area that the Committee wants to consider.

Mr McQuillan: As ever with legislation, the devil is in the detail. The provisions as they stand are very detailed and very prescriptive. Even though they are wide, they explain carefully who is involved. I will leave it to the Human Rights Commission to expand on its view. It is our view that there must be clarity; that is what practitioners look for.

The Chairperson (Mr Givan): I will bring in other members. I have a few more questions, but I will go round the table and bring in other folk.

Ms Dillon: The Chair has just asked a question that I meant to ask the Bar Council, because I would like to get another view. We should try to get another view on that, but it is not really a question for you.

You talked about training, which is vital. The legislation is only as good as the way in which it is used. Has there been engagement with the Department and the victims' organisations on the scoping work that is being done?

Ms Caroline Conway (Public Prosecution Service): Can I just clarify: the scoping of —?

Ms Dillon: Around the specialist abuse prosecutors.

Ms Conway: No, we are considering that internally. When we explore the finer details, we will engage with other agencies to consult on that, but it is not at that stage yet.

Mr McQuillan: It has come up over the years in CJINI reports and in our dealings with organisations such as Women's Aid and Victim Support. While they recognise the high level of expertise on the issue among PPS prosecutors already, it is a matter that is often raised. That is why we are looking at it. We will, of course, consult those bodies, if we decide to implement it, and take their views on board.

Ms Dillon: Obviously, you would consult them when you get to that stage, but it is sometimes better to have the conversation earlier so that you have a fairly rounded view before getting to the consultation. It is interesting that you are doing that, and it is to be welcomed. Obviously, we would like to see a lot of things in the judicial system around family courts and criminal courts working much better together on those issues, but there is a lot of work going on, and it is all to be welcomed. Those are my only points for now because you have covered all my questions.

Mr Beattie: I will say the same thing: Paul and Linda have covered all the points that I was going to cover. Ciaran and Caroline, thank you for coming and giving us that useful reference document. Linda has hammered this continuously, but education and training are key to everything that we do in regard to the Bill. She is right to keep banging on about it, and she has my support on that.

On the reasonableness thing, if it was not referenced in the Bill at all, am I right in saying that it would still be considered a defence? Does it have to be referenced in here to be considered a defence if it was to come forward and a defendant evidenced that there was a degree of reasonableness in what they did? Is that fair?

Mr McQuillan: Reasonableness is built into the elements of the offence already. A reasonable person must consider that the victim would suffer harm from the abusive behaviour. There is an element of reasonableness, which, of course, is an objective test; it is not the individual defendant.

The benefit of a statutory defence is that it provides clarity and a clear test for all the practitioners and, in particular, the judiciary and juries who hear the cases. Defences can be formulated, and there is a range of common law defences and commonly used defences in criminal law. The reason that some offences include a statutory defence, such as this one, is that it provides a very precise legal definition of what has to be disproven by the prosecution.

As I said, where you have clarity, the legislation works more effectively for everybody. Whilst there would, obviously, be defences in the absence of any statutory defence — the Department will give its view on why it was put in — I think that practitioners' views generally about statutory defences are that they provide a clear pathway for the defence to raise it and for the prosecution to disprove it.

Mr Beattie: That is really useful. The reason I ask that is that there are elements in the Bill that will always pop up and we will always have to talk about, and I guess that this is one of them. We have had people who have given the opposite point of view, and I sense that as well. However, the point that you make, which is really important in thinking about this, is that there is clarity on what is and what is not.

Mr McQuillan: It does not mean that it will not be tested —

Mr Beattie: No, of course not.

Mr McQuillan: — and it may be that that needs to go through the courts. There needs to be a view given on it, but it is there. It is in the legislation, and, as I said, everybody who is practising, including judges and juries, knows what it says.

Mr Beattie: Another area — again, it is a follow-up from what Linda was asking about — is the specialist domestic violence and abuse prosecutors, which you are scoping. I think that they are an exceptionally good idea, by the way, but it would be good if it could move in tandem with the Bill. I know that you are scoping, but, if the Bill is enacted, it would be really good if the specialist domestic violence and abuse prosecutors were in place.

Mr McQuillan: That is why we are doing it now.

Mr Beattie: I do not know where it is, so I do not know whether it needs to speed up, but it needs to do what Linda says and start talking to people to be in a position to be in place. We do not want the first series of people who are working off the legislation going through a different process, and, all of a sudden, you introduce something different. Does that make sense?

Mr McQuillan: It does, and that is why we are looking at it now: so that it aligns with when we start receiving the cases, assuming that the legislation is passed, and that we have that in place. If we do not go down the road of specialist domestic prosecutors, we will still introduce training for our prosecutors, so it is not as if the lawyers dealing with it in the PPS will not have that level of training.

Mr Beattie: No, but they will not be the specialists dealing with it. If you flicked that coin, which would you prefer?

Mr McQuillan: There are arguments. It is important for anybody involved in these cases to understand that there is a very high level of knowledge of domestic violence amongst all our legal staff. I sometimes do not like the idea of people being specialist, because it suggests that other prosecutors might reach these cases without the necessary knowledge. However there are a lot of advantages to having experience and focused training.

The Chairperson (Mr Givan): I will bring in Sinéad Bradley. I am waiting for the technology to catch up.

Ms S Bradley: Thank you. I will not go over what members have already raised. I appreciate the presentation. However, there is a big discussion about the scope and meaning of what warrants abusive behaviour. What is your view on clause 3 on the impact of the behaviour on the victim, the burden of proof or the low burden of proof?

Mr McQuillan: As the preceding clauses and paragraph 3 set out, there are a number of, if you like, bars that we have to overcome to prove the offence. It is not just a matter of there having to be abusive behaviour; there has to be an intent, which is for the prosecution to prove. There has to be an intent to cause harm or be reckless as to that, and the behaviour itself has to come under some of the descriptions in clause 2. However, as I said in my opening, the idea in clause 3 was to capture cases where the actions of the perpetrator — the person under consideration for prosecution — do not necessarily result in harm or having an impact on the victim because of, perhaps, the resilience of the victim and the experience that they have been through over time. The rationale for clause 3 — again, the Department can speak to this — was to focus on the actions of the perpetrator rather than the impact or the effect on the victim. The focus is kept on the perpetrator in those cases. That is why the necessity to show that harm is actually caused to a victim is not included in the Bill or that the impacts set out in clauses 2 and 3 do not necessarily have to exist either, if the intention to cause them is there.

Ms S Bradley: I appreciate the intent behind it, but do you have any concerns that the clauses appear to reach out to grab everything that did not fit the criteria? I am not questioning the intention behind it; I think that it is right. Is there a danger that it is not refined enough if you are reaching out on the scope, meaning and impact? Does it open the floodgates for what is eligible to go through the Bill?

Mr McQuillan: It reflects the complicated nature of the behaviours, which can be subtle, nuanced and, at times, covert, and also the nature of relationships. The list of behaviours in clause 2 and the relevant effects that those behaviours seek to achieve reflect the way non-physical abuse can manifest itself. It is necessarily broad to capture all those behaviours. It is complicated, and there is no question that there are a number of elements to it. That is because it is a complex issue. A physical assault, if you like, is relatively straightforward, whereas this sort of behaviour has complexities that necessitate the comprehensive reach of the legislation.

Ms Conway: Clause 3 is important. For example, if you take the case of a serial perpetrator who engages in a course of abusive behaviour against two females. If one female displays evidence of harm while the other does not, it would be wrong in law to allow one of those behaviours to be an offence while the other would not be.

Ms S Bradley: OK, so you are happy with the drafting.

Mr McQuillan: We support those clauses, yes.

Ms S Bradley: Thank you.

Mr McQuillan: You mentioned the aggravation clauses earlier, with one of the other witnesses. Those clauses are similar to, though not exactly the same as, the approach in hate crime cases. There are aggravating factors in hate crime, where, if you like, an ordinary offence can be aggravated if it is motivated by hostility to a particular group. These are not unique, in that sense; they apply in other areas.

Ms S Bradley: Thank you.

The Chairperson (Mr Givan): Do any other members want to ask questions?

Finally, I want to ask about the domestic violence courts in Belfast, as they have been coming up with other members. What is the PPS view? Is it something that will expedite this type of case in a much more timely way, with the expertise is focused in a central location? Do you want to elaborate on that?

Mr McQuillan: We are very supportive of it. We have been working with the presiding district judge, the judiciary, the DOJ and the PSNI for that very purpose. We feel that, if they can be concentrated,

both in terms of expertise but also having that intensive judicial management on the cases, it can reduce delay. As we know, the longer the cases go on, the likelier the victims are to disengage. One of the purposes of setting up the pilot is to reduce delay, reduce the attrition, as it is referred to, of victims. We are hopeful that, if it can happen, that is what we will see. These are Magistrates' Court cases. The 12-week period would be a lot quicker than if they were in the general run of cases.

The Chairperson (Mr Givan): Does that need to be legislated for?

Mr McQuillan: No, it is an initiative between the agencies. A similar scheme was tried outside Belfast some years ago, grouping or "corralling", I think it was called, the cases together. It does not need legislation.

Mr McQuillan: Thank you very much for the evidence session. There may be some issues that we want to get back to. It will be about September time when we get to the Consideration Stage of the Bill. Your submission has been very helpful. On behalf of the Committee, thank you both very much.

Mr McQuillan: Thank you.