

Cafcass' response to the Government's consultation on the domestic abuse bill

Cafcass (the Children and Family Court Advisory and Support Service) is a non-departmental public body sponsored by the Ministry of Justice. The role of Cafcass within family court proceedings is: to safeguard and promote the welfare of children; provide advice to the court; make provision for children to be represented; and provide information and support to children and families. We do not have a statutory function with respect to adult victims of domestic abuse, but it is one of a number of factors that feature in a significant proportion of cases that come before the family court. Our role is to assess the impact of these factors on the child, as part of our advice to the court. Put simply, we are the statutory independent voice of circa 140,000 of the most vulnerable children in England referred to us by family courts each year.

We have consulted staff on the proposed domestic abuse bill and this response sets out our views on the aspects of the consultation that are most congruent with our functions and duties.¹ Our focus is primarily on our role in private law (divorce and separation) proceedings as this is where we are the primary safeguarding agency and it is in these cases where the proposed changes would have greatest impact. However, domestic abuse is also a common feature in public law cases where local authorities apply for care or supervision proceedings in respect of a child. Increasingly, the issues for vulnerable children are similar in many public and private law cases, even though the legal frameworks are different.

The nature of domestic abuse may also be changing though as it takes place behind closed doors it remains difficult to accurately gauge prevalence and consequences. Our casework experience tells us that in public law, it is often associated with mental health and substance misuse in a toxic mix of parental factors which taken together can produce adverse childhood experiences. In many private law cases, family violence is not linear but multi-directional, and we are seeing more child to child, and child to parent violence. The Bill would benefit from ensuring that new criminal justice measures are properly synchronised with family justice measures, so that legislation catches up with the way people are living their lives today.

A small-scale study we carried out in 2016 found that domestic abuse was alleged in 62% of our private law cases where a parent had applied to the court for a child arrangements order to spend time with their child.² Yet in this sample of cases, fact finding hearings or criminal convictions were rare, and some of our practitioners have cited cases where fact finding hearings had been avoided to limit cross-examination by alleged perpetrators of abuse when neither party is legally represented. The complex and disputed nature of these cases presents a substantial challenge for the courts in determining the best outcome for the child and we are aware that our intervention, as part of family court proceedings, happens too late for many alleged victims. In this response and in relation to the proposed Bill, we encourage greater investment in early intervention and early help for children and families, as part of a more comprehensive government-wide strategy to address domestic abuse.

For those cases that are in the family court, we have a systematic approach to assessing domestic abuse through our initial safeguarding checks and, where ordered by the court, by undertaking a more detailed welfare analysis based upon the impact on the child of domestic abuse. Our social work staff receive training to respond appropriately to domestic abuse and have access to a range of evidence informed practice tools.³ In 2016 we launched our

¹ We have cited the question numbers from the consultation document where relevant.

² <https://www.cafcass.gov.uk/download/2124/>

³ These tools are available on Cafcass' website: <https://www.cafcass.gov.uk/leaflets-resources/policies-and-templates-for-secs/forms,-templates-and-tools.aspx>

domestic abuse practice pathway, recognising the increased awareness – within the family justice system and more widely – of the complex and varied nature of abuse and the impact on victims, including children. This pathway has now been adopted by a number of local authorities. An important shift over the last decade has been to understand that most children are aware of domestic abuse going on around them. Rather than describing them as witnesses to that abuse, as is the language in the consultation document, we recognise that these children have experienced domestic abuse. These are important developments in understanding the impact on children which in our view need a stronger representation in the proposed Bill.

Promoting awareness of domestic abuse

Introducing economic abuse into the definition of domestic abuse (Q1)

We support this addition as it reflects a more nuanced understanding of domestic abuse and will improve public understanding and awareness of abusive relationships, which can have a detrimental impact on children. Economic abuse features in Cafcass' domestic abuse practice pathway and our practitioners are confident in recognising this aspect of abuse. It can be a form of coercive control, so it is important that in legislation and regulations, classifications and language are consistent.

Maintaining the age limit of domestic abuse victims as 16 or over (Q3 and Q5)

We agree with maintaining the current age limit, so as not to blur the line between child abuse and domestic abuse. However, it is important to ensure that young people understand what is abusive within relationships, and we welcome the government's priority to educate young people on domestic abuse and to reinforce learning over the course of their education. This is especially important when a child has experienced domestic abuse, as education can operate as a safeguard against them developing these damaging behaviours themselves and to develop strategies for keeping themselves safe in situations where they may experience domestic abuse, or re-experience it even after professional agencies have sought to intervene.

The proposals could go further in promoting positive relationships within families, as well as preventing domestic abuse. It is incredibly difficult to achieve lasting change in attitudes and beliefs but we owe it to future generations to start this process in relation to relationships. The Bill provides an opportunity to position domestic abuse as a major public health issue, which could be the subject of targeted public awareness and prevention campaigns, as well as evidence-based interventions to respond to it when it occurs. We think there is a particular gap in interventions to support children and young people to recover from their experience of domestic abuse – in maintaining relationships with their non-abusive parent or carer, in developing strategies for staying safe, and in building healthy relationships in future.

Introducing parental alienation into the definition of domestic abuse

This has not been proposed in the government's consultation but we recognise that some family justice stakeholders have called for parental alienation to be included in the definition of domestic abuse. Cafcass recognises parental alienation is a potentially significant issue in families, especially after relationship breakdown, and in our assessments our focus is on the existence of alienating behaviours and the harmful impact they can have on children. We do not think a change in legislation at this stage is necessary as further work is required to understand the nature and impact of alienating behaviours, which operate on a spectrum of harmful behaviours rather than falling within one clear pattern and definition. Having said that, the government could support initiatives to increase understanding and awareness of, and discourage, alienating behaviours as part of cross-government work to reduce parental conflict and to support positive co-parenting after separation. For cases that are in the family

court, our practitioners have access to training and guidance on how to recognise potentially alienating behaviours, and we are developing additional tools as part of our Child Arrangements Assessment Framework to support the assessment of the range of interacting factors that may impact on the child.

Employers and domestic abuse (Q9)

We welcome the toolkit developed by Public Health England and Business in the Community, to set out advice on steps that employers can take if their employees are victims or perpetrators of domestic abuse. The toolkit needs to be sensitive to the problems we know some victims face in identifying domestic abuse for what it is, and the difficulties they have in talking about it, especially to employers.

We support employees who are experiencing domestic abuse through our policy on staff care in situations of domestic abuse, an Employee Assistance Programme (including a counselling service) and 1:1 consultations with a health and wellbeing adviser. We plan to strengthen this by raising awareness of domestic abuse as an employer and creating a psychologically safe work environment so that staff can come forward, either to managers or other designated contacts, and feel they will be supported. We will introduce a dedicated intranet page for resources, specific training with managers on having conversations about domestic abuse, and will identify expert organisations to partner with, such as Employers' Initiative on domestic abuse and relevant charities. We intend to go further with this in the years ahead and to define and introduce best practice as an employer.

Protect and support victims

Proposing a domestic abuse protection order (Q16 – 21)

We support the introduction of a domestic abuse protection order (DAPO) in family courts, as it extends the opportunities for victims to access the right level of protection. We also support the proposal for increased flexibility and duration of the DAPO versus the current Domestic Violence Protection Order (DVPO).

Regarding the proposal for third parties to apply for a DAPO on the victim's behalf, we support the victim not having to be the applicant. However, there are complexities in permitting family members and friends to make an application for a DAPO. The intention is to increase protection for victims but there may be risks in how such an intervention would be experienced by the victim. If it is decided that a family member or friend will be able to make the DAPO application, they may require support in order to navigate through the process.

We support the court being able to attach conditions to DAPOs, for example a direction for attendance on a domestic abuse perpetrator programme. An assessment is needed of whether there are sufficient programmes available to meet any increase in demand, and how suitability assessments for attendance would be factored into such a condition. We would need to discuss any additional requirements on us of a DAPO with our sponsoring Department, the Ministry of Justice.

Pursue and deter perpetrators

Improving victims' experience of the justice system (Q41)

The proposed Bill will give the family court the power to prevent perpetrators of domestic abuse cross-examining victims. Our feedback from practitioners is that, while such cross-examination is rare, when it happens it can be damaging to the victim and can affect the proceedings, with one victim avoiding court due to fear of cross-examination and others

experiencing bullying and intimidation. One practitioner told us of a case where “the court ordered a finding of fact but neither party was able to cross-examine effectively and no conclusive findings could be made”. Another recalled a case where “the alleged victim was not able to deal with the cross-examination and agreed with an arrangement to support [contact] handovers, putting them in the potential situation of continuing to be intimidated and controlled”.

We welcome the commitment to introduce legislation to prohibit the cross-examination of victims of domestic abuse and recognise the well documented concerns expressed by the judiciary and groups representing victims and witnesses about the impact of a vulnerable witness being subject to cross-examination by the alleged perpetrator. The process of establishing findings becomes much less efficient, more time consuming and traumatic for the parties and there is a benefit to the children in ensuring that the courts are able to conduct fair and thorough investigations. The amendments to Practice Direction 12 J were welcome but it is agreed that legislative change is required to prohibit the process. Any legislation which is introduced will need to be carefully drafted to ensure that all family proceedings are included in the prohibition as fact finding hearings arise in a number of different applications in the family jurisdiction.

Extra-territorial jurisdiction (Q49)

We support in principle the proposal to take extra territorial jurisdiction over offences of domestic abuse, given the increasing number of cases featuring children who have moved from other jurisdictions. However, we recognise the complexities of ensuring that any criminal proceedings could be effective and the need for the courts to have access to all the relevant evidence. While the family court is able to make findings of domestic abuse which took place outside of the jurisdiction, the criminal jurisdiction cannot currently pursue an investigation. The prospect of perpetrators being subject to criminal proceedings once the family relocates to England and Wales may provide additional protection to victims and their children.

Improve performance

Linking together high-quality data (Q58)

We welcome greater data sharing to enable a more thorough analysis of domestic abuse. In addition to facilitating linkage *between* data sets, it is important that steps are taken to reflect the proposed amendments to the definition of domestic abuse in data capture *within* official data sets.

Introducing a domestic abuse commissioner (Q59 and Q62)

We support the proposal to legislate for a Domestic Abuse Commissioner if this will promote a cross-government focus on the broader issues around domestic abuse. The Commissioner needs a clear remit, and to be held to account for achieving identified aims. We believe that working with Public Health England on awareness raising should be central to the role, and Ofsted's joint targeted area inspection on ['the multi-agency response to children living with domestic abuse'](#) may be relevant. In particular, Ofsted highlighted the limited evidence available on early interventions aimed at changing the behaviour of perpetrators, which need to be available for all levels of risk and need. As part of our in-court role we commission domestic abuse perpetrator programmes when ordered by the court, but such programmes may come after an lengthy period of abuse.

The proposal that the Commissioner could routinely collate, quality assure and share lessons learnt from domestic homicide reviews is one that we support. There is much

learning to be extracted from serious case reviews, many of which feature domestic abuse. We suggest that the Commissioner works with the new Child Safeguarding Practice Review Panel to extract learning that could contribute to an understanding of the impact of domestic abuse on children. Learning could also be drawn from the Children's Commissioner, who has brought together stakeholders from across the sector, leading to effective cross-government working on key issues, including work to quantify the number of vulnerable children in England.

Conclusion

We support the work already underway and proposed in the Bill to increase awareness of domestic abuse through education, and to strengthen the legal response to abuse. But we also encourage a greater focus on prevention and early intervention programmes to tackle the range of parental behaviours that can affect children in the present and in their outcomes later in life. Domestic abuse is one of these damaging behaviours, often existing alongside other risks to children, and we support a whole government response to this pressing social and public health need.

Cafcass has worked with over one million cases since Cafcass was formed in 2001. We are refining our practice continuously and in March 2018 we were judged as being 'outstanding' by Ofsted. We will happily make our experience of how to assess, prevent and intervene in domestic abuse cases available to officials as the Bill is taken forward.



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May 2018