

**Submission to the Public Bill Committee for the Domestic Abuse Bill
Submitted by the charity Parity on (October 2019)**

- [1] **Our Organisation:** Parity has a history going back 33 years and has been incorporated as a charity for 14 years. Our purpose is to promote equal rights for men and women and to oppose discrimination on grounds of sex.
- [2] Our submission recommends amendments in four areas,
- (A) Explicit recognition of parental alienation as a domestic abuse offence, see [10];
 - (B) Removal of an inconsistency in the definition of controlling or coercive behaviour, see [15];
 - (C) Explicit recognition of a false allegation of domestic abuse as a domestic abuse offence, see [21];
 - (D) Revision of the Domestic Abuse Commissioner's powers to fall under a Minister of State, see [26].
- [3] Comments relate to the draft Bill as it was on second reading in the HoC in October'19.

(A) Parental Alienation

- [4] Acceptance of parental alienation as a form of domestic abuse is necessary in order to maintain consistency with internationally accepted diagnostic criteria for psychological disorders and international agreements on health matters.
- [5] Parental alienation had been the subject of academic debate regarding its validity as a psychological condition, but this debate came to an end with the agreement in May 2019 by World Health Organisation Member States to adopt the eleventh revision of the International Statistical Classification of Diseases and Related Health Problems (ICD-11), Ref.1. Parental alienation appears in ICD-11 as an Index Term under code QE52.0, Ref.2, thus providing clinical validation of the condition as a mental health issue.
- [6] Parental alienation is most visible as a phenomenon in which one parent turns a child against the other parent by negative portrayal. However, the harm done is not confined to the target parent. The associated psychological splitting of the child is a serious mental pathology which can have life-long adverse consequences for the child. This mental disorder is induced in the child by the behaviour of the alienating parent. It is therefore a form of domestic abuse.
- [7] It is known that if a child has the constant support of two parents during childhood then that child is far more strongly protected against Adverse Childhood Experiences (ACEs) (Figure 17 of Ref.3). This is particularly important after parental separation, which is when parental alienation generally occurs, because parental separation is itself the most common ACE (Ref.4).
- [8] Parental alienation is common. Ref.5 reported that, "*July 2016, Sarah Parsons, Principal Social Worker and Assistant Director of Cafcass, stated that 'parental alienation is responsible for around 80% of the most intransigent cases that come before the family courts'. Parental alienation is likely to be a feature in a minimum of 9,000 family proceeding applications per annum involving more than 18,000 children.*"

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- [9] Given the evidence, above, that parental alienation is a form of domestic abuse, and that it is both a serious and a common abuse, its exclusion from being treated as domestic abuse, both within the Bill and by current *de facto* judicial practice, is anomalous.
- [10] **We therefore recommend** that an explanatory clause is added to Section 1 (Definition of Domestic Abuse) as follows,
- *“Included in ‘psychological, emotional or other abuse’ shall be behaviours which induce such harms in a child, for example by the alienation of a parent from the life of their child without due cause”.*

(B) The Offence of Controlling or Coercive Behaviour

- [11] The draft Bill as it stands is inconsistent with existing legislation in respect of the definition of “controlling or coercive behaviour”.
- [12] Controlling or coercive behaviour in an intimate or family relationship was introduced into criminal law via the Serious Crime Act 2015, Ref.6. In Section 76 of that Act the definition starts, *“A person (A) commits an offence if A repeatedly or continuously engages in behaviour towards another person (B) that is controlling or coercive”*. The behaviour is required to have a “serious effect” on B, and a further clause states that A’s behaviour has a “serious effect” on B if: *“(a) it causes B to fear, on at least two occasions, that violence will be used against B, or (b) it causes B serious alarm or distress which has a substantial adverse effect on B’s usual day-to-day activities”*.
- [13] Note that the requirements necessary to meet the criteria for “serious effect” do not negate the definition of the offence which requires “repeatedly or continuously engaging” in controlling or coercive behaviour.
- [14] In contrast, the draft Domestic Abuse Bill currently states in clause 1(3), following the list of types of behaviour to be classed as abusive (including controlling or coercive behaviour) that, *“it does not matter whether the behaviour consists of a single incident or a course of conduct”*. This is in flat contradiction to the existing legislation.
- [15] **We therefore recommend** that the rider *“it does not matter whether the behaviour consists of a single incident or a course of conduct”* is deleted from clause 1(3). If necessary, a sub-clause may be added to Section 1 to clarify which types of abuse may be established by a single incident, and which require repeatedly or continuously engaging in the behaviour. The latter must include “controlling or coercive behaviour” to be consistent with the Serious Crime Act 2015.

(C) False Allegations of Domestic Abuse

- [16] The Crime Survey for England & Wales indicates that 5.9% of women and 3.0% of men experienced domestic abuse from their partner “in the last year”, Ref.7.
- [17] In contrast, about 50% of private family law cases (overwhelmingly for child contact arrangements) involve allegations of domestic abuse, Ref.8. This immediately raises a concern that a significant proportion of allegations of domestic abuse made in the family courts might be false.
- [18] Indeed, a high rate of false allegation would be expected in the family court. In the family court the temptation to raise a false allegation is considerable as it provides the accuser with a great advantage in the proceedings, the standard of “proof” is

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dramatically lower than in the criminal jurisdiction, most allegations will not be meaningfully investigated, and an untrue allegation can be made with impunity.

- [19] This is to be contrasted with the extremely serious impact of false allegations on the accuser **and** upon the children involved. Such allegations are often very effective in removing a parent (usually the father) from their child's life, perhaps totally and permanently. If the allegation is false, this is clearly an abuse of said parent, but it is also abusive of the child due to the known adverse consequences of a child being raised with one rather than two parents (Refs. 3, 4).
- [20] False allegations are therefore a serious form of domestic abuse and hence should be addressed in the Bill. However, this is a qualitatively different form of abuse from those listed in clause 1(3).
- [21] **We therefore recommend** that false allegations of domestic abuse be recognised explicitly within the Bill by addition of a further item to that effect in clause 1(3).

(D) Domestic Abuse Commissioner's Powers

- [22] The current draft Bill would give the DA Commissioner supra-governmental powers which are inappropriate for an unelected person advised by an unelected panel.
- [23] The latest draft Bill contains substantial revisions from the earlier draft. The January 2019 draft of the Bill required the Commissioner's strategic plan, or revisions thereto, to be approved by the Secretary of State, and the responsibility for laying the plan before Parliament was to reside with the Secretary of State. In the current draft Bill, no approval of the strategic plan by the Secretary of State is required, and the Commissioner would have the responsibility to lay the plan directly before Parliament. The Commissioner need only **consult** the Secretary of State, which gives the Secretary of State the same status in the production of the plan as the members of the Commissioner's own Advisory Panel.
- [24] The latest draft Bill requires that affected Government departments (i.e., Ministers) must prepare comments on the Commissioner's reported recommendations, including an explanation of what action has been taken to address the recommendations or an explanation of why this has not been done. In effect, Ministers must "explain themselves" to the Commissioner. This represents undue leverage over elected representatives by an unelected representative.
- [25] These concerns are substantial in view of the powers which would be granted to the Commissioner by this legislation, namely,
- *"The Commissioner may do anything which the Commissioner considers will facilitate, or is incidental or conducive to, the carrying out of the Commissioner's functions."*
 - *"The Commissioner may request a specified public authority to co-operate with the Commissioner in any way that the Commissioner considers necessary for the purposes of the Commissioner's functions."*
- [26] Such powers are inappropriate in an unelected individual. **Consequently we recommend** that the Bill revert to something closer to its earlier draft in which the Commissioner acts as the agent of the Secretary of State, who retains the invested powers.

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References

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http://www.wales.nhs.uk/sitesplus/documents/888/ACE%20%26%20Resilience%20Report%20%28Eng_final%29.pdf
4. Public Health Wales. “*Adverse childhood experiences (ACEs) and resilience: risk and protective factors for mental illness throughout life*” infographic, 2017.
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<http://www.legislation.gov.uk/ukpga/2015/9/section/76/enacted>
7. Office for National Statistics. “*Domestic abuse in England and Wales: year ending March 2017*”. Release September 3, 2018.
<https://www.ons.gov.uk/releases/domesticabuseinenglandandwalesyearendingmarch2017>
8. Ministry of Justice Research Team, private communication to Her Majesty’s Courts & Tribunals Service and the charity Families Need Fathers Both Parents Matter Cymru. This indicates that 49.2% of private family law cases in 2016 involved allegations of domestic abuse

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