



NORTHERN  
IRELAND  
HUMAN  
RIGHTS  
COMMISSION

## **Tackling Violence at Home: Response to the Government's Proposals on Domestic Violence at Home**

1. The Northern Ireland Human Rights Commission (the Commission) is a statutory body created by the Northern Ireland Act 1998. We have a range of functions including reviewing the adequacy and effectiveness in Northern Ireland of law and practice relating to the protection of human rights,<sup>1</sup> advising on legislative and other measures which ought to be taken to protect human rights,<sup>2</sup> advising on whether a Bill is compatible with human rights<sup>3</sup> and promoting understanding and awareness of the importance of human rights in Northern Ireland.<sup>4</sup> In all of that work the Commission bases its positions on the full range of internationally accepted human rights standards, including the European Convention on Human Rights (ECHR), other treaty obligations in the Council of Europe and United Nations systems, and the non-binding or “soft law” standards developed by the human rights bodies.
2. The Commission would welcome feedback from Government on this response. Where it is decided not to take account of some of the comments made, the Commission would be grateful for [an indication of the](#) reasons for not doing so.
3. The Northern Ireland Human Rights Commission broadly welcomes Government's plans to increase protections for women and others suffering from domestic violence. In particular, the Commission welcomes the emphasis on preventing domestic violence from occurring in the first place and the attention given to the improvement of support and protection for victims and their families.
4. However, the Commission regrets that nowhere in the consultation document is the issue placed unequivocally in a human rights context. We would have liked to see it asserted that every human being has a fundamental right to live in a safe and secure environment and that Government therefore has a

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<sup>1</sup> Northern Ireland Act 1998, s.69(1).

<sup>2</sup> *Ibid.*, s.69(3).

<sup>3</sup> *Ibid.*, s.69(4).

<sup>4</sup> *Ibid.*, s.69(6).

corresponding duty to do what it can to secure such an environment. In the case of protection from threats to safety and security in the home, those duties include appropriate legislative measures to deter perpetrators and to provide adequate social, financial and legal support to victims.

5. Government's obligation to legislate against and protect individuals from domestic violence is underlined in the provisions of numerous international human rights treaties to which the UK is a party. These are outlined in the attached Appendix.
6. The Commission welcomes the recognition on the part of Government that 'some additional investment may be required to take forward elements of this important initiative'. The Commission would urge Government to ensure that appropriate resources are devoted to the task of tackling violence in the home.

## **Informing attitudes on domestic violence**

### *Young people*

7. The Commission views as positive the proposals to inform attitudes on domestic violence through education from an early age. The Commission believes that all young people should be well informed of their rights and entitlements. These include the fundamental right of all human beings to live in a safe and secure environment free from actual violence or the threat of violence. There is, therefore, a right not to be subjected to domestic violence and a corresponding duty not to subject others to it. The education system, both formal and informal (i.e. the school curriculum and youth service work) should ensure that young people are well informed of what avenues are available if they or others that they know become victims of domestic violence. Information on relevant agencies and services, and on the right to redress through the courts and rights to financial, legal and medical support, should also be available through educational and other channels. There is a need to develop a strong human rights culture in Northern Ireland and making young people aware of their rights is an important element of creating that culture.

### *Reaching diverse groups*

8. One of the proposals in the consultation paper is for a media/public information campaign about domestic violence. The Commission would urge that any media/public information campaign needs to be accessible to a diverse range of individuals, in terms of age, disabilities, socio-economic, linguistic, ethnic and cultural background.

## **Encouraging reporting**

9. In order to encourage victims to come forward and report domestic violence, victims need to be informed of how their report will be dealt with and assured that their case will be addressed with sensitivity at all stages of the reporting process and also that adequate protection from all the relevant agencies will be made available. Victims will have many concerns when considering whether

to report the violence. They will have concerns about how police officers will deal with their report and how sympathetic police officers will be. Victims may also be uncertain as to the range of options available to them, in terms of applying for civil orders and/or pursuing their case in the criminal courts. Victims also require information on accommodation options, social security and childcare arrangements once they report their case and decide to leave their violent partner. Victims will also be uncertain of how their case will be dealt with in the courts and concerned about the cross-examining process. These uncertainties and concerns are likely to be even more acute for those belonging to ethnic minorities and those for whom English is not a first language. The latter in particular may also be unaware that interpreting facilities can be made available to them if necessary.

10. Government therefore must ensure that the public is kept well informed of the legislation, policy and practice on domestic violence. Furthermore it must ensure that victims' fears and concerns regarding the reporting process are not realised. Police officers, service providers and court staff need to receive appropriate training on working with victims of domestic violence. Ultimately victims of domestic violence need to be assured that reporting their experiences will not aggravate their situation. In particular, they need assurances that they will be offered protection from the perpetrator, and that they will not be subjected to hostile questioning and further psychological trauma by police officers and service providers. When positive experiences can be communicated to other victims by those who have reported their abuse this will also play an important role in encouraging others to report.

### **Reporting restrictions**

11. The Commission agrees with Government that the issue of reporting restrictions involves striking a balance between encouraging victims of domestic violence to come forward on the one hand, and not making certain assumptions about how the victim wants his/her case to be dealt with on the other. Human rights standards do allow for reporting restrictions when it is not appropriate for cases to be held and heard in public. Article 6 (1) of the ECHR states 'In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. Judgment shall be pronounced publicly but the press and public may be excluded from all or part of the trial in the interests of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice'.
12. Similarly Article 14 (1) of the International Covenant on Civil and Political Rights reads, 'All persons shall be equal before the courts and tribunals. In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law. The press and the public may be excluded from all or part of a trial for reasons

of morals, public order (*ordre public*) or national security in a democratic society, or when the interest of the private lives of the parties so requires, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice; but any judgement rendered in a criminal case or in a suit at law shall be made public except where the interest of juvenile persons otherwise requires or the proceedings’.

13. Having to request, from the court, eligibility for assistance as an intimidated witness places one additional hurdle for the victim in terms of having his/her case heard in court and is likely to cause additional distress. The Commission does appreciate that this hurdle and the possibility of having their request rejected may deter victims from proceeding with the court process. The Commission would recommend therefore that reporting restrictions are applied automatically but that the victim retains the right to have reporting restrictions lifted if she/he wishes the trial to take place in public.
14. For the reporting restrictions to protect the privacy of the victim it is also necessary that they apply to the defendant. Where the defendant believes that reporting restrictions ought not to apply to him/her, he/she ought to be able to apply for a lifting of such restrictions and an independent court left to decide on the appropriateness of the defendant’s request.

### **Wider family relationships**

15. The Commission would support the inclusion of wider family relationships in the definition of ‘associated persons’ for molestation orders since such an inclusion would take into account the different family structures and dynamics in the UK today. Indeed the recent case (in England) of Sahjda Bibi, a young woman murdered by her cousin for choosing a marriage partner he considered to be ‘unsuitable’, indicates that there is a strong need for such an extension of the existing definition of ‘associated persons’.

### **Same sex relationships**

16. The Commission’s view is that the legislation needs to be amended so that same sex couples can seek protection under the Protection from Harassment (NI) Order 1997.

### **Non-molestation orders**

17. The consultation document appears to presume that in issuing non-molestation orders, judges will rely on a wide and fluid rather than narrow definition of molestation and moreover that judges will always be aware of evolving definitions of the term. The Commission is concerned that this will not always be the case and that in some cases non-molestation orders may not be issued when in fact they ought to be. The Commission would advise that appropriate guidelines are given to judges in terms of defining molestation and that such guidelines are consistently kept under review. While legislation defining molestation can be updated by amendment the Commission understands that

this process can take time when the need may be more urgent. Provided that the guidelines are issued with appropriate consultation and that adherence to them is kept under review, the Commission's view is therefore, that it is not necessary (and in fact may be counter-productive) to define molestation in legislation.

### ***Delivering non-molestation orders***

18. The Commission would urge Government to continue with the current way of delivering non-molestation orders for the very reasons identified in the consultation paper. That is that police involvement from an early stage ought to ensure appropriate protection for the victim of domestic violence and ensure that the perpetrator does indeed leave the family home. The arrival of an order in the family home by post may indeed leave the victim particularly vulnerable to further immediate abuse.

### ***Penalties for breach***

19. The Commission would advise that any breach of a non-molestation order ought to be taken seriously by both the police and courts. If figures currently show that breach of non-molestation orders is frequent then there may be a need to revise the penalties. However, it may be equally effective to impose *both* the fine and prison sentence rather than increasing the amount of the fine and/or the length of the prison sentence.

### ***When orders become effective***

20. The Commission shares the concern that the current arrangements under the Family Homes and Domestic Violence (Northern Ireland) Order 1998, to the extent that they could cause a person to be arrested for breaching an order that they may not know has been made, may constitute a breach of Article 5 of the ECHR. We would therefore urge Government to amend the legislation so that the order becomes effective only once served. However, the Commission would also stress that it is important that there is no undue delay between orders being issued and served.

### ***Ex parte orders***

21. The Commission's view is that the issuing of *ex parte* orders does engage Article 6 of the ECHR. Furthermore issuing an order *ex parte* also effectively denies the alleged offender his/her family rights under Article 8 of the ECHR, particularly if children are involved.<sup>5</sup> The Commission believes therefore that

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<sup>5</sup> Article 8 reads:

1. Everyone has the right to respect for his private and family life, his home and his correspondence.
2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

*ex parte* orders should have effect only until a court hearing can be held. The Commission does not find it appropriate that the consultation document applies the criterion of ‘convenience’ when stating an intention to uphold the individual’s right to a fair trial within a reasonable time under Article 6 of the ECHR. As already stated, *ex parte* orders engage not only Article 6 but also Article 8 of the ECHR and therefore Government should be committed to securing a full hearing as soon as it is just and practicable rather than convenient to the courts. The Commission would also stress of course, that in the issuing of any orders the best interests of any child that might be affected should be the primary concern of the court.

### **A register of civil orders**

22. At present, few criminal convictions arise out of domestic violence cases and therefore the creation of a formal register of civil orders may be valuable to the police in terms of being kept informed of the whereabouts of domestic violence offenders. It may therefore prove a useful mechanism to ensure compliance with civil orders. The Commission would stress that such a register if created ought to be available only to the police.

### **A register of offenders**

23. The Commission envisages a number of problems with the proposal to establish a formal register of domestic violence offenders. First, while the consultation paper rightly shows concern for protecting the identity of the victim in domestic violence cases, a formal register of domestic violence offenders may essentially become a register of victims. That is, it would be relatively easy, for those with access to the register, to identify the former partners of offenders. Second, the Commission appreciates the need to protect victims from possible further attack by offenders and it is suggested that a register may fulfil that purpose in that victims could be informed if the offender is moving into his/her locality. It is the Commission’s understanding however, that existing legislation may already provide for a victim of any crime, including domestic violence, being informed if his/her offender moves into his/her locality. This arrangement could be established under the provisions of section 68 of the Justice (Northern Ireland) Act 2002. Under section 68 (3) of the Act the Secretary of State is obliged to inform victims of the month in which it is anticipated that an imprisoned offender will be discharged. In addition, under section 68 (4) the Secretary of State may also make available other information relating to the discharge and temporary release of imprisoned offenders if he/she considers it appropriate. This additional information may be informing the victim if an offender is to move into his/her locality. The Commission is concerned about the negative effects a register may have and in particular who may have access to it, without bringing any real benefits to the victims of domestic violence. The Commission would therefore caution against this proposal and urge Government to make use of existing legislation to protect victims from further harm.

### **Improving current court processes**

24. In terms of more effective progression of cases, this Commission has expressed concern at the physical layout of courts in Northern Ireland and the need to ensure that victims and witnesses do not feel intimidated in the court environment. A consultation document on The Accommodation Strategy of the Northern Ireland Court Service was issued in 2001 and the strategy relates to the period 2001 – 2010. In response to that consultation this Commission made a number of suggestions that would have resulted in a less intimidating environment during criminal proceedings for women and children victims. We referred to the need for special provision in cases involving children and for physical separation between defendants, witnesses and victims in all courts. In particular we identified three courts (Lisburn, Magherafelt and Strabane) where it seems only one waiting area is available. It now appears that these concerns have not been addressed in the outcome of that consultation exercise. This Commission, therefore, again urges Government to consider the adverse implications of the physical layout of the courts identified above for victims of domestic violence and to make the necessary alterations.
25. Court processes could also be improved by allowing vulnerable witnesses to give evidence by video link or without the accused being in the room. Again the Commission would also stress the need for relevant court staff to be trained in domestic violence awareness. Government should be working to ensure that the courtroom is made a less intimidating place for the victim and his/her family and for other witnesses.

## **Domestic violence homicides**

### *Reviews*

26. The Commission supports the idea of legislation to provide for a multi-agency review of domestic violence homicides as this may lead to crucial lessons being learned for the future. It is also important in terms of victims' families receiving information on the circumstances leading to the homicide, and (along with a full police investigation, coroner's inquest and criminal prosecution) can help to secure the Article 2 ECHR adjectival right to an adequate investigation. Legislation that provides for reviews to take place when one or more agency has had contact with or knowledge of the victim or others living in the same home is therefore to be encouraged. We suggest that the recently revised Northern Ireland procedures for child protection provide an instructive model. When a child known to social services is seriously harmed, the relevant agencies each conduct their own internal reviews and at an appropriate time (which may be at the end of a prosecution) a multi-agency review takes place. Generally a multi-agency review that is intended as a learning exercise rather than one intended to apportion blame may be more appropriate. In such circumstances the review ought to be led by an agency not directly involved in case management, such as is currently done in child protection cases where the Social Services Inspectorate has that role. The Commission understands however, that in some cases there may come to light shortcomings or misconduct on the part of a particular agency or individual(s),

and this may need to be highlighted and disciplinary action taken in the public interest. In such cases an independent review may also be required and Government must ensure that this takes place when necessary.

### ***Child contact arrangements***

27. Article 3 (1) of the United Nations Convention on the Rights of the Child (CRC) states that ‘In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration’. Article 9 details the circumstances under which a child can be separated from one or both of his/her parents and under paragraph 3 declares that ‘States Parties shall respect the right of the child who is separated from one or both parents to maintain personal relations and direct contact with both parents on a regular basis, except if it is contrary to the child’s best interests’. Article 12 then reads:

1. States Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child.

2. For this purpose, the child shall in particular be provided the opportunity to be heard in any judicial and administrative proceedings affecting the child, either directly, or through a representative or an appropriate body, in a manner consistent with the procedural rules of national law.

28. This Commission has repeatedly expressed its concern that existing legislation, including the Children (NI) Order 1995, does not fully comply with the international standards in that it refers only to the ‘welfare’ of the child and not ‘the best interests’ as stated in the CRC. It is disappointing that this consultation document does not seek to redress that shortcoming. Notwithstanding this shortcoming, the Commission understands that balancing these rights in order to secure the best interests of the child is not always an easy task. The Commission is extremely concerned that recent research findings indicate that 76 per cent of children who were ordered by the courts to have contact with a violent parent have been further abused. The Commission would therefore recommend that all contact arrangements should be reviewed regularly by the court or social services with the court taking full account of the child’s views and wishes.

### **Practitioners working with adult victims**

29. Victims, as do all individuals, have a right to respect for their private life under Article 8 of the ECHR. The Commission would therefore support the idea that the consent of victims ought to be sought routinely before information relating to them is passed to voluntary and statutory bodies. This must be accompanied however, by victims being kept informed of how



relevant voluntary and statutory agencies can help them and why they may in turn need to keep information on victims.

### **Accommodation options**

30. Under Article 11 of the International Covenant on Civil and Political Rights all individuals have a right to ‘... an adequate standard of living for himself and his family, including adequate food, clothing and housing, and... the continuous improvement of living conditions’. In a state as wealthy as the United Kingdom it is not acceptable that individuals continue to suffer violence in the home because adequate alternative housing is not being provided or because all practicable steps are not being taken to ensure that it is safe for them to remain in their existing home. Given the universality of human rights this applies equally to women with insecure immigration status. Government therefore has a duty to ensure that accommodation is made available to all women who require it and that suitable long term housing is eventually provided. It is equally important that the Northern Ireland Housing Executive deals with domestic violence victims with sensitivity and in this regard it may be appropriate for staff to receive training on domestic violence.
  
31. The Commission cannot accept the Government’s stance that victims of domestic violence who also happen to be subject to immigration control (i.e. non-nationals without settled status) ought not to receive social security benefits. This leaves an already extremely vulnerable category of victims exposed to further suffering. Many such victims will have been relying solely on their partners for subsistence and it is vital that public resources be made available when it is dangerous for persons to continue relying on that source. The current situation of denying such persons social security benefits may be having the affect of forcing individuals to remain in violent relationships. Furthermore the Commission cannot accept the link between denying victims of domestic violence basic rights to subsistence and ‘protecting the integrity of the immigration and benefit rules’. Indeed the integrity of existing benefit rules, at least in the moral sense of society’s obligation to provide for basic needs, could best be protected by ensuring that appropriate financial assistance is secured for those individuals who are most in need of it.

## **Appendix**

### **Selected International Human Rights Standards**

#### **The European Convention on Human Rights**

##### *Article 2*

1 Everyone's right to life shall be protected by law. No one shall be deprived of his life intentionally save in the execution of a sentence of a court following his conviction of a crime for which this penalty is provided by law.

2 Deprivation of life shall not be regarded as inflicted in contravention of this article when it results from the use of force which is no more than absolutely necessary:

- a) in defence of any person from unlawful violence;
- b) in order to effect a lawful arrest or to prevent the escape of a person lawfully detained;
- c) in action lawfully taken for the purpose of quelling a riot or insurrection.

##### *Article 3*

No one shall be subjected to torture or to inhuman or degrading treatment or punishment.

#### **The International Covenant on Civil and Political Rights**

##### *Article 2 (3)*

Each State Party to the present Covenant undertakes:

(a) To ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity;

(b) To ensure that any person claiming such a remedy shall have his right thereto determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system of the State, and to develop the possibilities of judicial remedy;

(c) To ensure that the competent authorities shall enforce such remedies when granted.

##### *Article 17 (1)*

No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation.

***Article 23 (1)***

1. The family is the natural and fundamental group unit of society and is entitled to protection by society and the State.

**The Convention on the Elimination of All Forms of Discrimination Against Women**

***General Recommendation No. 12***

The Committee on the Elimination of Discrimination Against Women recommends to the States parties that they should include in their periodic reports to the Committee information about:

1. The legislation in force to protect women against the incidence of all kinds of violence in everyday life (including sexual violence, abuses in the family, sexual harassment at the work place etc.);
2. Other measures adopted to eradicate this violence;
3. The existence of support services for women who are the victims of aggression or abuses;
4. Statistical data on the incidence of violence of all kinds against women and on women who are the victims of violence.

**The United Nations Convention on the Rights of the Child**

***Article 3***

1. In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.
2. States Parties undertake to ensure the child such protection and care as is necessary for his or her well-being, taking into account the rights and duties of his or her parents, legal guardians, or other individuals legally responsible for him or her, and, to this end, shall take all appropriate legislative and administrative measures.
3. States Parties shall ensure that the institutions, services and facilities responsible for the care or protection of children shall conform with the standards established by competent authorities, particularly in the areas of safety, health, in the number and suitability of their staff, as well as competent supervision.

***Article 6***

1. States Parties recognize that every child has the inherent right to life.
2. States Parties shall ensure to the maximum extent possible the survival and development of the child.

***Article 39***

States Parties shall take all appropriate measures to promote physical and psychological recovery and social reintegration of a child victim of: any form of neglect, exploitation, or abuse; torture or any other form of cruel, inhuman or degrading treatment or punishment; or armed conflicts. Such recovery and reintegration shall take place in an environment which fosters the health, self-respect and dignity of the child.