



**‘Transforming the Response to Domestic Abuse’
Response from Rights of Women
to the Government Consultation on the proposed
Domestic Abuse Bill**

31st May 2018

Notes for readers:

- *We are happy for other organisations / individuals to use the text from our answers to assist with their submission but would appreciate this being noted in those submissions wherever possible.*
- *We have concentrated on answering questions that lend themselves best to our specific expertise.*

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

Disagree.

THE NEED FOR A VAWG APPROACH

As a starting point, we recognise that statistically the vast majority of domestic abuse is experienced by women and perpetrated by men within a complex dynamic of abuse of power that includes repeated acts of violence and/or abuse. Ultimately, for the Bill to be useful, it should be a tool that assists in recognising and tackling this culture.

We therefore believe the definition should be embedded within a Violence Against Women and Girls (VAWG) Bill rather than, as is currently proposed, within a Domestic Abuse Bill. This would allow alignment with the government’s stated commitment to ending violence against women and girls as outlined in the current VAWG strategy and would reflect existing national frameworks. It would also make it more consistent with the Violence against Women, Domestic Abuse and Sexual Violence (Wales) Act 2015.

The Istanbul Convention also takes this comprehensive VAWG approach. This Bill is meant to be the final step before ratification of the Convention. The Istanbul Convention explanatory report states:

'for the purpose of the Convention, violence against women shall be understood to constitute a violation of human rights and a form of discrimination ... [this] needs to be borne in mind when implementing the Convention' (para 40)

THE DEFINITION OF DOMESTIC ABUSE (DA)

1. The use of "incidents"

Our approach to answering this question is guided by considering how effective the new definition will be in improving the understanding and recognition of domestic abuse in society, which in turn should then improve support and legal redress for all domestic abuse survivors.

On balance, we agree a definition needs to be included within the proposed Bill, otherwise the Bill's purpose will be undermined. However, we are concerned the framing and drafting of the definition falls far short of what it should be.

We agree with the government's commitment to developing a better understanding of the complexities of abuse by taking a broader approach, for example by recognising both incidents and patterns of behaviour, however, we believe the wording is still problematic as the focus is still on "incidents". The phrase "incident or pattern of incidents" does not assist in shifting the understanding of domestic abuse away from thinking of abuse as a single incident of violence and we would suggest instead:

'any pattern or incident of controlling, coercive or threatening behaviour, violence or abuse'

Allowing equal weight to be given to a single act and a pattern of behaviour within a gender-neutral definition, leaves ample scope, for example, for a long-term perpetrator who has experienced one act of retaliation to gain equally weighted redress to that of their victim. This also provides the opportunity for a perpetrator, who for example may be more confident in reporting as they are not in genuine fear of reprisals as perhaps their victim is, to exploit this system to their advantage and potentially continue their pattern of abuse. Additionally, this in turn would contribute to potentially misleading or inaccurate data around the gender of victims and perpetrators that hides the scale of abuse directed at women and leads to ineffective commissioning.

2. Age limit

We agree that it is important to maintain the distinction between adult and child abuse, and therefore that 16 years is a suitable age limit for classifying cases of domestic abuse.

3. "intimate partners or family members"

We agree with the inclusion of family members in addition to intimate partners within the definition. We believe the inclusion of familial abuse is important in ensuring equal recognition of and, crucially, legal protection to, all people experiencing abusive situations involving associated persons; however, this may be of particular relevance in ensuring protection for BME women. Research shows half of BME women experiencing violence or abuse do so from multiple perpetrators, such as extended family. Ensuring stronger protections for BME women facing intersectional disadvantage is vital and were family members to be left out of this definition, we would be concerned about a disproportionately negative impact on this group in terms of their access to justice.

In stating the above, it is important to clarify that we absolutely oppose and distance ourselves from racist narratives that unjustly and simplistically stigmatise and stereotype specific communities in relation to a prevalence of or propensity towards abuse. Furthermore, we recognise that the dynamics and repercussions of familial abuse and intimate partner relationships are complex, potentially very different and all deserve to be understood in their own right, particularly in terms of providing appropriate support to survivors. We recommend that the guidance accompanying the definition addresses these issues.

4. Recognising all forms of domestic abuse

A more inclusive approach is needed that firmly recognises experiences that are, for example, disproportionately experienced by BME women, migrant women or can have a cultural dimension. The definition should include specific reference to female genital mutilation, forced marriage, honour-based violence, dowry-related abuse and transnational marriage abandonment.

We suggest you adopt the definition of abandonment as used within Practice Direction 12J of the Family Procedure rules as follows:

“abandonment” refers to the practice whereby a husband, in England and Wales, deliberately abandons or “strands” his foreign national wife abroad, usually without financial resources, in order to prevent her from asserting matrimonial and/or residence rights in England and Wales. It may involve children who are either abandoned with, or separated from, their mother;

5. Controlling and Coercive behaviour

We have concerns about the drafting of the definition of both controlling and coercive behaviour. Whilst we recognise it is useful to provide an explanation of what they are, we feel insufficient information has been provided about the distinction between them and the references to emotional and psychological abuse listed at the top of the definition.

In relation to the proposed definition of controlling behaviour we do not agree with the use of the word 'designed' in the sentence '*Controlling behaviour is a range of acts designed to make a person...*'. Concentrating solely on the motive or intention of the perpetrator(s) does not always assist in understanding and addressing the reality of domestic abuse. This approach overlooks important factors such as the perpetrator's mental health. For example, where a perpetrator with mental health issues has enacted controlling behaviour towards the victim but their behaviour was not consciously 'designed' to cause the effect of being controlling. In instances such as these, a victim of controlling behaviour may find they are not offered any protection under this definition and arguably neither is the perpetrator in terms of access to effective rehabilitation. Furthermore, by concentrating on motive alone, a perpetrator could potentially successfully argue that they are innocent in relation to an allegation by saying that their abusive behaviour was not intentionally controlling, for example by saying it was 'designed to save my family'. We favour following the approach used in the Domestic Abuse (Scotland) Act 2018 which allows reliance both on the perpetrator's purpose or the likely effects on the victim. Additionally, either the definition or guidance could further enhance understanding by suggesting consideration of the context in which the behaviour takes place, such as is currently being proposed within the joint police and CPS protocol on stalking and harassment.

6. Economic abuse

The new reference to 'economic' rather than 'financial' abuse, and the stated intention to improve perception and understanding of this aspect of abuse, is welcome.

STATUTORY GUIDANCE

We believe the guidance accompanying the definition needs to address, in detail, a number of key points as follows:

1. The gendered nature of domestic abuse and the fact that it is only one aspect of VAWG;
2. Additional barriers faced by BME women at every stage. BME women are more likely to experience abuse for longer than their white counterparts. This has been linked to specific barriers to reporting, such as structural discrimination or a lack of access to interpreters (where relevant) or support services.
3. The specific experiences of migrant women, for example, ways in which their immigration status can be used by perpetrators to continue abuse, feeling unsafe to report due to their immigration status, fear of accessing support as a result of the government's "hostile environment" policies, being unable to access support as a result of having "no recourse to public funds".

The government must consult survivors and women's organisations, including specialist BME women's organisations and those specialising in support for domestic abuse in the process of drafting this guidance.

2. Will the new definition change what your organisation does?

A strong and coherent definition could potentially strengthen the advice we provide to the 2000 women who call our confidential legal advice lines annually, leading to greater access to justice.

Our women legal advisers provide advice that empowers our women callers to have a stronger understanding of the law and navigate legal processes with confidence. A key part of this is assisting them by explaining legal definitions that then enable them to identify that the behaviour they are facing is considered abusive and unlawful. This is particularly relevant in relation to coercive and controlling behaviour, which our callers are often unclear about.

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

As members of End Violence Against Women Coalition, we endorse their written response as follows, however we have adapted their reference to statutory guidance documents to include all guidance i.e. whether statutory or otherwise:

There should be concerted, funded communications work on the new definition(s) and a plan to ensure that it is incorporated in the vocational and CPD training of many professionals. The communications work should include succinct definitions of domestic violence and related forms of abuse, followed by dropdown further guidance, typologies, scenarios, stories and testimonies. The communications work should invest in good search engine optimisation so that the definitions are easily discoverable for professionals who need the definitions to hand.

The multiple guidance documents across public services should be updated to reflect the new definitions, from schools, local authority and health safeguarding documents to criminal justice. Regarding training, many key public sector workers, including teachers and GPs for example, are still not receiving much if any initial vocational training on domestic violence or other forms of violence against women. (A recent report by Cumberland Lodge found that some medical and dental schools don't include VAWG in the curriculum at all, and very few adequately recognise VAWG as a determinant of health). The new definition is an opportunity to make a priority of reaching out to key professions and changing their training requirements.

4. What impact do you think the changes to the age limit in the 2012 domestic abuse definition have had?

As members of End Violence Against Women Coalition, we endorse their written response:

We believe it is likely to have changed some frontline professionals' understanding of when domestic abuse can be understood to occur and therefore their responsibility to be vigilant and to act. The question of improving understanding of and responding to abuse in intimate relationships between those aged under 16 (sometimes included in the term "peer on peer abuse") remains urgent however. Research, and reported crime and household survey figures all reveal that abuse committed by those aged under 16 is alarmingly high, and that young people commonly hold attitudes and beliefs which do not recognise abusive behaviour and tend towards blaming victims. This is also an area of critical overlap with other forms of violence against women and girls, including child sexual abuse and child sexual exploitation, both of which may occur when an abusive intimate relationship provides a 'conducive context' for further abuse/exploitation.

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

Strongly agree

Legislation concerning the protection of children will apply to victims below 16 years of age and we would not support an approach which risks children being treated as adults.

6. In addition to the changes being made to how relationship education will be taught in schools, what else can be done to help children and young people learn about positive relationships and educate them about abuse?

7. 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?

For the government to respond more effectively to survivors of domestic abuse, a considered and evidence-based approach is needed that sensitively and meaningfully takes account of the complexity involved. On principle, we are therefore regrettably unable to answer any questions that ask us to prioritise a top three, as this is too simplistic and arbitrary to result in any genuine benefit for survivors.

8. In addition to improving training programmes and introducing guidance, what more can the government do to improve statutory agencies' understanding of domestic abuse?

Training is effective only when supported by other organisational measures. We have concerns that training, as a stand alone measure, is currently being relied on too heavily without investment in other areas. If this approach were truly beneficial, we question why the impact is not more visible already, for example in relation to arrest and convictions for offences that relate to domestic abuse.

As calls to our legal advice lines demonstrate, a key frustration for survivors is access to effective or swift redress when statutory agencies fail in their understanding of domestic abuse and then, as a result, fail in their response to victims. This culture of

apparent impunity provides no incentive to agencies to improve. Transparent and robust accountability systems are the essential check and balance alongside training and guidance.

We would like to see the Victims' Code made enforceable in relation to the services and information it states victims are entitled to from criminal justice agencies. If it were made enforceable, the regulation of this would need to be independent, considered and we believe should involve the Victims' Commissioner. We believe this would dramatically improve the understanding of domestic abuse and response to victims.

We also feel too little is being done to consult with the women's sector around training and other measures that would improve the approach of agencies towards victims. For example, we have observed a significant reduction in Government Stakeholder Forums in relation to immigration law. We also have concerns about a lack of transparency on how membership of the forums that do exist is decided, with the appearance often being that stakeholders are handpicked. This approach appears to exclude survivors and other specialist voices whose critiques are needed to influence best practice.

An underlying issue that is critical to improving agencies' performance in relation to domestic abuse relates to access to legal aid. Frontline providers in statutory agencies with decision-making powers often make bad decisions. Frequently, those decisions are not being challenged due to reduced access to advice and assistance that has resulted from a decimated legal aid system.

9. 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?

In this section of the consultation document, the importance of the voluntary sector is highlighted, particularly in relation to being a gateway to reporting because this sector has the community trust, skills and expertise that leads to referring victims effectively. It is essential to prioritise ensuring that support reaches those who are most likely to experience abuse and least likely to access mainstream services, for example BMER women with no recourse to public funds. To do this we suggest investing in independent specialist frontline organisations with a track record of specific expertise and strong national and / or community-based networks. We think caution should be exercised in diverting funds away from independent organisations or charities in favour of, for example, investing in 'community figures'. Whilst many such people may be excellent role models and playing a positive role in society, calls to our lines also demonstrate that these positions of power can be used in an exploitative or abusive manner and frequently on a gendered basis. Accountability is an important factor in creating robust support in this area.

10. 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?

For the government to respond more effectively to survivors of domestic abuse, a considered and evidence-based approach is needed that sensitively and meaningfully takes account of the complexity involved. On principle, we are therefore regrettably unable to answer any questions that ask us to prioritise a top three, as this is too simplistic and arbitrary to result in any genuine benefit for survivors.

Rather than choosing between or prioritising areas – many of which are integrated anyway at a local level - we think the solution is to establish sustainable long-term funding for specialist services. Additionally, we think the categorisation of the options here is problematic as it is not accurate.

11. What more can the government do to encourage and support effective multiagency working, in order to provide victims with full support and protection?

For the government to respond more effectively to survivors of domestic abuse, a considered and evidence-based approach is needed that sensitively and meaningfully takes account of the complexity involved. On principle, we are therefore regrettably unable to answer any questions that ask us to prioritise a top three, as this is too simplistic and arbitrary to result in any genuine benefit for survivors.

12. What more can the government do to better support victims who face multiple barriers to accessing support.

MIGRANT WOMEN

The government must accept that, with respect to migrant women, it is existing law and policy, primarily but not limited to immigration law and policy, that has created the conditions for perpetrators to abuse with impunity.

Existing law and policy offers perpetrators the tools to control their victims and then erects barriers to prevent migrant women from accessing justice and support. This flagrant inequality must be eradicated; failing this, the proposed Bill can do nothing more than perpetuate the existing abhorrent divide that creates an underclass of migrant women to whom protection is systematically denied. This system of exclusion crosses countless areas of government policy including criminal justice, social services, welfare benefits, housing, healthcare, education, employment and, of course, immigration control. It is imperative that this systemic problem is recognised and reforms made to remedy this injustice.

In the aftermath of the Windrush scandal, Rights of Women joins the chorus of voices calling for an independent inquiry into Home Office policies and practice. This inquiry should specifically address the impact of policies and practice on victims of VAWG and make recommendations for reform.

Our further comments will focus on specific areas for reform that fall into our area of expertise and which address issues we encounter frequently in our immigration advice service for migrant women in England and Wales.

Accommodation and financial support

Migrant women are commonly turned away from statutory and non-statutory services because of their immigration status. As a result, they are unable to access safe accommodation and financial support in order to flee domestic abuse.

Successive governments have erected barriers to migrants accessing accommodation and financial support from the state. These barriers include the imposition of the 'no recourse to public funds' condition on grants of leave. For a woman fleeing domestic abuse, the effect is that she cannot access a refuge because of ineligibility for housing benefit and cannot access other benefits and tax credits for financial support.

This is particularly acute for women without children for whom there is no alternative safety net provided by the state. Although women with children can seek assistance from Children's Social Services, we have seen that in practice the response of local authorities to migrant women and their children is to routinely push back with threats of separating women from their children and threats of deportation. Our experience is that when migrant women present to Children's Social Services for support to flee an abusive relationship, they commonly receive responses that fail to address the best interests of the child and instead instil fear in the women approaching them for help. For example, migrant women we have advised have frequently been informed by local authorities they approach for help that the local authority can care for their children but not the family.

In the overwhelming majority of immigration categories, when an individual is granted leave it is given on condition that they maintain and accommodate themselves (and any dependants) without recourse to public funds (the so-called 'no recourse to public funds' condition). Parliament has never declared this approach mandatory, it simply gave the Home Secretary the power under section 3(1) Immigration Act 1971 to impose such a condition on a grant of leave. It is Home Office policy, enacted through the Immigration Rules, which determines that in all but a few exceptions, the 'no recourse to public funds' condition is imposed when leave is granted and the usual safety net of the welfare state denied to those migrants. Home Office policy and practice has determined this approach and therefore it is no surprise that when a migrant woman with leave subject to a 'no recourse to public funds' condition needs safe accommodation and financial support to help her flee domestic abuse, they are rarely available.

The government's only solution to this protection gap has been the Destitution Domestic Violence Concession (DDVC), a Home Office policy permitting those eligible to apply for three months leave outside the rules which permits access to public funds allowing them to access safe accommodation and financial support. For those migrants eligible for it, the DDVC has been little short of a lifeline when fleeing domestic abuse. Eligibility for the DDVC is narrowly confined to those migrants who are in the UK with leave as the partner of a British citizen or settled person (i.e. a person with permanent status in the UK). Everyone else is locked out of this protection.

The Home Office has long pursued a narrative that seeks to create a divide between the 'deserving' migrant and the 'undeserving' migrant. We see this from the pursuit of

'the brightest and the best' in its business immigration categories to the policy of resettling refugees from conflict regions because they are, to the government's mind, 'genuine refugees', while simultaneously refusing to assist refugees arriving across the Mediterranean into Europe. By pursuing a policy that protects migrant women with leave as the partner of a British or settled person through the provision of safe accommodation and support to flee abuse while simultaneously excluding other migrants from the same protection this division between the 'deserving' and 'undeserving' is drawn.

Undocumented migrant women, by which we mean those who require leave to enter or remain in the UK but do not have it, are similarly excluded from benefits and thus accommodation and financial support. The impact on this particularly vulnerable group of women has been exacerbated in recent years by the ramping up of government measures targeting undocumented migrants, including the hostile environment policies; we have seen an explosion of status checking across every facet of life including private housing, work, healthcare, banking, and even the marriage registry office. Through these measures, which deny undocumented migrants the means to sustain themselves, the government has promoted an environment in which abuse and exploitation can flourish unchecked. The government's aim of making life intolerable for undocumented migrants is fundamentally incompatible with the aim of providing protection for victims of abuse.

An alarming trend that Rights of Women has experienced in its advice work in recent years is the increasing numbers of EEA nationals and their family members who are being denied access to their rights and entitlements, most commonly benefits, tax credits and housing assistance, because of complex residence tests. Our experience is that European rights to social security are being routinely denied to EEA nationals and their family members due to chronically poor decision-making in public authorities and unyielding bureaucracy that demands evidence that victims of domestic abuse are unable to provide. Victims of domestic abuse with European law rights of residence are denied accommodation and financial support to which they are entitled because they cannot provide evidence that only the perpetrator of abuse and the state controls. In routinely failing to share the evidential burden with the victim who is seeking benefits, public authorities are disregarding their legal obligations and leaving victims at risk of further abuse. Rights of Women commonly advises, for example, spouses of EEA nationals who separate from their husbands due to domestic abuse but are denied housing assistance or benefits because they cannot provide recent payslips or bank statements from their husband confirming his work. Consequently, these women and their children are denied access to a refuge despite their need and entitlement. This flagrant denial of European entitlements to social security continues unchecked in large part because individuals have no means to challenge wrong decisions following the withdrawal of legal aid from welfare benefits law.

Brief mention must be given to asylum seekers who, while ineligible for mainstream housing assistance and benefits, are provided accommodation and financial support from the Home Office. Because of their exclusion from mainstream housing assistance and benefits, when asylum seekers need to flee their Home Office accommodation because of domestic abuse they cannot access refuge places. Rights of Women, alongside other voluntary sector stakeholders, has for more than three years engaged in stakeholder discussions with the Home Office urging the amendment of its asylum

support policy to allow asylum seeking women to access refuges. Despite Home Office commitments to change asylum support policy to realise this aim, we continue to await the publication and implementation of that policy. We surmise that this policy change is currently low down on the list of priorities for overstretched Home Office officials and call for it to be re-prioritised for completion by autumn 2018.

The inability to access safe accommodation and financial support inevitably means that migrant women are either trapped in abusive relationships or are made destitute and vulnerable to further abuse.

We receive countless calls from migrant women who are too frightened to seek help and support following an abusive relationship because they fear detention, deportation and/or their children being removed from their care. Pregnant women experiencing complex pregnancies often do not seek medical attention for the above reasons endangering their own life and the life of their unborn child.

We call for the government to urgently review access to safe accommodation and financial support for migrant women fleeing domestic abuse taking into account the views of survivors and relevant sector stakeholders; take action to allow all migrant women fleeing abuse to access safe accommodation and financial support irrespective of their immigration status; and re-instate legal aid for welfare benefits law so that where rights are denied individuals can challenge this.

Accessing justice as a victim of crime

Migrant women tell us that threats of deportation are a common weapon of control used by perpetrators of abuse. This is often combined with threats that reporting to the authorities will lead to deportation. Consequently, many migrant women fear that reporting abuse will lead to their enforced removal from the UK. This is particularly acute for undocumented migrant women who fear that their status as victims of crime will not override their immigration status.

These fears are not unfounded. We are aware of disturbing reports of police questioning victims about their immigration status and passing information to Home Office Immigration Enforcement. A devastating media report published on politics.co.uk in November 2017 exposed that a migrant victim of sexual violence was arrested in a Sexual Assault Referral Centre after reporting her rape to a London police station. Journalists have since made Freedom of Information requests of all 45 police forces in the UK. Of those, 27 police forces said they did refer victims to the Home Office for immigration enforcement purposes, 3 police forces said they did not and the remaining 15 police forces did not respond, gave unclear responses or said they had no data.

Our experience and this data confirms that migrant women are not automatically protected from immigration enforcement action if they report their abuse to the police. Quite the opposite, migrant victims seeking help are viewed as an opportunity for immigration enforcement action. Inevitably, migrant women are deterred from seeking support from the criminal justice system which increases their risk of harm, increases the risk of harm to others who may fall victim to the same perpetrator, emboldens perpetrators of abuse and damages public confidence in the police.

The failure to create a safe space for migrant women to report abuse requires urgent remedial action. Migrant women presenting to the authorities as victims of crime should not be subjected to any police action that seeks to investigate immigration related offences nor should any information be passed to the Home Office for the purposes of immigration enforcement. We call on government to create safe reporting mechanisms for migrant women to report domestic abuse.

Migrant women will only come forward following the trauma of an abusive relationship if they are confident that they will receive the help and support that they need without adverse repercussions.

Immigration controls

Through our advice work we have seen countless instances of immigration law and policy being used by perpetrators of abuse to control their victims. These instances include:

- Perpetrators who control the visa application process and immigration documents resulting in, for example:
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 - o women who are married to British citizens or settled migrants entering the UK on inappropriate visitor visas designed to keep their status precarious;
 - o women who are unaware of their status and their responsibilities to extend leave leading to inadvertent overstaying;
 - o women who misunderstand their status because they have been given false information by the perpetrator e.g. the perpetrator has told the victim he has applied for leave as a partner when he has not;
 - o women being held responsible for false information put forward by the perpetrator in applications.
- Perpetrators who use their role as a visa sponsor to control victims, resulting in, for example:
 - o Women whose immigration status is dependent on their relationship with their sponsor continuing, being subjected to abuse but unable to separate for fear of losing their immigration status. This well-founded fear is entrenched by perpetrator threats of cancelling visas and having victims deported and or having their children removed from their care.
 - o Perpetrators abandoning women overseas and asking the Home Office to revoke their victim's leave on account of relationship breakdown. These instances of transnational marriage abandonment can be accompanied by the separation of the women from their children who are returned to the UK by the perpetrator.

These are but a few examples of how perpetrators of abuse use the immigration system to abuse their victims. We call for the government to review existing

immigration policies and practices, in consultation with survivors and relevant sector stakeholders, with a view to identifying those areas that are being exploited by perpetrators to abuse migrant women and implement countervailing measures to protect and empower women.

Such measures should include:

- New routes for victims of domestic abuse to regularise their immigration status or obtain status independent from their perpetrators;
- Ending the revocation of leave (by way of cancellation or curtailment) following unilateral declaration by sponsors without giving visa holders the right of reply;
- Providing legal aid for victims of domestic violence to obtain immigration advice and assistance;
- Reinstating rights of appeal against Home Office refusal decisions;
- Facilitating access to support and accommodation for victims.

Specialist services

It is vital that specialist BME services for vulnerable women are able to sustain themselves to provide this much needed service. They play a significant role in assessing the needs of migrant women, who may present with multiple issues such as limited English, cultural and mental health issues, and providing them with appropriate support. BME services will also be faced with similar challenges as generic women's services in preventing their clients from becoming destitute and homeless and/or to help them access support and accommodation. The government must ensure that adequate funding is available to all women's services to enable them to continue supporting migrant women who have experienced abuse.

13. How can we work better with female offenders and vulnerable women at risk of offending to identify their domestic abuse earlier?

For the government to respond more effectively to survivors of domestic abuse, a considered and evidence-based approach is needed that sensitively and meaningfully takes account of the complexity involved. On principle, we are therefore regrettably unable to answer any questions that ask us to prioritise a top three, as this is too simplistic and arbitrary to result in any genuine benefit for survivors.

We support the free text / narrative answer to this question provided by Women in Prison.

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

For the government to respond more effectively to survivors of domestic abuse, a considered and evidence-based approach is needed that sensitively and meaningfully takes account of the complexity involved. On principle, we are therefore regrettably unable to answer any questions that ask us to prioritise a top three, as this is too simplistic and arbitrary to result in any genuine benefit for survivors.

We support the free text / narrative answer to this question provided by Women in Prison.

15. 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 refer you to our answer to question 12, the content of which we also adopt in full here.

Before responding further we wish to highlight the misleading nature of this question. The consultation document refers to government funding to pilot support for women and their children affected by abuse on non-spousal visas with no recourse to public funds and suggests this will assist in creating an evidence base to review how the immigration system caters for victims of abuse. The project referred to is, we believe, funded through the Ministry of Housing, Communities and Local Government from where there is no competence to address a review of the immigration system. Furthermore, there has been no Home Office commitment, that we are aware of, to review the eligibility criteria for the Destitution Domestic Violence Concession and consequential routes for migrant women to regularise their immigration status following domestic abuse. Therefore, the eligibility for the Destitution Domestic Violence Concession remains an issue on which we wish to comment.

The Destitution Domestic Violence Concession (DDVC) is an immigration policy that permits eligible individuals to obtain three months' leave outside the immigration rules during which time they are permitted access to public funds and expected to make a further application to extend their leave in the UK. The DDVC operates as an emergency escape through which a woman trapped in an abusive relationship because of a spouse visa prohibiting access to public funds can flee, converting her visa to a temporary one of 3 months duration which permits her access to public funds and consequently safe accommodation and financial support. An emergency escape however is of little value to those at risk unless it leads to a safe place. The DDVC operates as an effective emergency escape because it is connected to a category under the immigration rules that allows victims of domestic violence to obtain indefinite leave to remain in the UK if their relationship has broken down as a result of domestic abuse (see, for example, Section DVILR of Appendix FM of the Immigration Rules). Eligibility for both the DDVC and indefinite leave to remain as a victim of domestic violence is restricted to those who had had a visa as the partner of a British or settled person. In other words, the DDVC is only of value as a means of protection, because it precedes a long term route for victims of abuse to regularise their immigration status. With this in mind, any review of who is eligible for the DDVC must be done alongside

a review of who is eligible to regularise their status longer term as a victim of domestic violence.

Even those who have been eligible to apply for leave under the DDVC and for indefinite leave to remain as victims of domestic violence have encountered barriers to their protection.

Domestic violence specialist organisations report that the 3 months duration of the DDVC is problematic and an extension to 6 months would permit them to provide the support needed to work with these complex cases. Such support includes providing emotional support to women to assist them to tell their story, securing the service of a legal aid provider with capacity to accept an immigration case and gathering evidence from third parties to support an individual's indefinite leave application.

Before April 2015, if an application for indefinite leave to remain as a victim of domestic violence was refused by the Home Office, for example because it was not accepted that domestic abuse had occurred for want of objective third party evidence, an individual had a right of appeal before an independent judge who would form their own conclusion based on the evidence the victim presented at her appeal hearing. This right of appeal was taken away in April 2015. The injustice of this is felt most keenly by those who have, for whatever reason, not previously disclosed the abuse to the authorities because they are unable to obtain the objective third party evidence which the Home Office, in practice, demands. The Home Office's current policy guidance in respect of indefinite leave to remain applications instructs caseworkers that a victim's own account of the abuse she was subjected to is of weak evidential value when assessing her application (Home Office, Victims of domestic violence and abuse, version 14). It follows that women who have only their own account of abuse to call on in support of their claim can be expected to be refused with no right of appeal.

A further feature of the Home Office's cruel immigration system which commonly affects those eligible for indefinite leave to remain as victims of domestic violence, is that the Home Office refuses to permit applicants to raise alternative human rights claims as part of their application to remain in the UK. For example, if a woman who is in the UK with leave as the spouse of a British citizen separates from him because of domestic abuse, she is entitled to apply for indefinite leave to remain as a victim of domestic violence. If she has a British citizen child, she is separately entitled to apply for leave as the parent of a British citizen child though this route is less advantageous given it can take ten years before entitlement to settlement is acquired. A woman should be able to make one application presenting all the bases on which she is eligible to remain in the UK. Immigration policy however is that she cannot, she must choose (see paragraph 34BB Immigration Rules and Home Office Guidance 'applications for leave to remain; validation, variation and withdrawal', version 1.0). If she chooses to apply for indefinite leave to remain as a victim of domestic violence but fails to convince the Home Office caseworker reading her paper application that she is a victim of domestic abuse, her application is refused. The consequences are that she has no right of appeal against this refusal, she will lose the application fee if she paid it (at the time of writing £2389), she will become an overstayer subject to detention and removal, she will lose her entitlement to public funds including her place in a refuge and face the full onslaught of the hostile environment. All the time, the Home Office is well aware she is eligible for leave as the parent of a British child but

because of its procedural rules dictating how that application should be made, refuses to acknowledge it. Instead, this woman has to make a second application, this time as the parent of a British citizen child, within 14 days of her previous application being refused. There is no legal aid for this type of application notwithstanding that she is a victim of domestic abuse. She must complete her own 61 page FLR (FP) form, and a further 25 page fee waiver request form if she is unable to pay the more than £1500 application fees.

This cruel absurdity can be eradicated in part by a few simple changes. For example, the application form on which individuals apply for indefinite leave to remain as a victim of domestic violence (i.e. form SET (DV)) can be amended to declare that applicants are making a human rights claim and must state all reasons for wishing to stay in the UK.

16. Do you agree that the proposed Domestic Abuse Protection Notice issued by the police should operate in broadly the same way as the existing 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)?

Yes.

The stated purpose of introducing of DVPNs and DVPOs was to provide the police with a mechanism to protect victims of domestic abuse for a short period in order to provide the victim with 'breathing space' and to allow referrals to support services without interference from the perpetrator. They are designed to address the problem of persistent offenders where the victim is sometimes unwilling to support a prosecution making it unlikely that criminal charges can be brought. It was envisaged that they would largely be used in cases where a charge was not possible.

We would support the continuation of the use of DVPNs and DVPOs for this stated purpose and for the name to be changed to DAPN and DAPO with the proposed change that they can be issued in cases of domestic abuse generally and not limited to physical violence or threats of physical violence. However, we believe the current regime could be improved as follows:

- It must be made clear in all guidance and training that they are not an alternative to prosecution. If the charging standard is met, then perpetrators should be charged with a criminal offence;
- Wrap around support for the survivor is crucial in the immediate aftermath of a DVPN being issued. This should come from specialist domestic violence support services.
- The court fees the police pay to apply for a DVPO should be abolished. We are informed by both survivors calling our line and police officers attending our training that the cost of making an application to the

magistrates' court is a factor prohibiting their use. Superintendents should not have their budgets at the back of their minds when considering whether a case is suitable for a DVPN to be issued.

- It should be a criminal offence to breach a DVPO.

We think the proposals suggested in the government consultation in relation to DAPOs should not be introduced for the reasons laid out below.

As the remaining questions in this section address specific proposals in relation to DAPOs on the assumption that we would support their introduction, we address our overarching concerns about these proposals here.

The proposals in this consultation seem to have forgotten the stated purpose of introducing DVPOs in the first place which are summarised above. We support the intention behind the introduction and model of DVPN/O but with the caveat that there are problems with the current orders as outlined above. What we are concerned about is that the proposals in the consultation do not address the existing problems with DVPN/Os but would introduce new/additional problems. The proposed DAPOs would be a completely different type of order. We question the logic of replacing an order designed to achieve a particular goal with something which we do not believe will add anything to the current protective order regime but will remove the availability of DVPOs. We do not believe DAPOs would be used in the same way as DVPOs.

We would highlight that although this proposal sits within the “proposals to keep victims safe” section, the focus, yet again, is on criminal sanctions and court orders. Should the government wish to transform the way in which the criminal and civil jurisdictions protect victims of domestic abuse, they will need to propose much greater, sweeping reform than the addition of yet another protective order. This reform would require funding. Work should be done on improving access to the courts through legal aid, local courts need to stay open so that women can access them even if they have mobility, financial difficulties or caring responsibilities that mean they are not able to travel far. The availability of support in both the criminal and civil jurisdictions should be the same. Practical and emotional support from the same IDVA should be available across the jurisdictions. Judges in some areas refuse to let domestic violence support services into the court room with survivors despite them having a right to a litigation friend. Digital upgrades in both the criminal and civil courts should include a database of all protective injunctions made in civil and criminal courts that is searchable by courts in new applications and information can be passed on to CAFCASS officers and judges.

Survivors report different experiences across the jurisdictions. Although some of this is to be expected given the different nature of the cases, we come across many examples from women who call our service of the courts working against each other in their approach to the perpetrator. For example, if a criminal court has made a restraining order preventing contact between a perpetrator and survivor, the family

court should be expected to make orders in keeping with the order and not order contact which would lead the perpetrator to breach the order.

There are many ways in which survivors' experience of the family and criminal courts can be improved in order to better protect them. However, the proposal in relation to a new order only adds confusion as it does little more than the current protective order regime.

In relation to the specific proposals for DAPOs, we have the following concerns:

- Making it possible for other people to apply

DVPOs can be imposed on perpetrators without the survivor's consent but they are very short term orders; lasting no longer than 28 days. However, DAPOs are envisaged to be much longer and more onerous orders with the potential that orders are made against the wishes of the survivor for extended periods.

The survivor must be the person that decides whether she needs court protection. She is the best person to make decisions about what orders, if any, she wants. It is disempowering for professionals to make this decision on behalf of survivors and has the possibility of increasing risk to survivors in a number of circumstances.

If an order is put in place against the wishes of the survivor, the survivor is more likely to hide the relationship from professionals for fear of being accused of breaching the order (even though she cannot breach the order, many women do not understand this is how they work).

Having third parties being able to apply for an order leaves them open to abuse by perpetrators, in particular, family members.

Other professionals do not have the safety of survivors as their priority concern. We can envisage a situation where professionals are involved with a family or survivor as a result of domestic abuse and the professional decides to apply for a DAPO on the basis that this is one way of achieving their aim, whether that be social workers to protect the children or housing officers to prevent housing complaints. We are concerned this could encourage a shift towards providing paternalistic support, rather than being client centred, in supporting survivors of domestic abuse, which denies the victim any agency. It risks the relationship between the victim and perpetrator being hidden from professionals and, therefore, placing the survivor at greater risk.

Ultimately, women must be supported to make decisions for themselves in line with what they need at the time.

- The operation of DAPOs compared to currently available orders

The intention to improve how the different jurisdictions respond to domestic abuse cannot be met by simply adding an order that does very little in addition to DVPOs, restraining orders and non-molestation orders.

Restraining orders are available on conviction or acquittal. Non-molestation orders can be made by the family court on application and in certain ongoing proceedings. Both orders can be made for any length of time the court believes is appropriate. There is no additional flexibility by simply renaming these orders DAPOs.

It is a criminal offence to breach both restraining orders and non-molestation orders. The breach of a DVPO should be a criminal offence but if DAPOs simply replicate what is available in restraining and non-molestation orders then they add little extra protection.

One of the reasons DVPOs are not used by police is the cost of applying for and obtaining an order from the court. We believe the positive conditions that can be attached to these orders will increase the number of contested applications, thereby increasing costs to the police and making it less likely that they will use them.

We are aware from the women who call our family and criminal law lines that the police often tell survivors to make an application to the family court for a non-molestation order. Sometimes this is appropriate, sometimes it is because the police are not taking domestic abuse seriously. If an order is available, and the police can apply but it will cost them money, or the survivor can make the application herself, we believe the police will be very motivated to tell survivors to make the application to the family court.

- What representation would be available?

Victims are not party to or represented in criminal courts. Their views would not be taken into account any more than is currently the case with restraining orders.

In the family court, survivors find it difficult to get legal aid due to the stringent means testing for injunctions. This raises important questions: Would the same rules for legal aid apply to DAPO applications in the family court? Would women be eligible for legal aid when a third party has applied for an order to protect them? They would, presumably, be respondents to the application. Would perpetrators be eligible for legal

aid? If not, survivors could continue to face direct cross-examination by perpetrators in the family courts. Given the suggestion that positive requirements can be placed on DAPOs which go as far as prohibiting perpetrators' liberty, we do not see how legal representation through the availability of legal aid would not be necessary to protect their human rights. Would we, therefore, end up with perpetrators receiving legal aid and survivors representing themselves? The details of this are crucial to understanding whether these orders would really add anything to the current order regime or may, in fact, increase the risk of harm to survivors.

- Positive conditions

We can understand the idea that the expansion of protective orders to include positive conditions will add protection to victims. However, when the details of both the current system and the proposed regime are examined, we believe this is very muddled thinking. In the context of the current system, we doubt that the proposals add any extra protection. We are concerned that they carry increased risks for survivors, increased confusion for professionals and potentially increased costs that could be spent better elsewhere.

The purpose of a protective order regime should be to provide both immediate and long term protection to survivors to enable them to move on with their lives, free from the perpetrator. By adding positive requirements to a protective injunction, it changes the nature of the order. A non-molestation order can presently be obtained very quickly. In some cases, in no more than 2 hearings long term protection can be in place. If there are no other legal issues, the victim should be able to move on, free from the perpetrator.

If there are children, the family courts have the ability to place positive requirements on perpetrators as part of any children proceedings. The criminal courts can sentence perpetrators to community orders which have the power to include the positive requirements proposed for a DAPO. In neither of these situations is the need for a protective order linked to the sentence (the purpose of which is rehabilitation) or child contact (the purpose of which is safe contact).

We are concerned that orders with positive conditions place a responsibility on the survivor to continue their involvement with the perpetrator in some way. This raises a series of important questions that have not been addressed in the consultation document: Who will take responsibility for assessing a perpetrator's suitability for various conditions? Who is going to monitor and report on a perpetrator's

engagement with the positive condition? Would the victim be required to give evidence in order to prove a breach of a positive condition?

In the criminal courts when community-based sentences are passed, the burden of supervising compliance and bringing breach proceedings falls on the overburdened Probation Service. Prior to a court imposing drug or alcohol treatment, an assessment of suitability is usually required, often undertaken in conjunction with a pre-sentence report. Whilst we appreciate that the suggested requirements are not part of a sentence, we submit that some form of supervision of compliance would be needed and that that would necessarily fall on the Probation Service; it is simply not feasible for this to be undertaken by the survivor, not least because her ability to bring breach proceedings is limited. There are no other obvious routes for monitoring compliance other than the police (who are unlikely to be willing to take on this responsibility given that there is already a body who would normally do this), the survivor (who would not and should not be expected to bear the burden of having to keep tabs on the compliance behaviour of the perpetrator), or another body established solely to undertake this task (a somewhat pointless and financially unsound approach).

These obligations cannot sensibly be imposed without the Probation Service. Consideration will need to be given to the needs of the Probation Service in this regard, including whether there is a need for an assessment of the perpetrator before the imposition of positive requirements (something which is likely to add the need for additional hearings), which branch of the Probation Service will be responsible for this, and how this overstretched and under-resourced arm of our justice system will manage to undertake proper, suitable, and fit-for-purpose supervision.

The proposal to include electronic monitoring in a DAPO causes us particular concern. The current system of electronic monitoring does not function particularly well. Breaches are reported while perpetrators are at home because of faulty equipment or a perpetrator going into their garden. We are aware that the police often do not have the capacity to pursue breaches and they are a low priority for them. We believe the requirement for electronic monitoring could give survivors a false sense of protection and, therefore, increase the risk to them. The proposal also raises a series of pertinent questions around how the usage and process of implementation could impact on survivors: Would they (the survivor) be contacted by the private operator of the equipment every time a breach was reported? What about when the equipment is not working? Furthermore, we do not believe it is compatible with the UK's human rights obligations to impose a civil order on a perpetrator limiting their liberty, without conviction, without representation. They would have to be represented in these applications and, therefore, would they be represented while the victim is forced to represent herself?

The prospect of positive conditions being attached to orders would, in our view, make perpetrators more likely to contest an application, making the process longer and more arduous for survivors.

In summary, we do not believe that the introduction of DAPOs and abolition of DVPOs would help protect victims of domestic abuse. We do not believe the proposed DAPO adds anything that is not already available under restraining orders in the criminal courts or non-molestation orders in the family courts. Yet, they would remove the protection available under DVPOs which, although not perfect, have a specific role to play within the system as a whole. The only additional protection the proposals provide is that of adding positive conditions which are already available in certain circumstances. For the reasons set out above, we do not believe this is the appropriate use of a protective injunction.

Should government decide to push ahead with this proposal, we suggest it is very carefully piloted in a small area and reviewed to understand the effect of the orders on survivors' experiences.

17. Which of the following individuals/organisations should be able to apply for a Domestic Abuse Protection Order?

Select: Other

Free text box:

See our full response to Question 16 in which we set out our concerns about the introduction of DAPOs in general.

18. Which persons or bodies should be specified by regulations as 'relevant third parties' who can apply for a Domestic Abuse Protection Order on a victim's behalf?

Select: None of the above

Free text box:

See our full response to Question 16 in which we set out our concerns about the introduction of DAPOs in general.

It is crucial that specialist support is available for survivors of domestic abuse but their role is to provide support. It is ultimately the decision of the survivor whether she wishes to apply for protection from the court, hopefully after having received legal advice to understand the different options.

19. We propose that there should be multiple routes via which an application for a Domestic Abuse Protection Order can be made, including:

- **at a magistrates' court by the police following the issue of a Domestic Abuse Protection Notice or at any other time**
- **as a standalone application by, for example, the victim or a person or organisation on the victim's behalf to a family court**
- **by a party during the course of any family, civil or criminal proceedings**

Do you agree?

No

See our full response to Question 16 in which we set out our concerns about the introduction of DAPOs in general.

20. Do you agree that family, civil, and criminal courts should be able to make a Domestic Abuse Protection Order of their own volition during the course of any proceedings?

Yes

See our full response to Question 16 in which we set out our concerns about the introduction of DAPOs in general and why we do not believe they should be introduced. However, if the government is going to push ahead with this proposal in any event then the Court should be able to make the orders of their own volition as they can already do with Non-Molestation Orders in the family courts (again, this is simply a replication of powers that already exist).

21. 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?

No

This is not the purpose of a protective injunction. See our response to Question 16 which sets out our concerns regarding positive requirements.

22. Do you agree that courts should be able to require individuals subject to a Domestic Abuse Protection Order to notify personal details to the police?

Don't know

See our full response to Question 16 in which we set out our concerns about the introduction of DAPOs in general.

In relation to requiring individuals to provide personal details to the police, we have some concerns about the details of this proposal. It would only be after understanding exactly what is proposed that we would be able to take a firm view on its effectiveness.

Firstly, if the police are going to collect data about an individual, there has to be a clear purpose to this and a clear understanding of how the data is going to be used. The stated intention for collecting this data is to protect those at risk of domestic abuse by preventing future abuse. We require information on how the police will be monitored and scrutinised to ensure the data is being used for the intended purpose.

The government will have to consider who is going to enforce the condition. If a condition is added to an order, will it be the survivor's responsibility to check with the police that the information has been provided? Will a change of details be notified to the survivor? What if the survivor has moved out of that police area and they have no contact details for her? One of the stated intentions is that information can be provided to a new partner. In which case, the perpetrator has no incentive to provide the police with the information. What action, if any, will be taken against a perpetrator who fails to provide personal details to the police? Would the information automatically be provided to the new partner? Or would it only be released under an application from the new partner? If the perpetrator moves to a different police area, which police force is going to be responsible for obtaining and retaining the perpetrator's personal details and informing the survivor/new partner? How long will the perpetrator be subject to the condition, for as long as the DAPO is in force or longer? Is there a risk that a lack of this information will be relied on as an indication of lesser risk when there could be many circumstances where, for example, a restraining order was made instead of a DAPO and this information is not recorded?

23.If so, what personal details should the courts be able to require individuals to provide to the police?

- Home address/change of home address YES
- Formation of new relationship with an intimate partner YES
- Change of circumstances relating to household – including where a new child is born or otherwise joins the household YES
- Details of child arrangements orders for where and with whom a child is to live and with whom a child is to spend time or otherwise have contact NO
- Other – We are unclear as to why details of child arrangements orders need to be provided and how this will protect survivors.

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

Yes

See our full response to Question 16 in which we set out our concerns about the introduction of DAPOs in general.

25. If you do agree that breach of the proposed order should be a criminal offence, should it be possible for breach to alternatively be punished as a contempt of court?

Yes

We are not sure how you could exclude it from being punishable as a contempt of court as breach of a court order is always contempt.

26. Do you agree that courts should be given an express power to impose electronic monitoring as a condition of a Domestic Abuse Protection Order?

No

See our full response to Question 16 in which we set out our concerns about positive requirements and the introduction of DAPOs in general. We are concerned that introducing electronic monitoring will provide no additional protection to survivors and may provide them with a false sense of security. Our understanding of the way electronic monitoring works presently is that although police are notified when a person breaches a curfew or enters a restricted area, no immediate action is taken. If electronic monitoring is to provide protection to survivors, then somebody needs to monitor breaches and police officers will need to be deployed immediately upon a breach. This will require **significant** investment and increased police capacity.

If electronic monitoring is introduced it should be carefully piloted to assess the impact it has on survivors, and the impact it has on judges' decision making when considering whether to make an order.

27. Which particular statutory safeguards relating to the use of electronic monitoring with Domestic Abuse Protection Orders should be put in place?

They should not be introduced.

See our full response to Question 16 in which we set out our concerns about the introduction of DAPOs in general.

28. How much easier do you think it will be for domestic abuse victims to register to vote anonymously, once the changes summarised above happen?

Somewhat easier

29. What further support could survivors receive to prove their safety would be at risk if their name and address appeared on the electoral register? Please put forward one suggestion.

We have based our answer, in part, on lessons learnt from our experience of being a critical friend / sitting on the consultation group that looked at extending the list of relevant professionals who could supply evidence for survivors in relation to the changes the Domestic Violence Legal Aid Gateway that came into force in January 2018. This process showed that the support survivors receive is varied (as their needs are varied) and specific services may not be available to survivors due to a lack of resources (for example, shortage of refuge spaces). We have also spoken to Women's Aid in relation to this answer.

We suggest the list of qualifying officers who can attest an application should be extended to include:

- Any relevant person from an organisation providing domestic abuse support services. Extending the list in the way suggested will ensure that any domestic abuse related support that women receive (such as Independent Domestic Violence Advisor / Independent Sexual Violence Advisor services, therapeutic services, advocacy services etc.) is recognised and will make it easier for survivors to provide evidence;
- Any health professional as a member of a profession regulated by the General Medical Council, the General Dental Council, the General Optical Council, the General Osteopathic Council, the General Chiropractic Council, the General Pharmaceutical Council, the Nursing and Midwifery Council, or the Health and Care Professions Council;
- Chairs of Multi-Agency Risk Assessment Conferences (MARACs);
- An employer;
- Educational services - including a school, college or university;
- A local authority - with the seniority of qualifying officers lowered from the Director of Adult Social Services or Children's Services;
- A legal professional - including a solicitor, a trainee solicitor, a barrister, a paralegal, or a legal executive.

30. Do you have any further comments or suggestions on how to make it easier for domestic abuse survivors to anonymously register to vote?

Currently court documents such as injunctions must be in force on the day of the survivor's application to register anonymously. This requirement should be removed. The duration of court orders is not a reflection of the level or duration of risk to the survivor.

There are a few types of court documents not currently included on the list, for example:

- An undertaking relating to domestic violence
- A finding of fact relating to domestic violence
- An expert report produced as evidence for the benefit of a court or tribunal

Other forms of evidence that could easily be added to the list include those that have been included in the evidence list for the Domestic Violence Legal Aid Gateway:

- Evidence that the Home Office has granted a survivor indefinite leave to remain in the UK as a victim of domestic violence
- Evidence that the survivor has accessed family law legal aid as a person who has experienced or is at risk of experiencing domestic abuse
- Relevant unspent court convictions for a domestic abuse-related offence
- Relevant police cautions for domestic abuse offences
- Evidence of a bind over order which was made in connection with an alleged domestic abuse offence

It is unlikely that a list will include every type of evidence a survivor may want to present to support her application. To make anonymous registration accessible to as many survivors as possible it is important to state that the list of supporting evidence is not exhaustive, and that other forms of evidence will be considered.

Not all survivors report abuse to a professional or seek support from support services. Further investigation is required to consider what options should be made available to survivors who are unable to provide documentary evidence from a court, tribunal or professional.

Once an application for anonymous voter registration has been successful it should remain in place indefinitely, therefore the 12 month time limit for re-registering and the expiry of an attestation after 5 years should be removed. The impact and risks associated with domestic abuse can be lifelong. Requiring survivors to repeat the application every year may be retraumatizing or deter them from registering and voting. Also, if the survivor needs to move house, which is frequently the case to protect their safety, this status should automatically move with them.

31. Aside from anonymous registration, how else can we keep victims' addresses safe?

Refuge contact addresses, which are commonly PO Box addresses (in order to protect those living and working there) also need to be accepted on the anonymous registration application form to make the system workable.

It should be possible to register a company and director at Companies House without having the address published either online or made available on the public register in the event of domestic abuse.

More needs to be done to address the prevalence of a victim's redacted address being shared with the perpetrator or their representative during legal proceedings. We know from survivors who contact us that this happens frequently and puts them at great risk and can result in them needing to move. Specific training and ongoing professional development could assist with this.

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

Yes

33. Do you agree the guidance underpinning the DVDS should be placed on a statutory footing?

Agree

Placing the guidance on a statutory footing may increase awareness and encourage police forces to pay greater attention to it. However, legislation will not be enough.

We endorse the comments put forward by the End Violence Against Women Coalition (EVAW) in response to this question, particularly in relation to training for police officers, the importance of referral pathways and ensuring women who choose to stay in relationships do not face prejudice in future investigations and court proceedings.

DVDS is only helpful in cases where the police have a record of convictions or charges and its effectiveness in preventing abuse has proved to be limited. Therefore, we share the view that the DVDS should not be considered a core part of the response to domestic violence.

34. How do you think we can best promote awareness of the Domestic Violence Disclosure scheme amongst the public?

Don't know/no answer

Although the DVDS can be helpful, it should not be promoted in isolation from other services and options available to survivors (such as domestic abuse support services

and helplines). When promoting the DVDS it is important to make clear that if the police do not disclose or have no information to disclose, that does not mean that the prospective partner is not a perpetrator. There is concern that the scheme could provide a false sense of security to potential survivors.

35. What practical barriers do domestic abuse victims face in escaping or recovering from economic abuse and how could these be overcome?

We have contributed to the response of Surviving Economic Abuse, which we endorse. There has been little work done with what is described in that response as “non-traditional” stakeholders such as financial institutions. This is an area where a large amount of work should be done.

In the justice system, we see sharp distinctions made between criminal, family and civil jurisdictions but a survivor of economic abuse will often have to access all three in order to have proper access to justice. Survivors of domestic abuse should be able to access legal advice and support on debt, welfare benefits and housing.

Migrant women

Migrant women face unique barriers to escaping economic abuse. These are not practical barriers but barriers government has erected to deny migrants financial independence. They include:

- Undocumented migrants and asylum seekers have no right to work.
- Undocumented migrants or migrants with leave subject to a ‘no recourse to public funds’ condition are not entitled to benefits. This allows current or former abusive partners to claim child benefit and child tax credit on behalf of the children. In our experience abusive partners commonly control access to such benefits for their own gain which persists after the children are no longer living with them.
- Undocumented migrants cannot hold bank accounts to control their own money creating dependencies on perpetrators.

Many women that call our immigration line report that they have never been permitted to deal with financial and legal issues and that their male partner or spouse has always taken responsibility for the family’s financial affairs. Women in this position are easy targets for perpetrators who will exploit the woman’s lack of knowledge by abusing her financially e.g. asking her to sign documents that she doesn’t understand to enable loans and credit cards to be taken out in the victim’s name for the sole use of the perpetrator, insisting she pays earnings into a joint account from which only the perpetrator is able to access funds.

36. What more can we do to tackle domestic abuse which is perpetrated online, or through control of technology?

Don’t know/no answer

Whilst the proposals made are broadly good and would not be unhelpful, the government should be mindful of the following:

1. The police are insufficiently resourced and experienced to deal with online abuse in many of its forms. Current approaches to reporting and recording offences do not always join up what can be a cumulative pattern of abuse, nor necessarily take seriously lower level abusive behaviours (calling a woman a bitch online, for example), which whilst they may not be problematic in isolated incidents, can be very problematic as a course of conduct. Police lack the knowledge about how to police the internet. "Effective use and handling of evidence from social media within the investigation and prosecution" means nothing if the police cannot properly get to the investigation stage.
2. There is a risk of placing the responsibility onto survivors for protecting themselves, rather than on stopping people being abusive in the first place. Most of the suggestions place the onus on women learning how to use technology and privacy settings so that they can protect themselves from harm, but that does not address the abuse. The abuser will still be an abuser and it will not stop them finding another means of abusing.
3. Providing guidance to social media companies may have little impact if that guidance has no weight. The social media companies are not obliged to do anything and they cannot be made to comply with guidance.

Methods of reporting are helpful, but by then the damage has been done (for example, the abuser may have posted indecent images online and sent private information to all the survivor's contacts). More needs to be done to ensure that online abuse is tackled as a serious offence and that there are tougher penalties for committing such offences.

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

We would emphasise again that transparency and accountability in policing are central to empowering and improving outcomes for victims. Please refer to our response to question 8 which is relevant here.

We are unable to endorse the use of body-worn cameras at this point as, despite their roll-out in the use of Domestic Abuse cases nationally for over 5 years, there appears to be a continuing and notable gap in evidence – either robust outcome-based research or statutory data - to support the view that they are actually making a difference in the successful prosecution of offenders. We note the results from the limited trial in 2014 in Essex with the College of Policing. However, this only covered a limited period from January to May and provided no evidence about the outcomes of any trial where footage was used. We also note that Freedom of Information

responses from 42 police forces nationally in 2017 show that over £22 million pounds of public money has been spent on purchasing body-worn cameras. Considering how much has been invested in this area we question why no strong data appears to be available. We also note that the consultation document obscures this point by stating that body-worn cameras 'can strengthen prosecutions' and 'could be effective', rather than 'have strengthened prosecutions' and 'have been effective'. Annually published data should be required from all police forces and the CPS to assess whether body-worn cameras are, in fact, positively influencing outcomes for survivors of domestic abuse. The data should include, for example, the number of times evidence from body worn cameras was relied upon during prosecutions involving domestic abuse and the outcomes of those trials.

The general response survivors receive from the police is inconsistent. Some women who call our advice lines report positive experiences with police, but there are still too many who tell us they are not taken seriously, lines of investigation are not being followed, evidence is not being gathered and investigations are taking too long. Callers to our advice line tell us that they find it difficult to obtain updates and there are long delays in communications despite being allocated a specially trained officer, witness care officer or other point of contact. Further investigation may be required to ascertain why this is the case and how to resolve the issue.

Many survivors continue to experience abuse after reports to the police which indicates that there have been poor risk assessments or the risks have not been properly mitigated. Advice should be sought from expert domestic abuse services on what needs to change to improve risk assessments, and whether the DASH model is effective.

The introduction of 28 day pre-charge bail is having a negative impact on survivors of domestic abuse. Abusers are being released without bail after 28 days, and there is no protection in place to protect survivors. We are concerned that post-charge bail applications are being denied in cases where there has been a period of no bail before charge. This leaves survivors exposed to further abuse with no bail conditions or other measures in place until the trial, and possibly longer. Further consideration is required as to what measures should be put in place to protect survivors, for example, the 28 day rule for pre-charge bail could be removed for cases involving domestic abuse, sexual violence, harassment offences, FGM, and any other offences of a domestic or VAWG nature. Alternatively, provisions could be introduced to make it easier to extend bail beyond 28 days until a charging decision has been made for cases involving these offences. Decreasing the amount of time it currently takes to investigate reports of domestic abuse will help obviate the need to extend bail.

We sometimes hear from survivors who report breaches of bail conditions to the police and no action is taken. In order for bail conditions to work effectively, reports of breaches should be acted upon as a priority.

Use of DVPNs and DVPOs varies widely across the country, and some forces are reporting a decrease in the number of DVPOs granted. Training on when and how to apply for DVPOs should be provided and refreshed regularly. Applications for DVPOs should be free of charge. Use of DVPNs and DVPOs should be routinely monitored. See our response to questions 16 - 27.

The HMICFRS report (Living in fear - the police and CPS response to harassment and stalking, July 2017) highlighted the inappropriate use of Police Information Notices (PINs) for stalking and harassment cases, which often take place in the context of domestic abuse. PINs were being issued to abusers as a way of resolving the case instead of completing proper investigations and risks assessments, and in some cases where it was clear the abuser should have been arrested. These findings are reflected in the calls we receive to our advice lines. It was recommended that Chief Constables should stop the use of PINs immediately. A further review on the use of PINs and harassment warnings is required to check whether the recommendations have been followed across all police forces.

Safe reporting mechanisms for migrant women need to be established which protect victims of abuse who present to the police from investigation as potential immigration offenders and also safeguard their information to prevent it being transferred to Home Office immigration enforcement. The failure to create a safe space for migrant women to report abuse requires urgent remedial action. Migrant women will only come forward and seek help and support following the trauma of an abusive relationship if they are confident that they will receive the help and support that they need without adverse repercussions.

Training to police officers should be evaluated as to its effectiveness and continue to be improved to ensure that all frontline and specialist police officers:

- Treat reports of domestic abuse as serious and respond to them as a priority
- Understand the dynamics and complexities of domestic abuse
- Have the necessary practical skills, for example how to issue a DVPN and how to apply for a DVPO, carry out risk assessments, signpost women to support services
- Routinely and accurately record data so that performance can be monitored and analysed

38. 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

Our experience is that applications for special measures in the criminal courts are routinely made in domestic abuse cases and we are unaware of any application that

has been refused. The much larger problem with special measures is their availability in other courts. A legislative assumption may provide some survivors who have reported, or are thinking of reporting, with greater certainty that they will have access to special measures should they be required to give evidence at a trial. This assumption should be extended to all jurisdictions and not limited to the criminal courts. We see no reason why it would be limited in this way and this may encourage survivors to report, stay engaged in the process and access justice.

It should also be unnecessary for the prosecution to establish “fear and distress” for survivors of domestic abuse, for the same reasons why it is not required for survivors of sexual abuse.

It is vital that special measures once granted are available and ready to use on the day of the trial so that survivors can provide their best evidence.

We endorse the comments put forward by EAW in relation to equipment, training and the importance of advocacy.

39. 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

Some survivors may find it difficult to retain information communicated to them orally, and may need time to think about which special measures they require. Leaflets presented in accessible formats should be provided to survivors. The information should also be published online in a format which can be easily accessed and understood.

40. Do you know of instances in criminal proceedings when an application to prevent cross-examination of a victim by an unrepresented defendant has been denied in a domestic abuse case? Where possible, please provide evidence or details of the experience to support your answer.

No

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

Yes

In our experience part 36/38 orders are regularly granted for domestic abuse cases, however a formal extension of the prohibition on cross-examination may provide clarity

and certainty to survivors who can be told from the very start of proceedings that this will be the case. At present, although professionals are confident a part 36/38 order will be made due to our experience of them always being made in domestic abuse cases, it still requires a survivor to wait until the court makes a formal order to have that certainty. We see no reason why this prohibition would be limited to criminal proceedings and believe that the prohibition should be applied to all criminal, civil and family jurisdictions.

42. Do you have suggestions for how we can better support prosecutions through to conclusion, including providing better support for witnesses who currently disengage from the process? Where possible, please provide evidence or details of the experience to support your answer.

Yes

Independent domestic violence advisors (IDVA) are an excellent source of support for survivors and can give survivors the confidence to stay engaged in the process. Some survivors who call our advice lines have never heard of IDVAs, or tell us that there are waiting lists or no IDVA services in their area. We suggest that IDVAs should automatically be assigned to all victims of domestic abuse. Specialist services should be made available for marginalised women and those with additional needs.

Police officers who find a survivor repeatedly reports her abuser and then retracts her statement can be reluctant to take further reports from the same survivor seriously because “she will just return to him anyway”. Better training should be provided to help officers understand why survivors stay with abusers and how to respond to them. This training needs to have the survivors’ voice and experience at its heart to increase understanding of this issue. Support should be offered to officers who may be affected by such cases so that these experiences do not prevent them from providing a positive response to future reports of domestic abuse.

Callers to our advice lines continue to express frustration and disappointment with the justice system for a number of reasons. These must be seen within the context of the criminal justice system as a whole (which includes the courts, prison service and probation), which is woefully underfunded and keeping itself together largely based on the good will of the people involved. We recommend The Secret Barrister’s recently published book for an exposition on the problems within the criminal justice system. For example:

- Long periods of inaction by police during the investigation stage, including long periods while the case is reviewed by the CPS for a charging decision.
- Lack of communication with victims before and after charge.

- Failure to act upon reported breaches of bail conditions and threats, which can result in survivors feeling it would be safer to retract statements and possibly return to the abuser.
- Survivors feeling that lines of investigation have not been followed or evidence has been missed with no explanation.
- Long delays between charge and trial.
- Local courts being closed making it difficult for survivors to get to court and once they are at court, having to spend long periods waiting for cases to be heard.
- Trial dates being changed at very short notice, or no notice, which means the survivor arrives at court ready to give evidence and is then sent home to go through the ordeal again at a future date which may be many months away.
- Little or no communication with the prosecutor can leave the victim feeling alone and “in the dark”. Once decisions are made, prosecutors failing to explain the reasons why or failing to explain case outcomes. Support from an IDVA may help.

Addressing these issues will require an injection of funding into the criminal justice system but would help restore some faith in the justice system and keep survivors engaged in the process.

43. What more can police, witness care units and the Crown Prosecution Service do to support victims through the justice process from the point of report onwards? Where possible, please provide evidence or details of the experience to support your answer.

See responses to Questions 42 and 37 for detailed answers.

There is a role the CPS can play in helping to support survivors through the criminal process. Women tell us that when they are at court, prosecutors do not have time to speak to them about the case or what to expect. They do not have the time to explain the outcome of the case and what happens next.

Prosecutors, as well as police officers, should be trained about myths about domestic abuse. Our experience is that the CPS is becoming much better at understanding offences like child sexual exploitation and explaining to a jury that, for example, particular young girls will have been targeted because of their vulnerabilities and understanding and explaining the way in which the victim may present following trauma. We see no reason why similar learning should not be followed for domestic

abuse victims in terms of understanding why they may have stayed in a relationship, the way in which they may present and understanding how trauma may manifest.

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

Yes

It is unacceptable that the consultation document focuses on special measures and cross-examination in the criminal courts when this is largely not a problem for survivors of domestic abuse in that jurisdiction. However, in the family courts, survivors are being denied special measures (if they are even made aware that they are available) and are still being cross-examined directly by perpetrators. The system is currently muddling through with this situation and the result is that survivors are being further abused through the court process. We would highlight the recent case of *JY v RY* [2018] EWFC B16. In this case, the mother made allegations of serious domestic abuse against the father. Neither party was represented because neither could afford a lawyer and neither was eligible for legal aid. This is as a result of the overly stringent means test to be eligible for legal aid. In the case of the mother, she was ineligible for legal aid despite being on benefits. The mother, understandably, found the situation unbearable and was only able to give evidence on some of the allegations. The Judge stated that:

There is always the fear in the mind of the Court that the questioning of an alleged victim about their abuse merely prolongs that abuse by other means. Given my findings in this case, limited though they are to only the first few allegations, I think that fear is borne out here.

It is unacceptable that these parents were unrepresented in such a serious case. It is further unacceptable that the Judge was expected to step in and take over the role of representing both parties at different times in order to prevent direct cross-examination by the perpetrator. The Judge was clear that:

the lack of legal representation gravely affected the fairness and efficiency of the process of questioning both parents. So far as my role in this was concerned, although I did my best to abide by the guidance in PD12J at paragraph 28, I was hesitant about participating in this way, being reluctant to be seen to step into the arena myself. Ours is an adversarial (i.e., led by opposing parties) not an inquisitorial or judge-led legal system: judges have neither the training, tradition nor natural inclination to subject witnesses to detailed questioning.

The result is that the court will now have to go on to make important decisions about the welfare of a 10 year old child based on the limited findings the Judge felt able to make. The other allegations have not been tested but the court must treat them as if they did not happen. They cannot possibly assess the risk the father poses without addressing all the allegations.

This would never have happened in a criminal court. It is unsatisfactory for the position to be that there is a commitment to legislate against this at some point. This needs to be addressed as a matter of urgency and the system in the criminal courts should be replicated where an order is made for the unrepresented parties to be represented during cross-examination. Cross-examination is not the role of the judge and, again, this is something that would never happen in the criminal courts.

The availability of special measures in the family court should be put on a statutory footing and the resources made available to family courts to ensure that they have special measures available in courts. All special measures should be available in all courts, and a survivor should never be denied a special measure simply because it is unavailable at that court.

Professional support is crucial beyond simply a lawyer. Survivors should have access to IDVAs and ISVAs who can attend court with them. There needs to be more funding for this specialist support. The availability of IDVAs across the country varies, but women who are facing private children proceedings only find it very difficult to obtain support from an IDVA because there are not enough of them.

These are specific examples of where the family court could learn from the criminal court. There are many ways in which survivors' experiences of the justice system could be improved through the provision of cross-jurisdiction support and improved links and understanding across the family and criminal jurisdictions in individual cases. However, this would require an approach that was actually "transformative" which does not appear to be what is proposed in this consultation.

45. Do you think there is further action the government could take to strengthen the effectiveness of the controlling or coercive behaviour offence?

Yes

There has been some training provided to police officers to help them improve their understanding of coercive control, however, many police officers still do not understand the dynamics of domestic abuse. This is an issue which was identified in the latest HMICFRS report (A progress report on the police response to domestic abuse, 14 November 2017). The report highlighted that officers "underestimate how manipulative perpetrators can be". Training needs to be delivered consistently across all forces, and evaluated regularly to assess its effectiveness. Training should include providing officers with the skills to recognise coercive control, assess risk, respond appropriately and identify and gather evidence. Thought needs to be given to who designs and provides the training for officers to ensure that survivors' voices and experiences are reflected in the training. Please also refer to our response to question 8 on our concerns around relying too heavily on training alone in order to improve response, when greater consultation, transparency and robust accountability systems are also needed.

46. 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?

Don't know

The guidelines were issued in February 2018 but only came into force on 24th May 2018. It is not possible to know what the effect of the guidelines will be. In general, we believe the guidelines are sensible. The effect of these new guidelines should be reviewed after they have been in force for a period.

47. Is a statutory aggravating factor needed in order for the court to reflect the seriousness of offences involving domestic abuse and children in sentencing?

No

This is linked to the answer to question 46. It is impossible to know whether a statutory aggravating factor is needed when we do not know how effective the new sentencing guidelines will be. We believe a more sensible approach is to review the effect of the guidelines before adding a statutory aggravating factor which largely replicates what is contained in the sentencing guidelines.

In the event that, despite sensible opinion to the contrary, it is decided to go ahead with this suggestion, we have a number of concerns about the proposal. Firstly, a statutory aggravating factor for both domestic abuse and child involvement will have to be very carefully defined – we assume there would need to be two separate statutory aggravating factors, one of “domestic abuse” and a separate factor of “child involvement”. Where both apply, would there be, in effect, a “double uplift” to sentencing? Or would the factor only apply where there was both domestic abuse and “child involvement” in the same offence? The offence of controlling and coercive behaviour would have to have a separate provision as it is already built into the offence that it is a domestic abuse offence. This suggests that it would be easier for there to be two separate aggravating factors to more easily accommodate controlling and coercive behaviour, leading to “double uplift” where both factors are present.

A statutory aggravating factor requires the court to increase sentences and is not able to be as nuanced or flexible as sentencing guidelines. Courts have to apply the sentencing guidelines and, in our experience, they do. The guidelines enable the court to take a more nuanced approach to the individual circumstances of a case when deciding sentence.

The definition of any statutory aggravating factor would be crucial. Although it may be reasonably easy to define the domestic abuse aggravating factor, defining the “child

involvement” aggravating factor would be incredibly difficult and we are concerned that the introduction of this will result in a number of negative consequences as follows:

- It will lead to children being called to give evidence in domestic abuse cases, often between their parents. At the very least, in order to prove the aggravating factor is present, children will have to give statements to the police. These are children who would be asked to give evidence, in most cases, against one of their parents. This is harmful to children.
- There will be a reduction in guilty pleas - it is well known that defendants plead not guilty to domestic abuse offences in order to test whether the survivor will be brave enough to attend court for the trial. They believe that there is a high chance she will not attend and the case will have to be dropped. Where an element of child involvement also has to be proved, this will be even more likely as many survivors will not wish to bring their children to court to test their involvement. If a defendant were to plead guilty but on a basis that the child was not involved, and child involvement were a statutory aggravating feature (thus increasing the sentence), the inevitable outcome would be a Newton hearing on the question of child involvement. In such situations the child may have to be called upon to give evidence despite the guilty plea (by the Crown or by the defendant); alternatively the CPS may choose not to pursue the statutory aggravating feature to avoid having to call the child to give evidence, rendering the provision pointless.
- The effect on child contact cases should not be underestimated and has a number of risks associated with it. A defendant being guilty to a domestic abuse offence that involved their children in some way will affect any application for contact with the children, leading to it being even less likely that defendants will plead guilty to this offence. Where a defendant is found not guilty of the child involvement element, or the child involvement element is dropped in the criminal case due to lack of evidence, this does not mean that it did not happen. It means that it could not be proven beyond a reasonable doubt. There is a risk that should this occur, a family court may accept this as showing the children were not harmed or at risk. This is a very different assessment, nevertheless we foresee it being argued by perpetrators in the family court.

Including statutory aggravating features requires a reflection on the purpose of punishment: if we simply want to send abusers to prison for longer then it may have that effect. If we want to try to address (some) of the root causes of domestic abuse offending, then simply detaining someone in prison for longer is unlikely to succeed (particularly given the patchy and limited rehabilitative provisions in prisons).

48. Please share any other views on how to ensure domestic abuse and its impact on children are taken into account in sentencing?

See answer to Question 47 – it is confusing that after a lot of work went into writing specific sentencing guidelines on domestic abuse that have not yet come into force, the government is consulting on how domestic abuse and its impact on children can be taken into account in sentencing.

The proposal to go ‘over the heads’ of the well-considered new sentencing guidelines with the introduction of these new statutory provisions is indicative of a more general approach by the government to VAWG. While we have no doubt that there is sincere commitment to genuinely improve the lives of women facing domestic abuse, this provision appears to amount to an attempt to be seen to be doing something to make a difference when it is a) not necessarily required and b) a sop designed to allow celebration of protecting the rights of survivors of VAWG, when energy and resources would be better spent on investing in tried and tested ways to help women in these situations: improved services to work holistically to meet survivors needs, increased funding to domestic abuse services and refuges, better support for victims of domestic abuse, a greater financial investment in the family and criminal justice systems, and better provision of legal aid.

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

No

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

We wish to raise some points in relation to the inclusion of “procuring abortion” in the list of offences. We do not believe it is necessary to include this in the list of offences to which extra-territorial jurisdiction (ETJ) should be extended in order to comply with the Convention. We are concerned about extending ETJ to this offence in light of the situation women face in Northern Ireland where this offence is used to criminalise women seeking abortion and the family and friends who support them.

The Istanbul Convention requires the criminalisation of forced abortion and forced sterilisation. The Convention states:

Article 39 – Forced abortion and forced sterilisation

Parties shall take the necessary legislative or other measures to ensure that the following intentional conducts are criminalised:

- a. performing an abortion on a woman without her prior and informed consent;*

- b. performing surgery which has the purpose or effect of terminating a woman's capacity to naturally reproduce without her prior and informed consent or understanding of the procedure.*

On the face of Article 39, these criminal acts are potentially only committed by medical professionals or would largely be covered by the assaults proposed to have ETJ extended to them.

Our understanding is the intention of this article was to address, for example, forced abortion and sterilization of Roma women (although the ECHR cases post-date Istanbul, i.e. *V.C. v Slovakia* [2011]), forced sterilization relating to eugenics, war time forced pregnancy and birth, abortion and sterilization. In the negotiation of the Istanbul Convention, there were States represented with a range of legal and policy approaches to abortion and this was the negotiated outcome.

The Explanatory Report to the Council of Europe Convention on preventing and combatting violence against women and domestic violence is 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 important part of Article 39 is that the offences are committed "without her prior and informed consent". The offence of procuring abortion under the Offences Against the Person Act 1861 does not respect a woman's right to decide freely on the number and spacing of her children.

In light of the above, we do not believe it is appropriate for ETJ to be extended to this offence and would be concerned about the effect on women in Northern Ireland were this to happen. We also believe that given the wording of the offence in the Convention is about "performing" an abortion/sterilisation, it is not necessary to include any additional offences and still be compatible with the Convention to enable ratification.

We would also like to see uniformity of the definition of who is protected by extra-territorial jurisdiction across all of the offences.

51. Do you agree that relying on the civil law remedy in the Protection from Harassment Act 1997 is sufficient to satisfy the sexual harassment requirements of the Convention?

Yes

52. If not, what do you think is necessary to satisfy those requirements?

We believe that relying on a combination of the criminal and civil law remedies in the Protection from Harassment Act 1997, together with the civil law remedy in section 26 of the Equality Act 2010 satisfies the sexual harassment requirements of the Convention and does not prevent the UK from ratifying the Convention.

We understand that the law in England and Wales around harassment and sexual harassment were in mind when the Convention article on sexual harassment was drafted. This is reflected in the Explanatory Report to the Council of Europe Convention on preventing and combatting violence against women and domestic violence which states that, *“it is intended to capture a pattern of behaviour whose individual elements, if taken on their own, may not necessarily result in a sanction”*

It is not intended to capture “street harassment”. While this behaviour is insidious in its effect due to how widespread and everyday it is, it is not the behaviour envisioned in the Convention. The main reason is that the behaviour envisioned in Article 40 of the Convention requires states to make criminal or civil sanctions available. We believe a more effective response to street harassment is through societal approaches/interventions, for example, education and culture change programmes.

53. 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?

- a. If yes, please explain your answer, suggesting what procedures should be in place to ensure a conditional caution would only be given in appropriate cases with appropriate conditions attached**
- b. If no, please explain your answer**

Yes.

We cannot recall any women who call our advice lines reporting the use of conditional cautions. This suggests that they are not used very much in domestic abuse cases. However, we regularly receive calls from women who have reported offences to the police where a simple caution has been issued to the perpetrator. We suspect the reason behind this is because it is easier for the police to issue a simple caution than to obtain authorisation from the Crown Prosecution Service to issue a conditional caution despite the guidance that a simple caution is unlikely to be appropriate in cases of domestic violence, stalking or harassment.

While we agree that there should be exploration of the use of conditional cautions in cases of domestic abuse, we would hope that this would be more likely to replace the use of simple cautions than simply reduce the number of offenders prosecuted.

We endorse the response of Respect, as they have expertise when it comes to the effectiveness of perpetrator treatment. We highlight the importance of any programmes being offered to perpetrators being Respect accredited. The provision of

an Integrated Support Service for survivors alongside the intervention for perpetrators is essential. When working with perpetrators it is important to recognise the need for behaviour change, but risk reduction should always be prioritised.

We would also wish to highlight that conditions in relation to mediation would never be appropriate. At the stage of issuing a conditional caution to a perpetrator, it would not be appropriate to expect a survivor to engage in mediation. Although support for the survivor is a crucial part of a Respect accredited programme, there should never be a requirement for a survivor to engage. The conditions applied to a conditional caution should relate to the perpetrator only.

54. Do you have any additional evidence on current conditional caution practice which we should consider in relation to this issue?

Yes.

See answer to question 53.

55. What changes to current policies or procedures would help police and other agencies to better manage serial and repeat abusers, in particular those who are not subject to a sentence of the court. This can include how best to:

- a. risk assess an abuser and plan for risk reduction
- b. engage an abuser in order to encourage compliance with control measures

56. What more could be done to work with perpetrators in prisons, particularly offenders who receive a sentence of less than 12 months and do not have sufficient time to complete a domestic abuse programme in custody? We are interested to hear of particular examples of practice which have been successful.

57. What more could be done to work with perpetrators in the community (convicted or non-convicted) to change their behaviour? We are interested to hear of particular examples of practice which have been successful.

58. Please select which of the following you believe should be priorities for improving data collection.

For the government to respond more effectively to survivors of domestic abuse, a considered and evidence-based approach is needed that sensitively and meaningfully takes account of the complexity involved. On principle, we are therefore regrettably unable to answer any questions that ask us to prioritise a top three, as this is too simplistic and arbitrary to result in any genuine benefit for survivors.

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

Strongly disagree

As members of End Violence Against Women Coalition, we endorse their written response:

We welcome the creation of a new commissioner in this area, in particular one which is a permanent and independent mechanism for scrutinising policy and practice. But, understanding the interconnectedness of experiences of different forms of gender-based violence in many women's and girls' lives, and indeed the interconnectedness for male victims too, mean that a truly useful and productive commissioner must have duties relating to all forms of gender based violence: we recommend a Violence Against Women and Girls Commissioner. If a new commissioner's brief were limited to domestic violence only, they would be out of step with the established national policy framework in this area: the Home Office-led but cross-departmental strategy to end violence against women and girls, leaving them working on a limited set of objectives, only parts of service provision, only some relevant data, only parts of local commissioners' powers, and inevitably needing to review law in areas stretching beyond what is termed domestic violence (in the area of new and emerging forms of abuse online as only one example). Established 'VAWG' policy frameworks at the Home Office, the CPS, in London and other local areas, are inclusive of men's and boys' victimisation, and criminal justice and other statutory agencies usually find that it makes sense to be tasked and to report on their work in relation to the different forms of gender based violence, not domestic violence alone.

This Violence Against Women and Girls Commissioner could: (1) map provision of services across all forms of VAWG ensuring the National Statement of Expectations is met and in line with the VAWG strategy; (2) ensure data collection is effective and comprehensive, mapping prevalence and response across England for all types of VAWG; (3) make the links in domestic homicide reviews (DHR) and help ensure lessons are learned; (4) ensure the criminal justice system is able to respond lawfully to rape and sexual violence in a way which offers justice for victims; (5) ensure the ambitions within the VAWG strategy are met, including taking an overview of public services' response to VAWG, and analysing the potential impact of policies which could have a negative impact on some women. This may include, for example, analysing any new immigration legislation for disproportionate impact on women who've experienced VAWG, highlighting possible unintended consequences of welfare changes which could enable economic abuse by reducing independence, or exploring housing policy to create greater protections for women and children who experience abuse to remain in their homes; (6) ensuring the response to VAWG is reflective of women's lives and services meet their needs; this means being alert to the need for specialist support services including BME and LGBT specialist services which are an essential element of the response to VAWG.

We are committed to supporting a VAWG Commissioner with the powers and budget to contribute to the vision of a society where violence against women and girls is prevented, and the response to VAWG is compassionate, effective and just.

60. Of the proposed powers and resources, which do you consider to be the most important for a Domestic Abuse Commissioner?

For the government to respond more effectively to survivors of domestic abuse, a considered and evidence-based approach is needed that sensitively and meaningfully takes account of the complexity involved. On principle, we are therefore regrettably unable to answer any questions that ask us to prioritise a top three, as this is too simplistic and arbitrary to result in any genuine benefit for survivors.

61. Question for public bodies only: What would be the practical implications of complying with the proposed Domestic Abuse Commissioner's powers?

62. 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?

As members of End Violence Against Women Coalition, we endorse their written response:

We support the recommendations made in the Standing Together analysis of DHRs which found that authorities are not addressing the systematic failures exposed by individual DHRs. It is vital that the lessons learned are applied across authorities and with urgency. We would like a new VAWG commissioner to also introduce: (1) a duty on public authorities to absorb relevant lessons from DHR; (2) an annual report reviewing the DHRs, ensuring lessons are not left at a local level and move to national lessons learned; (3) a regular report into progress for public authorities on implementing learning from DHRs.

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

As members of End Violence Against Women Coalition, we endorse their written response:

The notion of local DHR action plans completely misses the point. The findings by default are systemic, as shown in the Standing Together report, and there should be a public inquiry into routine police and other agency failures in order to help change national policy.

64. How can the government better share and promote effective practice on domestic abuse across all public services both in regard to commissioning and delivery of services?

As members of End Violence Against Women Coalition, we endorse their written response with the exception of their endorsement in relation to a statutory aggravated factor in relation to children which we have removed:

This Bill must go further than small changes to criminal sanctions and sentencing if it is truly to meet the needs of all victims of gender-based violence. If we understand that domestic and sexual violence are part of the culture that stops women living free and equal lives, then this and any Government can't hide behind localism and its devolved decision-making: there has to be a national strategy for meeting the demand for specialist support services and truly eradicating abuse. It can't be left to local public sector commissioners to pick and choose priorities and providers; they should be instructed to carry out effective needs assessments as a condition of devolved funding, and these assessments should be central to tendering processes so they can be shown to meet local need. It also means that the health service, schools and the welfare and housing systems as well as the police, must play their part.

Support services in many communities are at crisis point, but this proposed Bill, whose stated aim is to increase the numbers of women coming forward, is virtually cost free and makes barely any commitment to advocacy, crisis and long-term support (which faithful ratification of the Istanbul Convention requires). A survivor of domestic or sexual abuse may well be unable to access counselling and will face big hurdles when seeking justice.

Changes to the way refuges are funded means they are turning women and children away every day, and some of the most marginalised women have no access to support. Women with complex needs including mental health problems face severe difficulties getting help and systems at present can further traumatise them. Women with insecure immigration status are often appallingly treated as immigration offenders before victims of abuse.

EVAW members provide specialist crisis and long-term support to women all over the country. They know that domestic violence is linked to sexual violence, to stalking and harassment, to abuse online, to forced marriages and more. Any new measures and independent Commissioner in this area must be able to work across these different forms of abuse if they are to be effective.

Proposals on "programmes" for offenders must include the requirement that they meet the highest standard (the Respect Standard) and put women's safety at their heart, as Respect accreditation requires. In the related area of criminalised sex offences, the Government should openly recognise that recent research has shown that programmes designed to address and help change behaviour cannot be shown to work. Everyone with responsibility for arrest, detention, risk assessment, probation management and more of sex offenders (who include domestic violence offenders) should work with this knowledge.

Existing legislation and laws must be effective in practice to meet the demands of the Istanbul Convention. That means all women and their children, no matter what their immigration status and in whatever context they experience harm, should have access to advocacy and specialist services to ensure they are protected and have access to justice.

65. What role should local areas play in sharing good practice?