

Transforming the Response to Domestic Abuse

May 2018

The Criminal Justice Alliance (CJA) is a coalition of 135 organisations - including charities, third sector service providers, research institutions and staff associations – working across the criminal justice pathway. Our members now employ more than 15,000 people between them. The Alliance works to establish a fairer and more effective criminal justice system.

The CJA welcomes the opportunity to respond to this inquiry. This response focuses on the issues most pertinent to the CJA's collective voice.

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

- **Strongly agree**
- **Agree**
- **Neither agree nor disagree - x**
- **Disagree**
- **Strongly disagree**
- **Don't know/no answer**

Please give reasons

The CJA fully supports the government's aim of ensuring domestic abuse is 'properly understood' and not viewed as only the 'domestic abuse stereotype' of a 'drunk perpetrator who seemingly loses control'.

However, if the government wants clearly to signal its stance on domestic abuse, a statutory definition may not be the most effective way, particularly when the *purpose* of the proposed statutory definition is unclear. Is it intended to define criminal offences? Or to define whether an alleged victim can access services?

At this stage, no new criminal offences are being proposed and it does not appear that the definition will impact any existing offences. However, the consultation states the new definition may replace or apply to existing legislative provisions 'where that might be appropriate'. Careful consideration must therefore be given to the potential implications of this definition for any offences that may be created in the future, particularly if a minimum age of 16 years is introduced (considered in more detail in question 5).

It's also important to understand whether this definition will affect how individuals are able to access support outside the criminal justice system – in particular the implications such a new definition may have for victims' services.

Nevertheless, the proposal for the definition to be accompanied by underpinning statutory guidance for professionals is welcome (subject to concerns raised in question 5 relating to

age). *Working Together to Safeguard Children* is a good example of statutory guidance for a range of professionals who have safeguarding obligations and therefore may well serve as an effective template.

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

- **Strongly agree**
- **Agree**
- **Neither agree nor disagree**
- **Disagree x**
- **Strongly disagree**
- **Don't know/no answer**

Please give reasons

Without clarity of purpose for the statutory definition, the age limit risks confusing an already complex area of law. This potential outcome is particularly concerning for victims under the age of 16. The consultation suggests that including those under 16 in the statutory definition 'could blur the lines between what is understood as domestic abuse or child abuse'. However, a child under 16 subject to coercive or controlling behaviour by an intimate partner would still not be protected by criminal laws on child abuse.

The criminal offence of child abuse, outlined in the Children & Young Persons Act 1933, requires the alleged perpetrator to have 'responsibility for' the child. So intimate partners of children under 16 do not fall within that definition, and children under 16 subject to such abuse would not fit within the proposed new statutory definition of domestic abuse.

In relation to the age of a perpetrator, there are currently over 60 offences used to prosecute domestic abuse to reflect a range of behaviours. Typically, these – such as murder, assault or coercive or controlling behaviour – do not have any age specified in their definition. This suggests that perpetrators may be anyone above the current age of criminal responsibility of ten years. In contrast, the proposed statutory definition suggests *both* the victim and the perpetrator must be aged 16 or over.

If the proposed statutory guidance has no impact on offences currently used to prosecute domestic abuse, this means there are likely to be some children aged 10-15 who continue to be prosecuted for such offences. Any accompanying statutory guidance for professionals on domestic abuse would similarly not provide guidance for such young people.

Further, 16 as a threshold within the statutory guidance means that there will be perpetrators who fall within the youth justice system (i.e. those aged 16-17) and those who fall within the adult system (i.e. those 18 and over). We regard it as essential that any accompanying statutory guidance should include suitable information for professionals on perpetrators who fall within the youth justice system.

Question 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?

The CJA supports proposed 'prevention and early intervention' as foundations for the government's approach to tackling violence. We are very pleased to see education within schools as a focus. However, it is important to ensure that any such relationship education is appropriate and meaningful.

Good examples drawn from the experience of CJA members include:

- a) The 'SOS+ Project', run by St Giles Trust. This programme's modules include those addressing child sexual exploitation and healthy relationships, sexual respect and pressuring. St Giles Trust have found that services such as these are best delivered to students by people to whom they can relate, such as specially trained young people who provide peer-led support which can link to appropriate services and support.
- b) 'Man Up', run by Safe Ground. This programme, which has been delivered in custody, to YOTs, and in specialist education units, focuses on building positive relationships and challenging attitudes and negative outcomes experienced by men as a result of trying to fulfil stereotypes and expectations linked to masculinity. The programme has been delivered to individuals as young as 14 years and, whilst not designed specifically to target domestic abuse, it has been found to improve attitudes and reduce offending behaviour, including perpetrating violence.

In addition to appropriate relationship education, children and young people should also be informed about websites and support services they can access if they find themselves in a situation where they need help.

Question 13: How can we work better with female offenders and vulnerable women at risk of offending to identify their domestic abuse earlier? Please select top 3.

- **Criminal justice agencies to adopt appropriate enquiries into history of abuse at each stage of the criminal justice process**
- **Dedicated support and/or IDVAs in women's services**
- **Encourage the use of schemes which divert vulnerable women out of the criminal justice system (where appropriate) and into services**
- **Improve availability of support for domestic abuse victims in prisons**
- **Support signposting into appropriate services for women who come into contact with the police**
- **Other (free text)**
- **Don't know/no answer**

The detail of 'Other' is outlined below.

A key issue recognised within the consultation is 'the major part that domestic abuse can play in female offending with over 60% of female offenders indicating they have experienced domestic abuse'.

Overrepresentation in prison of women in affected by domestic abuse has long been highlighted, including in the 2007 Corston Report. Last year Prison Governors' Association President Andrea Albutt criticised judges for imprisoning too many domestic violence victims due to a 'lack of understanding'.

Evidence from CJA member Prison Reform Trust has found that 'for a majority of women in prison, the experience of domestic abuse has been a significant contributory factor' (*There's a Reason We're in Trouble*). For example, nearly half of women prisoners (48%) report having committed offences to support someone else's drug use. CJA member Hibiscus Initiatives, who support foreign nationals affected by the criminal justice system, has found that some of the 11% of foreign nationals in women's prisons are known to have been coerced or trafficked into offending.

Sentencing Council research has found that women in custody for drug importation are particularly vulnerable to exploitation by those using them as drug mules. The financial reward for such women – who are often subject to coercion and intimidation – is tiny in comparison with the profits made by their controllers. *Still Dying on the Inside*, research published recently by CJA member Inquest, estimates that around 31% of foreign national women in prison are there for drugs offences. Many report being coerced or committing offences due to poverty and the need to support their families.

Trafficked women may claim a defence under the Modern Slavery Act 2015 for offences committed due to slavery. There are also limited defences available for women who use reactive violence against a primary aggressor. However for victims of wider domestic abuse, such as the new criminal offence of 'controlling or coercive behaviour in an intimate or family relationship', the only available avenues to avoid conviction are to plead duress, or to make written representations asking the CPS not to prosecute.

Duress is a complex defence, undefined by statute, with strict requirements for it to succeed. It is available when an individual was forced to commit the offence due to a reasonable belief that otherwise they, a member of their immediate family, or someone who they might reasonably feel responsible for would suffer immediate death or serious injury. The immediacy element of the defence ignores the complex mechanisms of coercion and control. It fails to recognise the dynamics of power and control present in many abusive relationships, and that domestic abuse is also almost always part of an ongoing pattern of behaviour. Understandably, the Criminal Bar Association describes the defence of duress as 'ill-fitting to the prism of domestic abuse'.

There consequently remains a gap to protect women whose offending behaviour is linked directly to domestic abuse in the form of coercive or controlling behaviour. To fill this gap and protect non-culpable women from unnecessary convictions and custodial sentences, we would strongly suggest introduction of a statutory defence for women who commit offences as a result of control or coercion in an intimate relationship.

Question 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?

- **Yes**
- **No**
- **Don't know/no answer**

Please explain your answer

The existing notice is a civil order, following the civil standard of proof – i.e. merely the balance of probabilities. This could result in numerous inappropriate applications being

successful, thereby impacting heavily on the effectiveness of such measures. If breach is to be a criminal offence (see Question 24) we believe a higher standard of proof should be required.

Some specialist women's charities, such as Justice for Women, are concerned that the offence of coercive or controlling behaviour be 'misused by vindictive men claiming that being "nagged" or prevented from seeing their children constituted the crime'. There is therefore a risk – particularly in light of the lower standard of proof – that such orders could be similarly misused. Many specialist women's organisations have also worked with women whose abusive partners have used threats to contact the police as part of an ongoing pattern of coercive or controlling behaviour. This might result in an order being imposed against an individual who is in fact a victim of domestic abuse.

Question 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? Please select one.

- **Yes**
- **No**
- **Don't know/no answer**

Please give reasons

The proposed positive requirements, which we support, have the potential to address some underlying causes of domestic abuse. Individuals given the opportunity to deal with specific issues that may have led them to act in an abusive way should be in a position where they could be better equipped to refrain from such behaviour in the future.

However, in order for any such requirements to be effective there should be some element of consent built into the process. Compelling individuals to engage in certain treatments, programmes or classes can be unproductive if they are simply unwilling or not in a position to fully engage. It is essential that appropriately trained staff engage individuals in relation to any positive requirements. If inappropriate or onerous requirements are placed on individuals, or ones that don't match specific needs or address underlying issues, this could simply also increase the breach rate of such orders.

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

- **Yes**
- **No**
- **Don't know/no answer**

Please give reasons

As the standard of proof for imposing the orders is civil, breach of such an order should not result in a criminal offence. This risks behaviour which does not cross a criminal threshold potentially resulting in a period of detention, which could actually escalate an alleged perpetrator's behaviour.

Question 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? Please select one.

- **Yes**
- **No**
- **Don't know/no answer**

Free text to explain answer

The Sentencing Guidelines list of aggravating factors relevant to offences committed in a domestic abuse context already includes the need to consider the impact of any offence on children. It's consequently unclear what purpose making this a statutory aggravating factor would serve, particularly given the continuing absence of hard evidence – across the criminal justice spectrum - that increased sentences actually deter offenders.

Question 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.

Taking account of the offence and subject to risk assessment, sentences of less than 12 months may better be served in the community. There a perpetrator might have the chance to engage meaningfully in domestic abuse programmes, such as BBR (Building Better Relationships), which could be an integral part of a sentence in order to address risks and needs, enabling rehabilitation and preventing re-offending.

The continuing failure of the prison service to deliver meaningful activities while in custody must be overcome so that where a domestic abuse perpetrator is sentenced to custody, the resettlement plan includes access to suitable programmes. An example of a good custody-based programme is 'Within my Reach', run by CJA member Pact. This programme focuses on maintaining healthy, safe and stable relationships with partners and families and is based on the PREP methodology which is a scientifically based and empirically tested method of teaching relationship education which draws on 30 years of research. The course tackles issues including domestic violence and recognising dangerous behavioural patterns, with a focus on family relationship training, which is a helpful route to learning about positive relationships and domestic abuse. This group work course is currently delivered in a custody setting – including to young offenders.

Question 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.

Virtual reality has been used in work with domestic violence perpetrators in various European countries with promising results. For example, University of Barcelona researchers have found that a virtual reality experience, where the individual is placed in the shoes of the victim of a domestic abuse incident, had an impact upon the individual's empathy scores and in particular their ability to recognise fear in others. In the Netherlands, the Probation Service has also been using virtual reality successfully to highlight for offenders the impact that witnessing domestic abuse can have upon children.

Further, CJA member Circles UK provide a 'Circles of Accountability' support system to offenders of sexual offences, where the offender is supported by a group of volunteers to feel responsibility and take accountability for their actions in a supportive environment. CJA Member Respond has built upon this work to offer Circles of Support and Accountability for young people and adults with learning disabilities or autism who display harmful sexual behaviour or have committed sexual offences. This demonstrates that the model can be adapted to different contexts. It has been used in both the custodial setting and in the community and could be replicated to work with perpetrators of domestic abuse specifically. This type of support system allows perpetrators to address their actions in a group setting whilst avoiding the risk of 'normalising' the individual's offending actions to themselves by hearing examples of other's similar offending behaviour, as can happen in group settings with other perpetrators of domestic abuse.

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*This response does not reflect the individual policy position of any member organisation
of the CJA*