



Northern Ireland
Assembly

Committee for Justice

OFFICIAL REPORT (Hansard)

Domestic Abuse and Family Proceedings Bill:
Northern Ireland Human Rights Commission

2 July 2020

NORTHERN IRELAND ASSEMBLY

Committee for Justice

Domestic Abuse and Family Proceedings Bill:
Northern Ireland Human Rights Commission

2 July 2020

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:

Mr Les Allamby	Northern Ireland Human Rights Commission
Ms Hannah Russell	Northern Ireland Human Rights Commission

The Chairperson (Mr Givan): I welcome Les Allamby, chief commissioner, and Hannah Russell, director of legal, research and investigations and advice to government, from the Northern Ireland Human Rights Commission. As normal with these sessions, it will be recorded by Hansard and published on the Committee web page in due course. I will hand over to you, Les. It is good to see you again.

Mr Les Allamby (Northern Ireland Human Rights Commission): Yes, and you. Thanks for the opportunity to give evidence today. I intend to make some short opening remarks to set the context, and then I will ask Hannah, my colleague, to cover three areas in the Bill that it might be useful for the Committee to look at.

I will start by saying that the commission is very supportive of the Bill. One of the issues for us is the need to ratify the Istanbul convention. The Bill is one of the missing pieces of the jigsaw that will allow the convention to be ratified in Westminster. I should say that, in June 2014, David Cameron said that he expected the Government to ratify the convention "in the next few months". In its report in February 2015, the Westminster Joint Committee on Human Rights recommended that it should be prioritised — it is a UK Government issue rather than a Northern Ireland Assembly and Executive issue — but, six and a half years on from David Cameron's remarks, ratification has still to happen. Frankly, I know that a week is a long time in politics, but six and a half years is a lifetime.

It is good to see the Bill. We also want to see specific offences of stalking and upskirting added to the statute books. That will also enhance the ratification of the Istanbul convention. We know that there are other circuitous routes for dealing with those offences, but we think that it is important that you call a spade a spade and stalking and upskirting should be made offences. Our position is that the UK Government should commit to an expedited timetable for the ratification of the convention and then

meet it. We have heard a lot of good intentions over the last few years, frankly. I have little doubt that they intend to eventually ratify the convention, but they should do it sooner rather than later.

The context is that the figures for domestic violence are at an all-time high. In 2018-19, the Police Service recorded almost 20,000 domestic abuse crimes — effectively, over 50 a day. We know that domestic violence and abuse are not new. The increase will almost certainly be due, overwhelmingly, to women being more able and willing to report abuse, greater confidence that the police and other authorities will take it more seriously and less willingness in society as a whole to turn a blind eye to the issue. Let us not delude ourselves: the cases reported remain the tip of an iceberg, and we do not know how large the iceberg is below the surface.

In 2019, the Home Office commissioned and published research on the economic and social cost of domestic abuse and violence in England and Wales. The researchers concluded that it was an eye-watering £66 billion, based on expenditure on protection and prevention measures, the consequences — for example, property damage and the physical and emotional harm — and the associated police and criminal justice costs. That report also said that the average length of abuse was around three years, so women and, occasionally, men have to suffer for a long time before it is dealt with. For us, prevention is better than cure. Legislation is only one part of tackling the issue, but it is an important one.

That is the context. I will hand over to Hannah, who will address some specific points about the Bill.

Ms Hannah Russell (Northern Ireland Human Rights Commission): Thank you for the opportunity to speak today. The three areas focus on personal connection, victim-centred approach and the best interests of the child.

On the first one — personal connection — the commission welcomes reference in the Bill to a variety of intimate relationships that deal with the personal connection between victim and perpetrator. However, in line with the Istanbul convention, which references the broadly stated family or domestic unit, the commission is of the view that that needs to be extended. We are aware that the Department is concerned that, if that definition is made too broad, it can become meaningless. However, from our point of view, there needs to be a balance that enables practical application and reflects real-life domestic situations.

In terms of the family unit, it is our view that the line is drawn a little too soon and should extend to additional obvious family relationships, such as aunt, niece, nephew and cousin. To put that into context, the Bill that is going through the UK process regarding England and Wales refers more broadly to "relatives". Concerning the domestic unit, many scenarios qualify as domestic arrangements but do not necessarily involve an existing or previous intimate relationship; for example, individuals living together as flatmates or an individual living with a carer on a full- or part-time basis in a private home. The dynamics of such a domestic situation can be ripe for domestic abuse, particularly in the context of coercive behaviour, where the seeds of controlling behaviour can be in full bloom before anyone realises what is happening.

With regard to adopting a victim-centred approach, we draw your attention to the defence on the grounds of reasonableness. The Department has been clear in its justification for including the defence, which the commission welcomes. However, we are concerned that the clause as currently drafted could be open to abuse. Clause 12(2)(b) places the burden of proof on the prosecution — that is, the alleged victim — to:

"prove beyond reasonable doubt that the course of behaviour is not as described".

Yet, according to the preceding clause, 12(2)(a), the defence or the alleged perpetrator has only to provide evidence that:

"is enough to raise an issue as to whether the course of behaviour is as described".

The commission discussed the issue with the Department and understands that the Department has been advised that that is a typical approach adopted in legal drafting. According to a variety of human rights treaties, however, including the United Nations Convention on the Rights of Persons with Disabilities, the UN Convention on the Elimination of All Forms of Discrimination against Women and the Istanbul convention, instances where special measures may be required must be considered. The commission's view is that, to ensure that a victim-centred approach is adopted, consideration should

be given to whether special measures are required here. Instead, it is the defence that should be required to prove beyond reasonable doubt that the coercive behaviour was as described. We encourage you to work through that in partnership with sector experts, who will be more aware of the intricacies.

The best interest of the child comes into play in the aggravating factors element. On the one hand, the aggravating factors element is welcome and could be said to reflect the requirement that the best interest of the child is the primary concern, as set out in article 3.1 of the UN Convention on the Rights of the Child, through the purposes set out in the present clauses aiming to protect a victim under the age of 18 and to reprimand or deter the use of a child by the perpetrator in exerting coercive control. However, without safeguards in place with regard to proving that such aggravating factors should be taken into account, it risks having the opposite effect. The Istanbul convention calls for specialist support for children, which should not be ignored or viewed as an afterthought. From the get-go, comprehensive consideration and decisions should be made on how best children can be protected throughout any legal process attached to the Bill — for example, obtaining evidence or requiring court evidence directly from a child only where necessary and obtaining it in a child-friendly and age-appropriate manner. Furthermore, specialist services and resources should be in place to ensure that children are fully and appropriately supported through the before, during and after of any process.

The areas highlighted, in the commission's view, need to be ironed out. It cannot be stressed enough, as Les has already done, how vital the criminalisation of domestic abuse is. The Northern Ireland Assembly and Executive's human rights obligations are crystal clear, but, as you are more than aware, there are human beings at the end of this that, in the current legal framework, are being failed and left unprotected in the most dangerous of ways. The legislation needs to be delivered in a way that is comprehensive, effective and victim-centred.

The Chairperson (Mr Givan): Thank you, Hannah and Les. I have a couple of questions. One is around the comments on clause 21 and the trial issue around the jury. In your submission, you reference the European Court of Human Rights around article 6(1) and wanting to have that legislation amended. In essence, you want it flipped around so that there is not the automatic judge-only-type trial — there should be a jury — but recognising that that convention can be curtailed in exceptional circumstances. Do you want to elaborate on the commission's position on that?

Mr Allamby: We think that, as a general principle, you should have trial by jury and somebody accused of something should have a trial by jury before their peers. There are circumstances where the impact on the victim of having to appear or the relationship or abuse is so serious that you should think about the necessity and proportionality. Clearly, some special measures are put in place, and, where those measures are effective, that is fine. Our starting point is that you should have a trial by jury, but you should have that option, and it should be by exception. The necessity and proportionality test and the legitimate aim of protecting the victim is a kind of guiding template that allows you to deal with that. We see that as an exception rather than a rule, but it should be recognised that there are circumstances where, because of the level of abuse and the impact on the victim, it may be reasonable.

Ms Russell: Just to add to that, Les, it could be a matter of looking at it case by case and adopting the victim-centred approach but very much from the standpoint that Les outlined. It should be on the basis of what is necessary and proportionate and looking at that individual's particular circumstances.

The Chairperson (Mr Givan): Obviously, the default position is that it is trial by jury, but, if you did not have clause 21 in the Bill, could you still have the exceptionality case brought forward to say that, in these circumstances, it would not be appropriate to have a jury by trial? Do we need to legislate for the exceptionality if clause 21 is not in it? Maybe that is a question that we can put to the Department.

Mr Allamby: "I am not sure", is the honest answer. There are measures that you could put in place without clause 21, but I would have to go away and look, frankly. I cannot give you an answer that would be anything other than speculating.

The Chairperson (Mr Givan): That is fair enough; it is probably not fair to ask. I want to get the Department's response on this. It is an area that we will come back to. There was some commentary in the submission about the need to extend the scope of the legislation to include, I think, live-in carers in private homes and guardians. Do you want to touch on that and say why, you feel, it needs to go further than those in the current group?

Ms Russell: As I said in my opening remarks, it is about having that practical application. We are aware that the Department is concerned — rightly so — about broadening the Bill to the point that it becomes, in effect, meaningless or difficult to implement. I feel, as does the commission, that a balance has to be struck and that there is a need to include those broader, very domestic scenarios. There is no doubt that they are domestic scenarios and can be very intense, particularly given the live-in aspect. Our main draw is looking at the Istanbul convention, which is clear in referring to "the family or domestic unit", so it encourages you to look at the more practical aspects.

Mr Allamby: I will give you a practical example from my time in the Law Centre that happens quite often here and in Britain: a couple living together as husband and wife under the same roof etc. Over 30 years, I dealt with about half a dozen cases where that became a problem because there were live-in care arrangements. In other words, it was not a personal, intimate, sexual relationship; rather, the couple had lived together with one providing care for the other, often because it suited the person who needed care to have somebody there and to help with housing costs. Such arrangements are not unique or unusual, and they occur here. It seems to me that somebody who was in what started as a non-abusive relationship but descended into some kind of abusive one is not covered by domestic abuse legislation if there is a live-in care arrangement, and we think that that should be covered.

On the relatives point, again, I suspect that the more distant the relative, the less prevalent it is likely to be that you will face domestic abuse. However, there will be circumstances where, for whatever reason, an uncle or an aunt is involved, and, although the arrangements may not be formal or sanctioned, they will end up looking after somebody. Again, there could be domestic abuse there, so we do not see why it should be excluded from the Bill.

The Chairperson (Mr Givan): I know from other experiences that, similarly, they will take them on holiday, because, if they are living in their home, they also need to travel with them. I am aware of that in my constituency from dealing with people. I am interested in pursuing that if there is an issue. If the scope is not to be narrow — in Scotland, the evidence has been that it is either a partner or an ex-partner — but wider, understandably, people will ask, "Why not this scenario as well?", once you start broadening it out from that very narrow construct of a relationship.

Thank you. I may come back to you, but I will bring in members at this stage.

Ms Dillon: Thank you both for your presentation. On the issue that the Chair just talked about, by broadening it so much, are we weakening or, in your view, adding to the Bill?

Mr Allamby: I do not think that it is weakening it. We are not suggesting that broadening it will somehow lessen the sanctions or the crime. You still have the defence of reasonableness etc. I do not think that widening the scope of who can be covered dilutes the impact. As I said, if you widen it, the numbers will be relatively small compared with the numbers involving couples and intimate couples. I do not think that we have a particular worry that this will in some way dilute the impact or the message.

Ms Dillon: I have repeatedly raised the issue of orders and notices, because I am concerned that they will go into a miscellaneous Bill — the Minister has indicated that that is where they will be dealt with — that may or may not go through in this mandate. I would much prefer to see orders and notices in this Bill. I think, from reading your submission, that that or a time frame would be your preference. I do not know how we can adhere to any time frame, given that it will require legislation and a miscellaneous Bill. We do not have a time frame. We hope that this will go through in this mandate, but we have no idea at this stage what will be in it and whether it will be possible. We have this Bill, a stalking Bill and a committal Bill. I am a wee bit concerned that the miscellaneous Bill will not see the light of day in this mandate and that we will have everything else without the orders and notices. They are a vital tool, particularly for the PSNI.

Mr Allamby: There are other provisions to deal with stalking and upskirting. When Alastair Ross was in your position, Chair, and a previous Bill was progressing, we suggested the inclusion of revenge porn as a specific offence. It was about telling it as it is. If you say to the public that certain types of offences are criminal offences, it makes it clear in people's minds. It is about calling something what it is. We have other ways of dealing with both those offences at the moment, but they are not upfront, clear and obvious, and you have to move around the prosecutorial houses.

The issues invoke the Istanbul convention, so they are important. We still think that you could ratify the Istanbul convention and make your intention clear about doing that within a limited period. There are two ways of ratifying conventions: you can have everything done and dusted or you can ratify and

show that you will have those things done quickly. We do not want the UK Government to use this as an excuse not to ratify the convention, but the issues need to be tackled quickly. As I said, it is about calling a spade a spade. Hannah, do want to say something?

Ms Russell: We have had discussions with the Department, and one reason for the delay is that it wants to see how the pilots run in England and Wales. We accept that to a point but agree with you that, however the orders and notices are introduced in practice and whatever is deemed to be the best way to go about them, it will be difficult for the police to act without them. The criminalisation aspect will be great, but, as you rightly point out, it will be difficult for the police to implement any form of protection early on in the process before it gets to the court stage. We agree with you and appreciate the political difficulties around the issue. It is about trying to continue with a vocal commitment that you will introduce the orders and notices and moving that along politically in the best way that you can.

Ms Dillon: I appreciate that the Minister is waiting for the pilots, but amendments can be made to legislation at a later date if the pilots prove that that is required. We will have to have that out with the Minister.

The Chairperson (Mr Givan): It could be included at commencement date that time would be given for training and so on, and some of the offences could be brought in in different time frames.

Ms Dillon: The Chair has covered some of my questions on jury trials and things like that, and I appreciate your responses to those questions.

My question is about gender-based violence and the need to have it in the legislation. Some organisations have said that they are more comfortable with it not being gender-based. Will you expand on that?

Ms Russell: Policies and laws in Northern Ireland are broadly based, and the approach is gender-neutral. We would like to be in a position where things are so well set up that that becomes the norm, special measures do not have to be in place and it becomes natural for gendered aspects to be taken into account. We are not at that stage yet. We have talked to the women's sector, and we have made this contribution in our evidence that we have given to the UN Committee on the Elimination of Discrimination against Women on laws and policies more broadly that, obviously, domestic abuse is a situation that predominantly affects women. Adding the gendered aspect does not ignore the other non-gendered aspects of domestic abuse; it just acknowledges that there will be the need to take special measures until we can get to a place where this is properly dealt with and, hopefully, we see not only the numbers reducing but better protection for women more broadly. It is about trying to acknowledge that there is a particular issue for a particular gender and that we need special measures at the minute. Having those special measures does not take away from the protections that are needed more broadly; it just acknowledges that it is a particular issue for a particular group.

Ms Dillon: I appreciate that. Thank you.

Miss Woods: I am back. I had IT issues.

Les, Hannah, thank you very much for your very detailed evidence and for being here today. I had a number of questions that have already been asked, but I want to focus specifically on children and safeguarding, which is mentioned a lot in your submission. The Committee heard from the National Society for the Prevention of Cruelty to Children (NSPCC) and Barnardo's last week. The NSPCC argued for the age of 16 to be put into the Bill and for children to be distinct in the legislation. Do you have any thoughts on that?

Mr Allamby: I would not have any difficulty with the age of 16. We start from the fact that the UN Convention on the Rights of the Child treats a child or young person as a child until the age of 18, so that is our international starting point. There may well be some sensible policy arguments to go for 16, and I do not think that we would have any difficulties with that as a concept, if there is a policy measure. We have to recognise that the UN Convention on the Rights of the Child applies until someone turns 18, and that is one of the starting points for us in looking at issues around the best interests of the child and who is a child and the age to which it applies.

Ms Russell: On the second point about children being distinct in legislation, that, again, comes back to the discussion about gender. There is nothing to prevent special measures where they are identified

as necessary for the protection of particular groups. The Convention on the Rights of the Child encourages it.

Miss Woods: The Committee has had discussions about relationships in circumstances where somebody was 18 and two months and in a relationship with somebody who was 17 and six months and how that would play out in the Bill. Are there enough safeguards in the Bill to protect the rights of the child, or does the Committee need to look at that a bit more?

Mr Allamby: Rachel, one of the things to look at might be the sentencing guidelines. I assume that you are saying that the worry is about a relationship between somebody who is 18 years and two months and someone who is 17 as opposed to a relationship between somebody who is 28 and somebody who is 17. One would like to think that sentencing guidelines would take into account, amongst other things, the age of, in this case, the perpetrator as well as the age and vulnerability of the victim and would look at all the circumstances. I guess that the Committee might seek reassurance that sentencing guidelines are sufficiently robust to deal with that. If they are not, I suppose, that is when you move into the territory of legislation. My preference, I suspect, would be to make sure that the sentencing guidelines are flexible enough to recognise what will be a range of circumstances. If somebody has just turned 18, is in a relationship and is involved in domestic abuse, you may want to take into account the context there. That is possibly the place to do that.

Miss Woods: Stalking has just been covered by Linda's comments. Do you think it should be even mentioned in the Bill? I have concerns about the time frames we are operating under with the stalking legislation, the miscellaneous provisions Bill and so on. Without mentioning stalking here, if separate legislation does not come in — the same applies with fatal and non-fatal strangulation — we will be left with a gap. Do you consider it prudent to have even a mention of it in this Bill, or are you content to wait? Would it cover enough of the Istanbul convention in that regard?

Mr Allamby: I see no reason why you could not attempt to do something. I would put it to the Department, saying, "What is the compelling reason why you cannot do this?". I would ask the Department to come up with convincing and compelling arguments as to why you should not find a way of doing this now. The piloting was one of the issues that have been raised with us. We had a good engagement with the Minister. She was firm in her commitment to getting legislation for stalking through. It was one of the issues we put to her. I have no doubt about the Minister's commitment or about that of the officials. One thing, perhaps, to do would be to see whether this is to do with timing, inertia or something. Is there a compelling argument that a delay is worth considering? There is no reason why you should not engage with the Department and find out what their case is for not pursuing it more quickly. Then you have to make the judgement whether that is a compelling enough case to convince you or otherwise.

Miss Woods: OK, so there is nothing through a human-rights lens that would stop this coming in this legislation. No barriers are raised from your point of view.

My last comment is on clause 12 and its misuse as a justification of abuse. I have raised this a couple of times with regard to vulnerable people in a caring situation or with mental health issues. You mentioned that it could be disproportionately impacted on by the implications of such a defence. What do we do? Do we tighten it? Some people have called for it to be removed. Do more specific examples need to be given in guidelines, for instance, as the Bar Library suggested?

Ms Russell: It is a good, practical suggestion from the Bar Library to provide examples in the guidelines. Just to reiterate our initial comments, we think that that clause can be strengthened to make it more victim-centred in its focus. We encourage conversation with victims' groups and other sector experts to make sure that it is drafted so that it can be useful. One thing that struck us was where the burden of proof lies: we think it could be shifted.

As I said in my opening remarks, we are aware that this may be the traditional legal approach. Coming back to the need for special measures and a victim-centred approach, sometimes you need to look at the traditional approach and ask, "Do we need to look at this slightly differently? Do we need to tighten it up?". That is one practical way in which the clause could be tightened.

Mr Allamby: There are things that you could do that are outside the legislation, such as training in divining when someone has taken control of somebody else's money because of the other person's addictions, gambling, dementia or whatever in a genuine, caring, helpful and perfectly reasonable form of behaviour, as opposed to something that is manipulative, coercive or is about applying dominance

in a relationship to the detriment of the other person. Trying to divine those issues where somebody says, "No, I did this for these reasons" requires training. Part of this, for us, is that, while legislation is always really important, it is about the panoply of issues that go with it about public education and awareness. Those are training etc, effective policing of it, effective prosecution and prosecutorial understanding, so that we look at these things in the round as to how you do it. There is a perfectly reasonable case for having the reasonableness clause to provide some protection, but it is then about making sure that that is properly managed to divine what is genuinely reasonable. We have put one suggestion forward, and I certainly think that the Bar's suggestion is another useful one. It is probably worth looking at those nuances within the legislation and outside of it to make sure that what is intended here is what happens in practice.

Ms S Bradley: Thank you, Les and Hannah. I will not go over the issues that other members have raised, but I note your commentary about immigration status. It has come up before, and it is something that the Committee needs to investigate. I do not know if there are any conflicting, overarching legal impediments to that, but it is something that we definitely need to have a conversation about and explore.

I bring up the issue of living together and the broadening of this again because a lot of the conversations so far have been about the linkages between the persons, for example, if it is a blood relative or if it is a relationship that has some legal status or recognition. However, if we are having a conversation about broadening that scope, we also have to ask what is the domestic setting that we are referring to, because that could also apply to places such as somebody's home, albeit a temporary home or a hostel or a care home. In that case, once you have widened the scope of relationships and you look at the domestic setting, which describes a person's home, it could be very wide indeed. Maybe that is not a bad thing, and, if the reasonableness is tight and the understanding of what is abuse is tight, that would counterbalance that. However, I am interested to know whether you have any thoughts on that. Have you considered the setting as well as the linkage from person to person?

The other item that I will mention is that you have been quite thorough on your children's safeguarding piece, which is very good. I wonder, while we have you here, whether you are aware of any good examples of legislation that has been proven to do a really good job on child safeguarding with regard to their presence in court and the live linkage. I like your piece about the aftercare as well. I would appreciate any thoughts that you have on those items.

Mr Allamby: I will take the first one, and, perhaps, Hannah might pick up the second. There are some immigration issues. I think that the Committee that looked at the Domestic Abuse Bill in England and Wales raised an issue about migrants and the need to strengthen the provision. For me, one of the difficulties about the Government's environment that they have created around migration and immigration is that reporting incidents to authorities has become an issue in itself; in other words, you are bringing yourself to the attention of the authorities in an environment where that appears to have other ramifications. There are issues about making sure that victims of domestic abuse are encouraged to report it and that the message goes out that, regardless of your status, be that around immigration or any other status, domestic abuse has to be tackled and will be tackled.

On the question of the setting, I guess we go back to asking whether you are diluting the legislation if you make it too broad. As regards the live-in carer-type arrangement, there are some other, specific ways of dealing with it. In care homes, often the issue is more likely to be either based on something happening in the home with employees etc, and there are ways with dealing with that. If it is within the family, it is more likely to be about decision-making or the managing of finance etc, and there are ways of dealing with that as well. I am reasonably sanguine that it is fine as set out. I do not think that this will seep into and, if you like, suddenly clog up the system with cases that the legislation was not primarily designed to deal with. I am relatively comfortable with that in terms of other settings, because there are other safeguards that you can have.

On child safeguarding, I will pass to Hannah on the question of the best interests of the child.

Ms Russell: I am afraid that it will not be a very informative answer at this stage. I do not have any examples off the top of my head, but I am happy to come back to the Committee with any examples that we may be able to find.

Ms S Bradley: Thank you, Hannah, and thank you, Les.

The Chairperson (Mr Givan): OK. Thank you, Sinéad. Are there no other members at this stage?
OK.

I am just checking what we covered and that stalking is in that. That is fine. Linda covered some of the areas that I wanted clarity on and on what else we could include in the Bill and your views on that. There may be things that we will want to come back to you on in due course.

Mr Allamby: Yes, that is fine.

The Chairperson (Mr Givan): I thank Hannah and Les for coming to the Committee today. As always, it is much appreciated.