



Police, Crime, Sentencing and Courts (PCSC) Bill 2021

Commons Committee Stage Briefing from the Domestic Abuse Commissioner for England and Wales May 2021

About the Domestic Abuse Commissioner

The Domestic Abuse Act (2021) establishes in law the office of the independent Domestic Abuse Commissioner. The role of the Commissioner is to provide public leadership on domestic abuse issues and play a key role in overseeing and monitoring the provision of domestic abuse services in England and Wales. The Commissioner also works to encourage good practice in preventing domestic abuse. Powers granted via the Domestic Abuse Act enable the Commissioner to drive forward change for victims and survivors and hold local agencies and national government to account for their role in responding to domestic abuse.

The Bill and Domestic Abuse

Domestic abuse represents one-third of violent crime recorded by the police¹, and approximately one-fifth of all adult homicides (and half of adult homicides where the victim is female), and affected 2.3 million adults in the last year.²

The criminal justice system still has a significant way to go in bringing perpetrators to justice and providing a consistently good response to domestic abuse survivors. Over the last couple of years there has been a notable decline in the number of offences prosecuted by the CPS related to domestic abuse, despite there being an increase in police recorded offences, and no reduction in prevalence. Between April 2014 and March 2020, the annual number of domestic abuse flagged cases referred to the CPS by police fell by 37%, with similar declines in prosecutions (34%) and convictions (31%). In the year ending March 2020, only 9% of domestic abuse related crimes recorded by the police led to a charge or summons. The CPS convicted 47,534 domestic abuse cases, compared to 758,491 domestic abuse related police recorded offences.

¹ [Domestic abuse prevalence and trends, England and Wales - Office for National Statistics \(ons.gov.uk\)](https://ons.gov.uk/peopleandpopulation/crimeandjustice/articles/domesticabuseprevalenceandtrendsenglandandwales/2019-03-20)

² [Appendix tables: homicide in England and Wales - Office for National Statistics \(ons.gov.uk\)](https://ons.gov.uk/peopleandpopulation/crimeandjustice/articles/appendix-tables-homicideinenglandandwales/2019-03-20)

The Domestic Abuse Act (2021) had made some significant changes to the protections provided to victims of domestic abuse, including the creation of several new criminal offences and the introduction of new Domestic Abuse Protection Orders and Notices. To achieve the wholesale reform needed to improve criminal justice outcomes for victims and survivors, and build confidence in the process, it is imperative that issues of violence against women and girls, including domestic abuse, are central considerations of the Police, Crime, Sentencing and Courts (PCSC) Bill.

Key priorities for the Bill

1. Serious violence prevention duty

Chapter 1 of Part 2 of the PCSC Bill places duties on public authorities to collaborate and plan to prevent and reduce serious violence. Specified authorities include: local government, probation and youth offending services, clinical commissioning groups and local health boards, police and fire and rescue authorities.

Section 12 of the Bill sets out how “serious violence” should be interpreted. It explicitly includes “violence against property and threats of violence”, and certain factors are set out at section 12 (4) to be taken into account when considering whether violence amounts to serious violence. The duty does not explicitly include violence against women and girls or domestic abuse, and the consultation paper which led to this legislative proposal explicitly excluded sexual abuse and violence against women and girls.³

We consider that violence against women and girls, and, specifically, domestic abuse, should explicitly be included in the serious violence prevention duty.

One third of all violence recorded by the police is domestic abuse-related,⁴ and the most common type of violence to be experienced on a repeated basis is domestic violence.⁵ 48% of all female homicides (and 8% of male homicides) are domestic homicides.⁶ Despite this, charging, prosecutions and convictions have fallen significantly in recent years for both rape and domestic abuse.⁷ This is extremely concerning and it is therefore crucial that violence against women and girls and domestic abuse is explicitly included in the serious violence reduction duty, to ensure a gender-informed approach to tackling serious violent crime. We support the multi-agency approach set out in this duty, but without the inclusion of violence against women and girls and domestic abuse, we are concerned that this duty will fail in its core aim of preventing and reducing serious violence.

We note the provisions in section 9 to allow information-sharing in the context of this duty. We consider that, with respect to migrant survivors of domestic abuse, this should be subject to our proposed amendment to the Bill (below) which prohibits data-sharing with immigration enforcement where migrant survivors have disclosed personal data in the context of seeking help for domestic abuse.

Recommendations:

³ Home Office (2019), [Consultation on a new legal duty to support a multi-agency approach to preventing and tackling serious violence](#), 5.

⁴ Office for National Statistics (ONS), [The nature of violent crime in England and Wales: Year ending March 2020](#), Section 7, Groups of people most likely to be victims of violent crime.

⁵ Ibid, Section 6, Levels of Repeat Victimisation.

⁶ ONS, [Homicide in England and Wales: year ending 2019](#).

⁷ CPS, [Data summary Quarter 1 2020-2021](#).

- Section 12 of the Bill should explicitly state that serious violence includes violence against women and girls, including domestic abuse; and
- The data-sharing provision in Section 9(2) should be subject to our proposed amendment prohibiting the sharing of migrant survivors' data for immigration purposes.

2. Establishing a safe reporting mechanism for migrant victims who report domestic abuse to the police

A recent investigation (published in December 2020) by the HMICFRS, which is responsible for independently assessing and reporting on the efficiency and effectiveness of police forces and policing, found that significant harm is being caused to the public interest because victims of crime with insecure immigration status are fearful that, if they report to the police, their information will be shared with the Home Office and/or the reported crimes will not be investigated. Factors which contribute to this fear include: the perception of a police culture that prioritises immigration enforcement over safeguarding and crime investigation; and the experiences of victims that this sometimes happens in practice and demonstrable inconsistencies in police practice.⁸ The report also found that whilst there is no evidence of an intention within the police service to operate a culture that prioritises immigration enforcement there is a perception of such a culture by some victims and specialist organisations. Furthermore, some victim case examples showed that the police do sometimes prioritise immigration enforcement.

The Draft Statutory Guidance Framework of the Domestic Abuse Act states, perpetrators routinely use the victim's immigration status as a tactic of coercive control.⁹ According to Imkaan, 92% of migrant women have reported threats of deportation from the perpetrator.¹⁰ Without a safe reporting mechanism in place, victims and survivors of domestic abuse are denied justice, while perpetrators go unpunished and remain a threat to the public.

The Commissioner is concerned by evidence which suggests that where a victim or survivor reports abuse to the police, their information can be passed to Immigration Enforcement. This practice undermines trust in the police and public services, deters victims with an insecure immigration status from coming forward for support, and allows abuse to continue and perpetrators to go unpunished. We need to see a safe reporting mechanism across vital public services, so that victims can report abuse to the police, social services, health professionals and others with confidence they will be treated as victims and without fear of Immigration Enforcement.

Recommendation:

- In light of the HMICFRS report's very clear findings on the impact of data sharing and the recommendation of a review to help establish a firewall by June 2021, the Commissioner recommends that the PCSC Bill is used as a timely vehicle to create a safe reporting mechanism for victims and survivors of domestic abuse. The safe reporting mechanism should establish a firewall to prevent the police from passing on to the Home Office any data regarding the immigration status of a person which was recorded in the reporting of the crime.

⁸ HMICFRS (2020), Safe to share? Report on Liberty and Southall Black Sisters' super-complaint on policing and immigration status. Available here: <https://www.justiceinspectorates.gov.uk/hmicfrs/publications/liberty-and-southall-black-sisters-super-complaint-on-policing-and-immigration-status/>

⁹ Home Office (2020), Domestic Abuse Draft Statutory Guidance Framework. Available here: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/896640/Draft_statutory_guidance_July_2020.pdf

¹⁰ Vital Statistics 2: Key findings report on Black, Minority Ethnic and Refugee Women's and Children's experiences of gender-based violence

3. Six month time limit for charging common assault

Currently, summary offences (which can only be dealt with in Magistrates' Courts), including common assault, are required to be charged and "laid before the Court" within six months of the date of the offence.

Many domestic abuse survivors experience common assaults (which include raising a fist, being spat at, and being pushed) during the course of an abusive relationship. They may either not be able to come forward to report (due to the dynamics of power and control within an abusive relationship) or may be unaware of the six-month time limit. This means when survivors are finally able to come forward, time limits can result in a perpetrator escaping justice.

We understand that, where there is a pattern of historic assaults, the CPS will look to charge these under the offence of coercive and controlling behaviour (CCB) (which is not subject to a time-limit). However, we know ([from the government's recent review into the charging of CCB](#)) that "only a small part of all CCB comes to the attention of the police or is recorded as CCB."¹¹ Whilst we would welcome any increase in the charging and prosecution of the offence of CCB, we do not consider that this approach alone addresses the issue.

Recommendations:

- The Bill should be amended to increase the time limit for charging common assault in the context of domestic abuse. We recommend: a year's time limit for reporting, followed by a six-month time limit on police from reporting to charging and laying before Court. This would ensure that more perpetrators are held to account for their abuse, while retaining an extended time limit would ensure the passage of time does not hinder collection of evidence.
- We would also support additional options to help address the issue, namely:
 - A discretion for magistrates to waive the 6-month time limit for domestic abuse cases; and
 - Statutory guidance that a repeated pattern of common assaults should be charged as actual bodily harm (which is not subject to a time limit), and ensuring that the existing non-statutory guidance to this effect is adhered to.¹²
- The Commissioner therefore urges MPs to support amendments 60 and 61.

4. Perpetrator Management

The effective management of risks posed by perpetrators requires an active multi-agency response, driven by information, intelligence, and data sharing. As most perpetrators, including some of the most dangerous perpetrators, will never have interactions with the criminal justice system, it is important that these approaches are able to capture individuals who have been in contact with the criminal justice system for domestic abuse or stalking-related offences, as well as those who may never have had any interactions with police or been charged with such offences.

Perpetrator management should focus on interventions which effect behaviour change. Such interventions should assess the comprehensive needs of individual perpetrators, such as mental health support and therapy, housing provision, substance abuse issues and

¹¹ Home Office (March 2021), [Review of the Controlling or Coercive Behaviour Offence](#).

¹² CPS (January 2020), [Offences against the person, incorporating the Charging Standard](#).

employment before recommending a tailored programme of rehabilitation work. Simultaneously, police forces should monitor the perpetrator's ongoing risk to the public and intervene with more onerous criminal justice measures where a perpetrator does not respond to interventions or refuses to engage with the programmes which they are offered.

Any such approaches which are implemented should work closely with existing arrangements such as MARACs to ensure that perpetrator management teams have key information from victims-focused panels to ensure that improved outcomes for victims remain central to perpetrator interventions. This would also ensure that dangerous offenders who may not be known to perpetrator management teams are not lost within the system and are flagged as requiring interventions as early as possible.

There are currently a range of interventionist models which adopt such approaches implemented by local authorities and police forces in England and Wales, including MATACs and the Drive Partnership which have been proven to effectively reduce re-offending and manage the risk of harm which can be caused by perpetrators. Where such models are proven to be effective, the Commissioner believes that they should be considered for wider roll out. The roll-out of such approaches should be nationwide in order to ensure consistency between local authorities and police forces.

Recommendations:

- Ultimately, the Commissioner believes that there should be a statutory underpinning, alongside long term funding, for the delivery of all domestic abuse services (accommodation based and community-based) for victims, as well as behaviour change programmes for perpetrators of domestic abuse. In addition, the Government should consider the extent to which further legislative measures are required in the PCSC Bill to achieve a consistent approach to mapping, and managing the risk and harm of perpetrators of domestic abuse and stalking through a multiagency forum to tackle serial and repeat offenders.
- Such a measure must be accompanied by a funding commitment to improve the IT systems used by police forces to allow them to collect and share data relating to serial perpetrators of domestic abuse.

5. Digital data extraction power clauses

In recent years, the issue of digital disclosure, particularly in rape cases, has received a great deal of attention and scrutiny. It has become practically routine for rape complainants to be asked to hand over digital devices and for most, or all, of the material held therein to be trawled.

Home Office data also shows an increase in withdrawal of rape complaints pre-charge, from 20% in 2014/15 to 42% in year to September 2020.¹³ As well as impacting victim attrition, we also know that it is a factor in decision making about whether to report in the first place. A recent survey of rape victims conducted by the Victims Commissioner for England and Wales

¹³ 3 <https://www.gov.uk/government/statistics/crime-outcomes-in-england-and-wales-year-to-september-2020-data-tables>

found that for some, scrutiny of their personal lives including their digital lives was a consideration in their decision not to report.¹⁴

A 2020 report by the Information Commissioner (ICO) on data extraction from mobile phones outlined that the way in which police were operating did not comply in a number of respects with data protection legislation and argued that the gateway of 'consent' which police had been reliant on was not open to them for a number of reasons.¹⁵ The clauses in Part 2, Chapter 3 of PSCS Bill were originally designed to address a different issue in policing but the broad ranging power which is contained in the Bill would clearly apply in the circumstances investigated in the ICO report.¹⁶ The Commissioner is concerned that as currently drafted the Bill provides a lack of safeguards and protections for victims and does nothing to promote a strictly limited approach to data collection, with the safeguards for victims of crime relegated to guidance. Existing case law legislation and guidance makes clear that agreement for digital extraction can only be sought if the officer believes relevant material can be extracted from a phone; for criminal investigations this means relevant to a reasonable line of enquiry. The Domestic Abuse Commissioner supports recommendations to changes to the clauses in the PSCS Bill made by the Victim's Commissioner in order to strengthen protections for victims, laid ahead of Committee stage. Key changes to the clauses are outlined below

Recommendations

The Commissioner urges MPs to support amendments NC49, NC50, NC51 and NC52 which would:

- Define the terms of "agreement" within the Bill for the purpose of taking a witness or victim's digital device. In addition, the legislation should be specific about requiring the police to set out what data it is they are seeking, as it is only by being specific that the data owner can give informed agreement to extraction.
- The guidance accompanying the Bill should mandate that the decision-making process of the authorised person in identifying a reasonable line of enquiry is recorded so that this can be scrutinised at a later date.
- The Bill should include a duty to consider the views of children and those without capacity to, explore their views, on whether they wish to have their phones scrutinised.

For further details please contact:

hannah.gousy@domesticabusecommissioner.independent.gov.uk

¹⁴ Rape survivors and the criminal justice system, Victims' Commissioner, Oct 2020:

<https://victimscommissioner.org.uk/published-reviews/rape-survivors-and-the-criminal-justice-system/>

¹⁵ Mobile phone data extraction by police forces in England and Wales Investigation report, June 2020:

https://ico.org.uk/media/about-the-ico/documents/2617838/ico-report-on-mpe-in-england-and-wales-v1_1.pdf

¹⁶ <https://www.legislation.gov.uk/ukpga/2016/25/contents> * unless they also comply with the requirements of the Regulation of investigatory Powers Act 2013 and secure a directed surveillance authority or 2-way consent