

SERIES

Ensuring an inclusive & effective domestic abuse bill for all women

TOPIC

Oversight & accountability: Role & powers of the Domestic Abuse Commissioner



KEY POINTS

- + The majority of Commissioner roles created by the Government are weak and lack the powers necessary to ensure substantive accountability of public authorities (para 1-2)
- + To comply with the Istanbul Convention, the Government should meet the requirements set out in Articles 9, 10 and 11 of the Convention, specifically around the mandate and powers of the Commissioner (para 3)
- + In the Government's Consultation document, the Domestic Abuse Commissioner role as currently envisioned has limited powers, justified as necessary to avoid "duplicating existing inspection regimes and maintaining the independence of local areas" (para 4)
- + Implications for the Domestic Abuse Bill
 - > The majority of women's sector stakeholders advocate that the scope of the role should include VAWG *and* domestic abuse; that it have sufficient "teeth" to ensure accountability and that it have the power to screen new legislation for impact on VAWG laws and responses to victims (Recommendations A & B)
 - > To address current weaknesses in local authority responses to VAWG, the Commissioner's collaboration with local government must be coupled with the power to hold those local authorities to account (Recommendation C)
 - > The Commissioner's role should include ensuring UK compliance with international standards and mechanisms, such as CEDAW and the Istanbul Convention (Recommendation D)
 - > The Government must provide greater funding for the role than that currently proposed in the impact assessment for the Bill (£1 million p.a.) (Recommendation E)

THE ROLE AND POWERS OF OVERSIGHT COMMISSIONERS AND RELATED BODIES

- 1 To support and oversee the introduction of new legislation or statutory guidance, the UK Government has created in law various independent Commissioners – the Children's Commissioner for England was established under the Children Act 2004; the Commissioner for Victims and Witnesses was established under the Domestic Violence, Crime and Victims Act 2004, with the first Victims' Commissioner appointed in 2010; the Anti-Slavery Commissioner was created under the Modern Slavery Act 2015. In the context of domestic abuse legislation, Wales set a precedent early this year by appointing two part-time National Advisors for Violence against Women, Gender-based Violence, Domestic Abuse and Sexual Violence with the task of advising the Welsh Government on how most effectively to implement the Violence against Women, Domestic Abuse and Sexual Violence (Wales) Act 2015.¹
- 2 The powers of these Commissioners or Advisors varies considerably – the Victims Commissioner, for example, has a mandate to "encourage good practice" but has no enforcement authority to ensure compliance with the Code of Practice for Victims. In a similar vein, the Anti-Slavery Commissioner has just resigned citing lack of independence as a factor in his departure.

¹ However the roles are limited to providing "independent, balanced input, offering expertise and advice" and the advisors have no office or staff to support them in their role, being supported instead by Welsh Government staff and accommodated in offices provided by Welsh Ministers. Information from Welsh Government, *Appointment of National Advisor for Violence against Women and other forms of Gender-based violence, domestic abuse and sexual violence*, 25 August 2017.

A more effective model to consider in the context of the establishment of the Domestic Abuse Commissioner can be found by looking at the powers granted to the Equality and Human Rights Commission (EHRC), a useful comparator given the similarity of mandate in terms of challenging discrimination and protecting human rights. The EHRC's powers include providing advice and guidance, publishing information and best practice, and undertaking research (all aspects favoured by the Government's proposal for the Domestic Abuse Commissioner), but EHRC also has a range of *enforcement powers* that it can use when advice or consultation prove ineffective. Specifically, EHRC can use the courts to clarify the law and challenge policies and practices; conduct inquiries and investigations (critical to highlight priority issues and force change if public bodies are failing in their duties); order assessments of public bodies and issue compliance orders.²

ISTANBUL CONVENTION REQUIREMENTS FOR VAWG/DOMESTIC ABUSE OVERSIGHT BODY

3 It is also important in this context to consider the requirements set out in the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (the Istanbul Convention) on establishing a "Co-ordinating Body" to oversee and monitor state policies and measures to combat violence against women and girls (VAWG). This is clearly relevant given the UK Government's intention to ratify the Istanbul Convention and its need to be compliant with it. Article 10 of the Istanbul Convention requires States to establish one or more official bodies (the Co-ordinating Body) responsible for the (1) co-ordination, (2) implementation, (3) monitoring and (4) evaluation of state policies and measures to prevent and combat all forms of VAWG, including domestic violence. The explanatory report to the Istanbul Convention states that the purpose of the defined functions of the Co-ordinating Body is to ensure a "concerted effort of all agencies and all sectors of government" and specifically states that key criteria for a successful body includes "powers to compel disclosure of information and witnesses" and to issue compliance/ enforcement notices. Article 11 further defines that the Co-ordinating Body must co-ordinate the systematic collection of disaggregated data on all forms of VAWG at regular intervals, and support scientific research on root causes and effects, incidences, conviction rates and the efficiency of measures taken to implement the Convention. Finally, Article 9 states that the Co-ordinating Body must establish effective mechanisms to engage and consult with VAWG non-governmental organisations.

GOVERNMENT CONSULTATION PROPOSAL FOR DOMESTIC ABUSE COMMISSIONER

4 It is In the Government Consultation document, the Government proposes introducing a Domestic Abuse Commissioner whose role will solely focus on domestic abuse services and support, and whose powers are limited to mapping and monitoring service provision with an aim to standardise quantity and quality of services nationally and "provide recommendations" to improve responses. The role as outlined appears to have severely curtailed powers - with no ability, for instance, to compel compliance or investigate local authorities or national bodies that fail to implement national law or comply with international standards on domestic abuse and VAWG. The Government's justification for limiting the Commissioner's powers is to avoid "duplicating existing inspection regimes and maintaining the independence of local areas to commission services."³

² EHRC can undertake an assessment to check whether a public body is complying with its duties which can be used to obtain evidence for further enforcement action. The EHRC can issue compliance notices requiring a public authority to comply with a duty or take steps that need to be taken to ensure compliance. Information from EHRC website, *Inquiries, investigations and wider powers*, <https://www.equalityhumanrights.com/en/our-powers/inquiries-investigations-and-wider-powers>.

³ HM Govt., *Transforming the Response to Domestic Abuse, Government Consultation* (March 2018) p65



RECOMMENDATIONS FOR THE DOMESTIC ABUSE BILL

Government Consultation questions relevant to these recommendations: Q59, Q60, Q61.

A Scope of a new Commissioner role

The majority of women's sector/ VAWG and domestic abuse stakeholders – including frontline service organisations, advocacy organisations, specialist BME service providers, police leads on domestic abuse/ VAWG/ sexual violence, criminal justice and family law experts – agree that the definition and remit of the new Commissioner should include both domestic abuse *and* VAWG across the United Kingdom. This is important to situate the role within the Government's National VAWG strategy and ensure more joined-up and integrated strategies and policies to tackle domestic abuse and VAWG across Government Ministries/ departments and the Devolved Administrations. It is also common sense if part of the remit of the Commissioner is to embed government guidance, such as the National Statement of Expectations, and to take responsibility for recommendations resulting from Domestic Homicide Reviews (DHRs). Finally, it is critical to ensure the Commissioner's role serves as a bridge between *all* victims of VAWG and domestic abuse and the Government to make certain "the victim's and survivor's voice is part of the response."⁴

B Commissioner's duties and powers

A key lesson from the experience of the National Advisors in Wales is that an oversight role must have "teeth" if it is to deliver a mandate to ensure full implementation of domestic abuse and VAWG laws and regulations across Government and statutory agencies, and ensure a holistic and integrated approach.⁵ It is therefore critical that the new Commissioner have the *power to compel* public bodies at both the national and local level to work together and share information, as well as have the *enforcement authority* to investigate issues and complaints on behalf of victims or frontline service organisations. This is especially important in relation to departments and agencies where progress on domestic abuse has been slow, such as health and education; the Family Courts; or where the rights of victims are being curtailed, for example in the cases where immigration enforcement is prioritised over victim support for migrant women victims of violence.

A major omission from the Government's Consultation is to recognise the need to ensure that all Government departments screen new legislation and policy for its impact on VAWG/ domestic abuse, such as family law legislation relating to child custody arrangements and contact rights; immigration legislation which may have a disproportionate impact on women victims of domestic violence; changes in welfare legislation and benefits which may exacerbate economic abuse or adversely impact women survivors of domestic abuse with sole custody of children etc. This process should mirror what is required for impact assessments relating to gender and race equality and would serve a potent and practical signal of the Government's real commitment to embedding a cross-government approach to tackling domestic abuse and VAWG.

⁴ VAWG service provider speaking at Sisters For Change Roundtable on *Securing an inclusive and effective Domestic Abuse Act*, Westminster, 8 May 2018

⁵ Anti-Slavery Commissioner Kevin Hyland OBE, in the *APPG on Domestic Violence* meeting on the role of the New Commissioner (20 February 2018), also stated that the power to measure the performance of statutory agencies, such as the police, was a crucial function.



RECOMMENDATIONS FOR THE DOMESTIC ABUSE BILL CONT

C Commissioner's relationship with local authorities

Given the current weaknesses in local authority responses to, and commissioning of services for, violence against women and domestic abuse (for further information, see Sisters For Change Briefing Note 2),⁶ it is critical that the new Commissioner has a clear mandate to work with local government and local authority bodies to ensure that adequate VAWG/ domestic abuse strategies and plans are developed and implemented to address and meet local needs and demographics (based on adequate evidence and data collection). This is especially critical in order to improve local authority responses to Black, Asian and Minority Ethnic (BME) and migrant women and girl victims of violence (for further information, see Sisters For Change Briefing Note 1). The Commissioner must be aware of changes in patterns or types of violence against *all* women and girls and ensure that Government and public authority responses evolve more rapidly to reflect and respond to this changing landscape.

However, while the role of Domestic Abuse Commissioner has been welcomed by the Local Government Association's Safe & Stronger Communities Board: "Councils will expect to work collaboratively with the new Commissioner to support the objectives of the Bill and embed good practice across the country,"⁷ such "collaboration" with local government must be coupled with the power to hold local authorities to account and issue compliance notices if they fail to deliver to their mandate. Without such enforcement powers, it will be impossible for the Commissioner to ensure adequate levels of service delivery across the UK and end the "post-code lottery" of service provision.

D Commissioner's role in ensuring UK compliance with international standards

The Commissioner should also be tasked to ensure UK compliance with international standards and mechanisms – including the UN Convention on the Elimination of Discrimination Against Women and the Istanbul Convention – and raise awareness about these standards across government and the public sector and use public authority failures against these standards as a way to push for change and reform.

E Funding of the role

The Government's Consultation currently proposes an annual budget of £1 million for the Commissioner, plus an office of 15 staff. This appears woefully insufficient if the Commissioner's mandate is to work across the key areas outlined above. If the Government does not reconsider additional funding, it risks making the Commissioner little more than a symbolic flag-bearer, rather than a role that can deliver the Government's ambition of "transforming the response" to domestic violence and abuse in Britain.

CONTACT

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⁶ Black Country Women's Aid Chief Executive Sara Ward also highlighted the inconsistent and uncoordinated approach between local authorities, driving a 'postcode lottery' of support to victims in her presentation to the APPG on Domestic Violence (20 February 2018).

⁷ Local Government Authority, *Queen's speech: LGA responds to draft Domestic Violence and Abuse Bill*, 21 June 2017