



DOMESTIC ABUSE BILL CONSULTATION RESPONSE

Q1. Do you agree with the proposed approach to the statutory definition?

VAWG approach

Before commenting on the proposed statutory definition, we urge the Government to reconsider its position and make this a Violence Against Women and Girls (VAWG) Bill rather than a Domestic Abuse Bill. This would reflect both the government's commitment to eliminating violence against women and girls as set out in its current national VAWG strategy and the UK's international legal obligations under the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) as well as the Council of Europe Convention on preventing and combating violence against women and domestic violence (the Istanbul Convention) which the Government has committed to ratify. This approach also aligns with the approach adopted in Wales in the Violence against Women, Domestic Abuse and Sexual Violence (Wales) Act 2015. The Istanbul Convention recognises that States parties may wish to take special measures to prevent and protect women from gender-based violence and, applying the approach of the European Court of Human Rights, states that such measures will not be considered discrimination: "the fact that women experience gender-based violence, including domestic violence, to a significantly larger extent than men can be considered an objective and reasonable justification to employ resources and take special measures for the benefit of women victims only".¹

Statutory definition

We disagree with the Government's proposed approach to the statutory definition. The proposed definition does not recognise the gendered nature of domestic abuse. The new statutory definition of domestic abuse should recognise the gendered nature, causes and impacts of domestic abuse, which affects women and girls disproportionately. This is critical to strengthen the understanding of domestic abuse as a social – rather than individual – problem, requiring comprehensive responses, beyond specific events, individual perpetrators and victims/survivors.

Scope of definition

It is important that the statutory definition includes familial as well as intimate partner abuse in order to provide legal protections to victims of abuse from extended family members. Research demonstrates that this is of particular relevance for BME women (SFC Report, *Unequal Regard, Unequal Protection: Public authority responses to violence against BME women in England*, November 2017).

The new statutory definition should recognise all forms of domestic abuse, including those disproportionately experienced by BME women or migrant women, or abuse which has a particular cultural dimension, such as so called 'honour-based violence', female genital mutilation (FGM), forced marriage, dowry-related abuse and transnational marriage abandonment. This ensures UK compliance with international standards on VAWG, including

¹ Explanatory Report to the Istanbul Convention, Council of Europe Treaty Series No. 210, 11 May 2011 (Explanatory Report), para.55, applying the approach of the European Court of Human Rights in its case law relating to ECHR Article 14, see, e.g. *Abdulaziz, Cabales and Balkandali v UK*, Application No.s 9214/80, 9473/81, 9474/81, 28 May 1985.



CEDAW and the Istanbul Convention, in particular Article 4 (obligation to combat gender-based violence against women without discrimination).

The Government should clarify its intention that the new statutory definition will not automatically replace all other existing definitions, or apply to other legislative provisions. If this means that different, potentially conflicting definitions of domestic abuse will apply in particular circumstances, this will create legal uncertainty and confusion.

Criminalising domestic abuse

The Consultation document focuses on the statutory definition of domestic abuse and does not state whether the Government intends to introduce a new criminal offence of domestic abuse. We urge the Government to criminalise domestic abuse, in line with international human rights standards on VAWG which provide that all forms of gender-based violence against women in all spheres, which amount to a violation of their physical, sexual, or psychological integrity, should be criminalised (CEDAW Committee General recommendation No.35 on gender-based violence against women, updating general recommendation No. 19, CEDAW/C/GC/35, 14 July 2017 para. 29). It also aligns with the approach adopted in Scotland in the Domestic Abuse (Scotland) Act 2018 (although the Scottish definition of domestic abuse is limited to intimate partner violence).

Q3. How can we ensure that the definition is embedded in frontline practice?

All guidance documents issued to public services (local authorities; education; health; social services; child and adult social care; criminal justice agencies) and all relevant authorised professional practice documents issued by the College of Policing and the CPS should be revised and updated to reflect the new domestic abuse definition and to ensure that prevention, protection and support measures are based on a gendered understanding of violence against women and domestic abuse and focus on the human rights and safety of the victim.

The Bill and the statutory guidance underpinning the new definition of domestic abuse should make clear that public authorities will be held responsible where they fail to:

- (i) comply with their due diligence obligations to take all appropriate measures to prevent, investigate, prosecute, punish and provide reparations for gender-based violence against women and girls; and
- (ii) act to eliminate intersecting forms of discrimination and violence (based on race, ethnicity, religion or belief, status, caste, sexual orientation) and the compounded negative impact of discrimination and violence on different groups of women

The statutory guidance underpinning the new definition of domestic abuse should instruct local authorities to make tackling domestic abuse a priority within their local area and to take special measures to prevent and protect women from gender-based violence, including domestic abuse. The statutory guidance should make clear to public authorities that such special measures do not constitute unlawful discrimination. The ECtHR has made clear that “the fact that women experience gender-based violence, including domestic violence, to a significantly



larger extent than men can be considered an objective and reasonable justification to employ resources and take special measures for the benefit of women victims only” (*Abdulaziz*). This reflects the approach of CEDAW and the Istanbul Convention.

Q5. We are proposing to maintain the current age limit of 16 years in the statutory definition – do you agree with this approach?

Yes

Q7. Which statutory agencies or groups do you think the UK Government should focus its efforts on in order to improve the identification of domestic abuse? Please tick your top 3 from the list.

- Armed forces
- Children's services
- Court staff
- Education professionals (for example teachers, school staff)
- Fire brigade
- Health professionals
- Housing staff
- Jobcentre staff
- Judges/magistrates
- Police
- Probation/Criminal Rehabilitation Company staff
- Prosecutors
- Providers of adult social care
- Commissioners of adult social care services (local authorities and clinical commissioning groups)
- Social workers
- **Other - please specify.**

We have chosen not to prioritise three particular statutory agencies on the grounds that such prioritisation is arbitrary. We believe that all public authorities have a duty to improve their identification and response to domestic abuse.

The Consultation document recognises that domestic abuse “is often misunderstood and goes unrecognised or unidentified by agencies”. For this reason, the Government should adopt a holistic response to improve the identification of domestic abuse across all public agencies. This reflects the fact that all public authorities have positive obligations to take reasonable measures to protect individuals they know to be at real and immediate risk of serious harm from the criminal acts of third parties (ECHR Articles 2 and 3) under the Human Rights Act 1998. The statutory guidance accompanying the definition should recognise the gendered nature, causes and impacts of domestic abuse in order to strengthen the understanding across public services of domestic abuse as a social – rather than individual – problem, requiring



comprehensive responses, beyond specific events, individual perpetrators and victims/survivors.

Q9. What further support can we provide to the public (employers, friends, family, community figures) so they can identify abuse and refer victims to help effectively?

Support for specialist BME VAW support services

BME women and girls who suffer domestic abuse are often more at risk of not being identified as victims of abuse, and consequently not being referred to support services. Factors including race, ethnicity, language, family structures, social exclusion, income and immigration status can cause multiple and intersecting forms of discrimination and harm and leave BME and migrant women particularly vulnerable (SFC Report, *Unequal Regard, Unequal Protection: Public authority responses to violence against BME women in England*, November 2017). Of BME women who experience violence, only 37% make a formal report to the police (Thiara & Roy, Vital Statistics, 2010). This, together with the fact that 89% of BME women victims say they prefer receiving support from a specialist BME VAW service (Thiara & Roy, Vital Statistics, 2010), means local specialist BME VAWG service providers one of the only entry points for many BME women victims to access statutory services such as health, social services and criminal justice authorities. Without them, the further isolation or exclusion of BME women victims from formal systems of support and redress remains a very real risk.

Despite the clear need for specialist BME VAW services, cuts in local authority funding in recent years has driven service provision towards generic, lower cost VAW services. These commissioning strategies discriminate against smaller, specialist BME VAW service providers, with the result that most BME VAW service providers are now completely excluded from local statutory authority funding while still being referred the majority of their casework from statutory agencies (SFC November 2017 Report). The Government must ensure sustainable financial support (see our more detailed response to Q10) for local specialist BME VAWG services to ensure BME women and girl victims of domestic abuse are identified and correctly referred to statutory agencies for support.

Q10. We are in the process of identifying priority areas for central Government funding on domestic abuse. Which of the following areas do you think the UK Government should prioritise?

- Advocacy for victims to enable them to stay safely in their own home (Independent Domestic Violence Advisors or their equivalent)
- Therapeutic services to help victims of domestic recover from their experience
- **Accommodation services**
- Helpline services for those affected by domestic abuse to call for advice and support
- Interventions embedded in health
- Perpetrator programmes which aim to change offenders' behaviour and stop reoffending
- **Rolling out of new multi-agency approaches**



- **Other, specify:**

Central ring-fenced fund for specialist BME VAWG support services

A priority area for central Government funding must include provision of a central ring-fenced fund for specialist BME VAW service provision. BME women's experience of violence and their consequent support needs are different from other women. This results from a lived experience in which race, ethnicity, language, family structures, social exclusion, income and immigration status cause multiple and intersecting forms of discrimination and harms. Due to this complex range of characteristics and needs, providing support for BME women victims requires more time, knowledge and specialist skill than that often required to support other women. 89% of BME women victims say they prefer receiving support from a specialist BME VAW service (Thiara & Roy, Vital Statistics, 2010). This means specialist BME VAWG service providers are often one of the only entry points for many BME women victims to access statutory services such as health, social services and criminal justice authorities (SFC Report, *Unequal Regard, Unequal Protection: Public authority responses to violence against BME women in England*, November 2017).

Failure to commission specialist BME services at the local level has led to massive cuts in funding across the sector and is failing BME victims of violence. The non-legislative package accompanying the Domestic Abuse Bill must include provision of a central ring-fenced fund for specialist BME VAW service provision.

Protection and access to support services for migrant women

A further funding priority should be to ensure migrant women and those with insecure immigration status who are victims of domestic abuse have access to support services. The Council of Europe Convention on preventing and combating violence against women and domestic violence (the Istanbul Convention) Article 4 requires states to implement the Convention without discrimination on any ground, including migrant or refugee status. Currently in the UK, immigration enforcement is coming before protection of migrant women victims of domestic abuse. The UK Government's imposed restrictions on access to refuge and other support services for women with insecure immigration status, often with No Recourse to Public Funds (NRPF), increases their vulnerability, leads to destitution and is responsible for rising rates of homicide and suicide. The Domestic Abuse Bill must include protections for migrant women and those with NRPF, and the Destitute Domestic Violence Concession should be extended beyond its current duration of 3 months to at least 6 months.

Q.11 What more can the Government do to encourage and support effective multi-agency working, in order to provide victims with full support and protection? Please select up to 3.

Improve multi-agency arrangements for protecting high risk victims of domestic abuse

The multi-agency arrangements for the protection of high-risk victims of domestic abuse should be set out in law, with local authorities, police and health services designated (and resourced) as the responsible authority with the duty to manage and co-ordinate the protection of high risk victims of domestic violence and oversee effective implementation of protection plans within their local areas; and with other relevant agencies under a statutory duty to co-operate with the police in discharging this function.



Public protection arrangements and child safeguarding arrangements have been placed on a statutory footing to ensure effective multi-agency co-ordination and collective legal responsibility across relevant public authorities. Senior public protection officers agree that the voluntary nature of the MARAC system results in a lack of accountability and undermines the effectiveness of the MARAC model to guarantee the protection of high risk victims of domestic abuse (Sisters For Change report, *Unequal Regard, Unequal Protection: Public authority responses to violence against BME women in England*, November 2017).

Q12. What more can the Government do to better support victims who face multiple barriers to accessing support?

BME victims of domestic abuse

Characteristics of violence against Black, Asian and minority ethnic (BME) women and girls and their corresponding support needs are different from and often more complex than other women in the UK. Factors including race, ethnicity, language, family structures, social exclusion, income and immigration status that can cause multiple and intersecting forms of discrimination and harm and leave BME and migrant women without support (SFC Report, *Unequal Regard, Unequal Protection: Public authority responses to violence against BME women in England*, November 2017). The Domestic Abuse Bill must recognise the different lived experiences of BME women and their different needs, protections and support services they have.

Of BME women who experience violence, only 37% make a formal report to the police. This, together with the fact that 89% of BME women victims say they prefer receiving support from a specialist BME VAW service (Ravi K Thiara & Sumanta Roy, *Vital Statistics: The experience of BME women and children facing violence and abuse*, Imkaan, 2010) means specialist BME VAWG service providers one of the only entry points for many BME women victims to access statutory services such as health, social services and criminal justice authorities. Without them, the further isolation or exclusion of BME women victims from formal systems of support and redress remains a very real risk.

The non-legislative package accompanying the Domestic Abuse Bill must include provision of a central ring-fenced fund for specialist BME VAW service provision in recognition of the reality that current local authority VAW commissioning models tend to fund larger, 'generic' service providers and fail to recognise the importance of the pathway provided by specialist BME VAWG service providers for victims to gain access to statutory services and legal redress.

Migrant women victims of domestic abuse

The Bill should protect all women living in the UK without discrimination, including migrant women, women seeking asylum and stateless women. It is widely acknowledged that those who face the largest barriers to support services are migrant women victims of violence. BME VAWG service providers estimate that approximately 50% of their casework annually relates to migrant women or women with insecure immigration status. This means that *de facto* these women have restricted or no recourse to public funds (NRPF), meaning that victims of domestic abuse cannot access welfare, housing and other social benefits (SFC Report, *Unequal Regard, Unequal Protection: Public authority responses to violence against BME women in England*, November 2017).



The Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (Istanbul Convention) which the Government has committed to ratify, requires states to implement the Convention without discrimination on any ground, including migrant or refugee status (Article 4). Currently in the UK, immigration enforcement is coming before protection of migrant women victims of domestic abuse. State imposed restrictions on access to services for women with insecure immigration status, often with No Recourse to Public Funds (NRPF), increases their vulnerability, leads to destitution and is responsible for rising rates of homicide and suicide.

Q14. How can we make greater use of women-specific services to deliver interventions in safe, women-only environments?

- Availability of a GP at women-only services
- Availability of a nurse at women-only services
- Child contact sessions so that women who are not living with their children can have supervised access to their child
- Delivery of health interventions such as mental health and substance misuse treatment at women-only services
- IDVAs located or linked to women-only services
- Improving access to benefits, finance and accommodation advisors at women-only services
- Provision of employer interventions at women-only services to help individuals become work ready, including offering work experience and/or mentoring
- Don't know/no answer
- **Other - please explain:**

Many victims of domestic abuse lack information and knowledge of the statutory services they are entitled to access. Having access to representatives of statutory services and sources of advice at a local women-only 'safe space' recognises often determines whether a domestic abuse victim will report domestic abuse and access support. It also recognises the fact that very often, domestic abuse victims are not able to visit multiple services, through lack of knowledge, fear or distrust, language barriers, or restrictions on their movement by abusers. 89% of BME women victims say they prefer receiving support from a specialist BME VAW service (for more information, see SFC Report, *Unequal Regard, Unequal Protection: Public authority responses to violence against BME women in England*, November 2017). The Government should recognise that local VAW services offer a critical point of access for vulnerable women and establish a sustainable funding model to support them.

Q15. In addition to reviewing who may be eligible for the Destitute Domestic Violence Concession, what other considerations could the Government make in respect of protecting domestic abuse victims with no recourse to public funds?

We endorse the following recommendations made by Southall Black Sisters:

- Ensure that end of the current "hostile environment" in immigration enforcement that is prioritising review and questioning of a victim's immigration status before her protection from domestic abuse.



- Stop social services discriminating against BME women and women with NRPF by denying them access to housing or refuges to which they and their children were legally entitled.
- Ensure that immigration status does not impact a victim's right to access services and support.
- Recognise that immigration status can be used as a tool by perpetrators to control, coerce and abuse victims of domestic abuse.

In addition, we recommend the DDVC should be extended to at least 6 months to permit frontline services to be able to provide the support victims need in these complex cases.

These recommendations accord with the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (the Istanbul Convention), which provides that the Convention must be implemented without discrimination on any ground, including migrant or refugee status. This is clearly relevant given the UK Government's intention to ratify the Istanbul Convention and its need to be compliant with it.

Q16. Do you agree that the Domestic Abuse Protection Notice issued by the police should operate in broadly the same way as the existing Domestic Violence Protection Notice (except that it would also be able to be issued in cases of abuse which do not involve violence or the threat of violence)?

We have a number of concerns regarding the proposals relating to the DAPOs:

- i. The new DAPOs will not consolidate or rationalise the current complicated system of orders, but merely add another order to the list.
- ii. The proposal to include positive requirements goes significantly beyond the standard scope of protective orders. As a result, the order will take longer to issue and create significant additional legal hurdles in relation to (a) proof of suitability and proportionately and (b) monitoring and enforcement.
- iii. There is no mention as to how the introduction of the new order will be funded for applicants and how other agencies (e.g. those required to issue electronic tags) would be involved.

We refer to and endorse the detailed response on DAPOs submitted by Rights of Women.

Q21. Do you agree that courts should be able to impose positive requirements as well as prohibitions as part of the conditions attached to the proposed order?

We believe the introduction of positive requirements raises significant questions, which the Government Consultation document fails to address. Please refer to our response to Q16.

Q24. Do you agree that breach of the proposed order should be a criminal offence?

Yes



Q32. Before reading this consultation, were you aware of the Domestic Violence Disclosure Scheme (Clare's Law)?

Yes

Q33. Do you agree the guidance underpinning the Domestic Violence Disclosure Scheme should be put in to law?

Agree

We note that the DVDS is only useful in cases where the police have a record of charges or convictions. Even then, its effectiveness in preventing domestic abuse has proven to be limited. Serious consideration must be given to how police forces share information more effectively regarding serial domestic abusers who move across police force areas.

The DHR Case of *Adult ZA* (London Borough of Newham, September 2016) is instructive. A serial violent domestic abuser who abused multiple partners over many years was known to Essex, Hertfordshire and the Metropolitan Police Services. He had been arrested multiple times for domestic violence (assaults, head butting and strangling, threats to kill) and released without charge. He was convicted in 2011 for common assault but successfully appealed his conviction. In 2013, he murdered his then partner, ZA (see Sisters For Change report, *Unequal Regard, Unequal Protection: Public authority responses to violence against BME women in England*, November 2017, p. 52).

Q37. How can we continue to encourage and support improvements in the policing response to domestic abuse across all forces and improve outcomes for victims?

Improve identification and assessment of risk of harm

HMIC's 2017 Report identified a continuing failure across police forces to assess vulnerability effectively and to fully complete risk-assessments of victims of domestic abuse during first response. In addition, HMIC reported that secondary review of risk assessments by police supervisors frequently result in inappropriate downgrading of risk, with the consequence that cases are not referred to multi-agency risk assessment conferences (MARACs) and high risk victims of domestic abuse are not being provided with necessary protection or support. More needs to be done to improve police identification and assessment of risk of harm of domestic abuse victims (see Sisters For Change report, *Unequal Regard, Unequal Protection: Public authority responses to violence against BME women in England*, November 2017, p.42).

More effective use of police powers

Police use of Domestic Violence Protection Notices (DVPNs) and Domestic Violence Protection Orders is low due to a lack of knowledge amongst front line officers and the time and cost implications for police. The national average rate of DVPOs applied for by the police is 1 application per 100 domestic abuse flagged offences. 1 in 5 DVPOs were breached in 2015 with the police failing to take action to enforce these breaches, as well as breaches of non-molestation and restraining orders (HMIC, 2015. See also Sisters For Change report, *Unequal Regard, Unequal Protection: Public authority responses to violence against BME women in*



England, November 2017, p.46-47). Response officers need to be required to improve their knowledge and understanding of the powers available to them when responding to cases of domestic abuse.

Review pre-charge bail limit in domestic abuse and sexual violence cases

At Sisters For Change Roundtable with criminal justice stakeholders in April 2018, senior police public protection officers and HMIC raised concerns that the new pre-charge bail limit of 28 days may have a negative impact on domestic abuse victims, with abusers being released without bail (and therefore not subject to conditions) after 28 days and no protection being put in place for victims. The College of Policing has itself raised concerns (<http://www.reducingtherisk.org.uk/cms/content/changes-police-bail-will-affect-victims>). We suggest that the Home Office and the College of Policing jointly review whether an exception to the 28 day rule for pre-charge bail should be made for cases involving domestic abuse and sexual violence.

Improve multi-agency arrangements for protecting high risk victims of domestic abuse

The multi-agency arrangements for the protection of high-risk victims of domestic abuse should be set out in law, with local authorities, police and health services designated (and resourced) as the responsible authority with the duty to manage and co-ordinate the protection of high risk victims of domestic violence and oversee effective implementation of protection plans within their local areas; and with other relevant agencies under a statutory duty to co-operate with the police in discharging this function.

Public protection arrangements and child safeguarding arrangements have been placed on a statutory footing to ensure effective multi-agency co-ordination and collective legal responsibility across relevant public authorities. Senior public protection officers agree that the voluntary nature of the MARAC system results in a lack of accountability and undermines the effectiveness of the MARAC model to guarantee the protection of high risk victims of domestic abuse (Sisters For Change report, *Unequal Regard, Unequal Protection: Public authority responses to violence against BME women in England*, November 2017).

Our recommendation accords with Istanbul Convention Articles 7, 15 and 18. Article 7 requires States Parties to ensure that the rights of the victim are placed at the centre of all measures to prevent and combat all forms of violence and are implemented by way of effective co-operation among all relevant agencies, institutions and organisations. Article 15 requires States to provide training on co-ordinated multi-agency co-operation to allow for a comprehensive and appropriate handling of referrals in all cases of VAWG and domestic violence. Article 18 requires States parties to take measures to ensure there are appropriate mechanisms to provide for effective co-operation between all relevant state agencies, including the judiciary, public prosecutors, law enforcement agencies, local and regional authorities as well as non-governmental organisations and other relevant organisations and entities, in protecting and supporting victims and witnesses of violence.



Q38. Do you think creating a legislative assumption that all domestic abuse victims are to be treated as eligible for assistance on the grounds of fear and distress (if the victim wants such assistance), will support more victims to give evidence?

Yes

Q39. Is there more this government could do to explain the range and remit of existing measures for victims to help support them in the criminal justice process?

Yes

The Code of Practice for Victims of Crime is not well known or understood. The Government should publish an accessible version of the Victim's Code in multiple languages. Currently, if a public authority fails to perform a duty imposed on it under the Victim's Code, the failure does not of itself make the public authority liable to criminal or civil proceedings (Domestic Violence, Crime and Victims Act 2004, s.34). The Government should review s.34 and impose statutory obligations on relevant authorities to ensure their compliance with the Victim's Code.

Q41. Do you think extending the prohibition on cross-examination in criminal proceedings would support more domestic abuse victims to give evidence?

Yes

Q44. Are there other aspects of the criminal court treatment of vulnerable people which the family court could learn from?

The Family Courts should adopt the approach of the criminal courts to special measures for victims of violence and 'vulnerable' witnesses and protect victims of domestic abuse through video-links, screens and separate waiting rooms. In addition, the Family Courts should ban the cross-examination of complainants by their alleged abusers. The Government must allocate funding for the implementation of these measures, which is urgently required.

It is critical that domestic abuse should be given much more serious consideration when Family Courts are hearing cases on child arrangement orders/ contact orders. We refer the Government to the important decision of *Angela Gonzalez Carreno v Spain* (CEDAW Committee, No. 47/2012, 16 July 2014). The decision concerned the failure of the Spanish authorities to protect a victim who had suffered years of domestic abuse and her daughter, resulting in court sanctioned unsupervised visits between the abuser (who continued to be violent) and his daughter, ultimately ending in the murder of the daughter by her abusive father. The CEDAW Committee found that the decision of the court to grant visitation rights to a violent abuser reflected "a pattern of conduct that reveals a stereotyped concept of visitation rights based on formal equality and which [...] granted clear advantages to the father despite his abusive conduct and minimized the situation of mother and daughter as victims of violence, placing them in a vulnerable situation." The Committee stated that child custody and visitation decisions should be based on the best interests of the child, not on stereotypes, with domestic



violence being a relevant consideration. The Committee concluded that the decision to grant the abuser unsupervised visits with his daughter was based on stereotypes and discrimination in a context of domestic violence, which resulted in the failure to provide the necessary safeguards. As such, the Spanish authorities failed to fulfil its due diligence obligations under CEDAW.

Q46. Do you think the current approach of using sentencing guidelines, as per guidelines issued in February 2018 is effective in ensuring sentences imposed reflect the seriousness of domestic abuse when it involves children?

No.

Please refer to our response to Question 1 on criminalising the offence of domestic abuse.

The Government's proposals for an aggravated offence when children are involved in domestic abuse cases raises concerns: first, it will result in children being called to court to give evidence, which victims will wish to avoid (and so may cause a 'chilling effect' in terms of cases brought); secondly, the threat of more stringent sentencing mean perpetrators will be less likely to plead guilty to allegations of abuse.

The Government's proposals are pre-emptive. New sentencing guidelines, which have been well drafted and come into effect at the end of May 2018, consider child involvement in domestic abuse cases in a much more nuanced way. The efficacy of these new guidelines should be evaluated before introducing the new aggravated offence proposed.

Q49. Do you agree that taking extraterritorial jurisdiction over these offences is sufficient to satisfy the requirements of the Convention?

No

Q50. If you answered 'No' to question 49 what additional offences do you think we should take extraterritorial jurisdiction over and why?

The English courts already have extra-territorial jurisdiction over the common-law offence of murder; certain sexual offences where the victim is under 18 years; forced marriage and FGM. The Government Consultation document proposes to extend extraterritorial jurisdiction to a number of additional VAWG offences. We challenge the inclusion of "procuring abortion" in the list of offences. We are particularly concerned about its inclusion given the current unacceptable legislation on abortion in Northern Ireland where the offence of "procuring an abortion" has been used to criminalise women seeking abortion. The Istanbul Convention requires the criminalisation of forced abortion and forced sterilisation (Article 39). The Explanatory Report to the Convention makes clear that the aim of Article 39 is "to emphasise the importance of respecting women's reproductive rights by allowing women to decide freely on the number and spacing of their children and by ensuring their access to appropriate information on natural reproduction and family planning" (para. 206).



The Convention takes a major step forward in the protection of victims of the most serious VAWG crimes – sexual violence including rape, forced marriage, FGM, forced abortion and forced sterilisation – by requiring State parties to ensure their jurisdiction to prosecute is not dependent on the condition that the act of violence is not a crime in the country where it happened (the requirement of dual criminality). The objective is to recognise that certain forms of VAWG, such as forced marriage, FGM, forced abortion and forced sterilisation, most frequently occur outside the territory of the State party. The Government does not propose removing the requirement of dual criminality, except in relation to stalking and coercive and controlling behaviour. This means that the UK will fail to comply with Article 44(3) of the Convention and will not provide this important additional protection for victims of some of the most serious forms of VAWG.

Q53. Do you agree we should explore (with the Crown Prosecution Service) further controlled and monitored use of conditional cautions with rehabilitation programmes than is currently permitted for lower-level, normally first time domestic abuse incidents?

No

Q58. Please select which of the following you believe should be priorities for improving data collection. Please choose up to 3.

- **Improving the collection and reporting of data on when domestic abuse is a feature of a case/ intervention**
- **Improving collection and reporting of data relating to the gender and relationship of the perpetrator and victim**
- Improving data to enable better tracking of outcomes in domestic abuse cases/ intervention
- Linking data to enable better tracking of interventions and reoffending
- Linking data to enable better understanding of the interactions/relationships between domestic abuse and other types of offending
- None of the above
- Don't know/ No answer
- **Other - please explain:**

Article 11 of the Council of Europe Convention on preventing and combating violence against women and domestic violence (the Istanbul Convention) which defines that the 'Co-ordinating Body' (established to oversee and monitor state policies and measures to combat VAWG and domestic violence) must co-ordinate the systematic collection of disaggregated data on all forms of VAWG at regular intervals, support scientific research on root causes and effects, incidences, conviction rates and efficacy of measures taken to implement the Convention. This is clearly relevant given the UK Government's intention to ratify the Istanbul Convention and its need to be compliant with it.

The Home Office should collect data nationwide on the ethnicity of both victims and perpetrators of VAWG and domestic abuse. Historically this has not been collected which fails to allow policy-makers, Police & Crime Commissioners, VAWG Commissioning Managers and others to understand the true picture of the scale of VAWG among particular groups and to



respond effectively with adequate protection, safeguarding and support measures. The Home Office has only just begun to collect information on the ethnicity of victim of domestic homicide as part of the Domestic Homicide Review process. This is long overdue, as without this information, it is not possible to understand the true picture of domestic homicide as it affects different groups, not possible to identify key lessons relating to public authority responses to particular victim groups and not possible for the Government to know whether there are much greater risks to certain population groups (for example, BME or migrant women) in respect of domestic homicide.

Q59. Do you agree with the proposed model for a Domestic Abuse Commissioner outlined above?

In the Government Consultation document, the Government proposes introducing a Domestic Abuse Commissioner whose role will solely focus on domestic abuse services and support. We do not agree with this approach and do not believe it is adequate.

Mandate of new Commissioner

The title and mandate 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, as well as the Devolved Assemblies. 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" (VAWG service provider speaking at Sisters For Change Roundtable on *Securing an inclusive and effective Domestic Abuse Act*, Westminster, 8 May 2018).

Relationship with local authorities

In the Government Consultation document, the Government proposes the Commissioner would have a limited relationship with local authorities, mostly centred on mapping and monitoring service provision. We do not agree with this approach and do not believe it is adequate.

Given the current weaknesses in local authority responses to, and commissioning of services for, violence against women and domestic abuse, 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. 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.



While collaboration with local government is a given, this will only be effective if 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 at the local authority level.

Ensuring compliance with international standards

In the Government Consultation document, the Government makes does not define a role for the Commissioner in ensuring UK compliance with international standards and mechanisms focused on combating domestic abuse and VAWG. We do not agree with this approach and do not believe it is adequate.

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.

Q60) Of the proposed powers and resources, which do you consider to be the most important for a Domestic Abuse Commissioner? Please choose up to 3.

Powers of Commissioner

In the Government Consultation document, the Government proposes introducing a Domestic Abuse Commissioner 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.” We do not agree with this approach and do not think it is adequate.

At the Sisters For Change Roundtable on Securing an inclusive and effective Domestic Abuse Act, Westminster, 8 May 2018, one of the two recently appointed National Advisors in Wales (Yasmin Khan) said that a key lesson from her experience was 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. Similarly, Anti-Slavery Commissioner Kevin Hyland OBE, in the APPG on Domestic Violence held on 20 February 2018 stated that the power to measure the performance of statutory agencies, such as the police, was a crucial function for a Commissioner.

It is 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. These powers should include the ability to conduct assessments to check whether a public body is complying with its duties or to obtain evidence for further enforcement action; and to issue compliance notices to require a public authority to comply with a duty or take steps that need to be taken in order to ensure compliance. 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; and 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 further 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. The Commissioner should have the power to oversee and monitor this screening process, which should mirror what is required for impact assessments relating to gender and race equality, and to make recommendations for amendments to legislation where it adversely impacts on victims of domestic abuse of VAWG. Providing the Commission with this authority 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.

The wider powers and authorities that we are advocating is in line with the requirements set out in the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (the Istanbul Convention). 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.

Funding of the Commissioner

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.



Q62. One proposal is that the Domestic Abuse Commissioner could routinely collate, quality assure and share lessons learnt from DHRs. What more could be done to increase awareness of the learning from DHRs?

The Commissioner should conduct annual reviews of DHRs and publish findings and recommendations (see, for example, the findings of the Home Office review of Domestic Homicide Reviews published in December 2016). The Commissioner should require relevant public authorities to produce national action plans in response to her findings and recommendations. These national action plans should be shared with all police forces and statutory agencies.

The Commissioner should ensure that DHR panel members put in place the following measures (evidence-based recommendations made by Sisters For Change in our report *Unequal Regard, Unequal Protection: Public authority response to violence against BME women in England* (November 2017)):

- DHR Panels should explicitly assess whether local authorities and agencies met their obligations under the Equality Act to ensure that equal protection of BME and migrant women victims of violence;
- DHR Panels reviewing the domestic homicide of a BME or migrant victim should appoint an expert from a BME VAWG organisation and explicitly consider how awareness and understanding of relevant cultural issues impacted public authorities' response to BME women victims of homicide.

Q63. How can areas best hold their own local agencies to account in terms of monitoring delivery against DHR action plans?

All local authorities/ police forces should publish the findings of Domestic Homicide Reviews relevant to their local area, together with an implementation plan on how failings or weaknesses will be remedied, and submit these on a six-monthly basis to their Police & Crime Commissioner (PCC). PCCs should hold the police to account for implementing review recommendations/remedies within 6 months, with the ability to refer systemic failures to the VAWG Commissioner.

However, whilst review of implementation of recommendations is important at the local level to ensure local public authorities and individual police forces are held to account for taking action to remedy identified failures, it is important to recognise that many failings reported in DHRs are systemic, repeated across DHRs. It is critical therefore that the Commissioner has the authority to conduct a national review or inquiry where failures appear to be systemic and continuing.