

LIBERTY

PROTECTING CIVIL LIBERTIES
PROMOTING HUMAN RIGHTS

**Liberty's written evidence to the Home
Affairs Select Committee on the Domestic
Abuse Inquiry**

June 2018

About Liberty

Liberty (The National Council for Civil Liberties) is one of the UK's leading civil liberties and human rights organisations. Liberty works to promote human rights and protect civil liberties through a combination of test case litigation, lobbying, campaigning and research.

Liberty provides policy responses to Government consultations on all issues which have implications for human rights and civil liberties. We also submit evidence to Select Committees, Inquiries and other policy fora, and undertake independent, funded research.

Liberty's policy papers are available at
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Introduction

1. This inquiry asks for evidence on what policies and strategies the Government should adopt to effectively tackle domestic abuse in the UK, in light of recent proposals made in the Domestic Violence and Abuse Bill public consultation. The inquiry's terms of reference include: what further preventative measures are needed, how the response of public authorities could be improved, what else is required for support, protection and refuge for victims of abuse, how to secure equal protection of BAME and migrant victims of abuse, the key difficulties encountered by victims of domestic abuse in the justice system, what national oversight framework is needed to ensure there are sufficient quality services available for victims at a local level, and the proposed role and powers of the Domestic Abuse Commissioner.
2. Liberty's written evidence will address the above terms of reference by focusing on four main areas, namely, how to: (1) improve reporting mechanisms for victims to prevent further and continued abuse, (2) develop responses by public authorities and enhance national oversight, (3) promote victims' rights to safety, security and support through safe accommodation and eliminating discriminatory treatment, and (4) ensure victims are properly protected in the justice system.
3. For further analysis and insight into these issues, please read our full response to the Government's consultation.¹

Improving reporting mechanisms for victims

Reporting without fear

4. The Government has failed to fully consider the many barriers to reporting that victims of abuse face, which include: a general fear of authorities, fear of being disbelieved and turned away, fear of retribution from perpetrators, and fear of immigration enforcement for those with insecure status. As a result, many victims face a harrowing choice between continued abuse, being removed from the UK or being locked up indefinitely in detention. The fact that statutory agencies' operations cause victims to fear reporting abuse is contrary to Article 20(2) of the Istanbul Convention, which states, "*Victims need access to health care and social services without fear of discrimination.*"² Yet a suite of Government policies that deliberately link immigration control to public services mean that migrant victims of abuse are routinely discriminated against by healthcare, social services and other statutory agencies.
5. Migrant victims' fear of reporting abuse is inextricably linked to the Government's hostile environment agenda. The fear that health professionals, banks, landlords, employers, homelessness charities and even schools may report migrants and their families to immigration enforcement is regularly realised, and is the deliberate, explicit policy choice of this Government.³ Liberty has provided extensive evidence

¹ Liberty's response to the Government's Consultation on the Domestic Violence and Abuse Bill 2018, May 2018, https://www.libertyhumanrights.org.uk/sites/default/files/Liberty%27s%20Response%20to%20the%20Government%27s%20Consultation%20on%20the%20Domestic%20Violence%20and%20Abuse%20Bill%202018_4.pdf.

² Council of Europe, Council of Europe Convention on preventing and combating violence against women and domestic violence, Istanbul, 11.V.2011, Council of Europe Treaty Series – No.210, <https://www.coe.int/en/web/conventions/full-list//conventions/rms/090000168008482e>.

³ For further information, see: 'A Guide to the Hostile Environment – the border controls dividing our communities and how we can bring them down', edited by Liberty, (April 2018), <https://www.libertyhumanrights.org.uk/sites/default/files/HE%20web.pdf>.

on the known bulk data-sharing schemes and how they operate.⁴ These policies prioritise immigration enforcement over the need to provide safety and security to victims of domestic abuse. As we state in our briefing to the Independent Chief Inspector of Borders and Immigration (ICIBI), *“These agreements ... subordinate legitimate public policy aims such as the protection of public health, the prevention of serious crime, homelessness support, and child safeguarding, to immigration enforcement priorities.”*⁵ Without ending these measures, migrant victims of abuse will continue to suffer at the hands of perpetrators, without any means of escape.

6. Ministers *must* ensure the Domestic Violence and Abuse Bill enables the UK to finally ratify the Istanbul Convention. The Government should take this opportunity to listen to the responses of women’s and civil liberties organisations to rectify areas where the UK is currently not compliant, such as the Article 20(2) rights outlined above. The Convention is considered a ‘gold standard’ by the UN⁶, so it is crucial that our own domestic legislation matches this model provision and upholds victims’ basic human right to live free from violence.

“Low-hanging fruit”

7. In May 2018, Freedom of Information responses revealed that of the 45 police forces asked, more than half said they refer victims of crime to the Home Office.⁷ In one case, a woman who was beaten by her partner was then herself arrested by police and detained in Yarl’s Wood immigration removal centre.⁸ There are also fears that other vulnerable people with insecure immigration status, including rape victims, are now too afraid to report crimes.⁹ Our greatest concern is that these individuals may be specifically targeted by police forces and the Home Office. As one former Chief Superintendent described, they may be considered *“low-hanging fruit”* as these victims are vulnerable, isolated and exposed, making them easier to arrest, detain or deport.¹⁰ Jess Phillips MP – member of the Women and Equalities Committee - has supported this view in a recent debate, arguing that, *“currently, we have a situation in our country where immigration officers are specifically targeting victims who come forward to the police forces”*¹¹. If the Government truly wishes to transform the response to domestic abuse, it must recognise the disconnect between routinely referring victims of crime to immigration enforcement and their commitment to protect victims of abuse.

Time for a firewall

8. Migrant victims of abuse need and deserve genuine assurances from the Government and from key statutory agencies that they will not be interrogated or referred to the Home Office on account of their

⁴ Liberty’s written evidence to the inspection of partnership working between the Home Office and other government departments by the Independent Chief Inspector of Borders and Immigration, (May 2018), p 4-5.

⁵ Ibid, p.5.

⁶ UN Women, ‘The Istanbul Convention: strengthening the response to ending violence against women’, (5 March 2013), <http://www.unwomen.org/en/news/stories/2013/3/the-istanbul-convention-strengthening-the-response-to-ending-violenceagainst-women>.

⁷ Diane Taylor, ‘Victims of crime being handed over to immigration enforcement’, The Guardian, (12 May 2018), <https://www.theguardian.com/uk-news/2018/may/14/victims-crime-handed-over-police-immigration-enforcement>.

⁸ Catrin Nye, Natalie Bloomer and Samir Jeraj, ‘Victims of serious crime face arrest over immigration status’, BBC’s Victoria Derbyshire programme, <http://www.bbc.co.uk/news/uk-44074572>.

⁹ Ibid.

¹⁰ Former Chief Superintendent Dal Babu, Ibid, <http://www.bbc.co.uk/news/uk-44074572>.

¹¹ Jess Phillips MP, Debate on ‘Immigration Detention (Victims of Torture)’, House of Commons Hansard, [https://hansard.parliament.uk/Commons/2018-06-14/debates/18061421000002/ImmigrationDetention\(VictimsOfTorture\)](https://hansard.parliament.uk/Commons/2018-06-14/debates/18061421000002/ImmigrationDetention(VictimsOfTorture)).

immigration status. From homeless women presenting to housing officers, to traumatised women recounting their stories to the police, no victim should be threatened or denied protection by the state. Liberty supports the call of Step Up Migrant Women (SUMW) and the Latin American Women’s Rights Service (LAWRS) for a firewall¹², to prevent public services from sharing information with immigration authorities about migrant victims of domestic abuse. Instead, these crucial service providers should be left to do their jobs, and to protect the people they are there to serve.¹³

9. We also support SUMW’s recommendation that domestic abuse strategies need to include safe-reporting policies that comply with the Human Rights Act 1998 (HRA). To strengthen the protection of victims’ rights: *“practices of the police and statutory agencies should comply with Articles 2, 3, 4 and 8 of the HRA by upholding their duty of providing safety for all victims of violence, putting the safety of victim as paramount over immigration control.”*¹⁴ Liberty supports the conclusion of SUMW that there should be (1) clear rules and guidance (through applying the Victim’s Code) outlining that there should be no questioning of domestic abuse victims over nationality or immigration status, (2) no data-sharing of victims’ information for immigration enforcement purposes, and (3) provision to enable reporting to other statutory services and areas in the public sector.¹⁵

Developing responses by statutory agencies and national oversight

Enforcing the Public Sector Equality Duty (s.148 Equality Act 2010)

10. The Government’s proposals do not outline any concrete plans to improve statutory agencies’ responses to domestic abuse. We believe an effective strategy would adopt a holistic approach and empower all statutory agencies to recognise abuse by providing them with sufficient funding and resources. The Public Sector Equality Duty (PSED) – set out at s.149 of the Equality Act 2010 – requires public bodies to have *“due regard”* to *“advance equality of opportunity”*.¹⁶ Although the PSED does not impose a positive obligation on public bodies to take certain actions, they must consider the consequences of their decisions and any subsequent discriminatory impact – failure to do so can be legally challenged. The Government strategy should emphasise firstly, that all statutory agencies must follow necessary protocol and guidance to improve their responses to domestic abuse (for example, imminent new housing guidance¹⁷ and Authorised Professional Practice for police¹⁸), and secondly, that all public bodies have a legal duty to consider victims’ rights when making decisions on domestic abuse cases.

¹² A means to prohibit the sharing of information between services for immigration enforcement purposes – Fizza Qureshi, ‘Firewalls and Tunnels: Migrants Need Protecting from the State’, Migrants Rights Network, (November 2017), <https://migrantsrights.org.uk/blog/2017/11/06/firewalls-tunnels-migrants-need-protecting-state/>.

¹³ For further information, see Liberty’s ‘Care Don’t Share’ campaign page, <https://www.libertyhumanrights.org.uk/care-don%E2%80%99t-share>.

¹⁴ SUMW, ‘Domestic Violence and Abuse – Consultation: Template by Step Up Migrant Women campaign on safe reporting’, (25 April 2018), p.2.

¹⁵ Ibid, p.5.

¹⁶ s.149 Equality Act 2010, <https://www.legislation.gov.uk/ukpga/2010/15/section/149>.

¹⁷ Ministry of Housing, Communities and Local Government, ‘Improving access to social housing for victims of domestic abuse’, (30 October 2017), <https://www.gov.uk/government/consultations/improving-access-to-social-housing-for-victims-of-domestic-abuse>.

¹⁸ College of Policing, ‘Major investigation and public protection: Authorised Professional Practice on domestic abuse’, (21 September 2015), <https://www.app.college.police.uk/app-content/major-investigation-and-public-protection/domestic-abuse/>.

Reforming policing

11. Evidence clearly demonstrates that the overall police response to domestic abuse is inadequate and ineffective. A lack of training, failure to recognise the level of risk present, and a culture of disbelief result in devastating consequences for victims. These failings are encapsulated by the case of Katrina O'Hara, who was murdered in 2016 by her abuser after the police wrongly classed *her* as the 'attacker' and seized her phone.¹⁹ Katrina's tragic and avoidable death is symptomatic of a much larger issue. In 2014, a review of all 43 police forces in England and Wales found that there were serious deficiencies in police operations concerning domestic abuse.²⁰ The number of domestic abuse incidents going unattended by police is also 'soaring', with officers failing to show up in at least 39,686 incidents in 2016.²¹ Police have also been accused of 'pushing responsibility' for prosecution onto victims, rather than tracking down evidence and building a case themselves.²² Local forces should be using their powers to protect victims of abuse – such disconcerting and persistent failures must be addressed through new legislation, policy and practice.
12. Police failings of this kind have resulted in violations of victims' right to life, and their right to freedom from inhuman or degrading treatment (Articles 2 and 3 ECHR). In relation to Article 3, following extensive litigation, the Supreme Court in *Commissioner of Police of the Metropolis v DSD and another* [2018] UKSC 11 established that there is a legal obligation on the police to investigate crimes involving serious violence (including sexual assaults). Where the police do not, as a result of serious operational or systemic failure, this constitutes an Article 3 violation and compensation can be claimed. Liberty argued – as the first intervener in these proceedings – that the proper approach to interpreting Convention rights is to make its safeguards practical and effective for the protection of individuals. Therefore, in order to keep victims safe, the courts must ensure these human rights obligations are upheld.
13. However, the legal duty under Article 3 established by *DSD* alone will not be sufficient – it must be accompanied by proper training to improve the overall police response to domestic abuse. Any new training scheme must be nuanced and consider the different stages of the investigative process – from crisis management in initial call outs, to escorting victims from their homes when fleeing an abuser, to collecting evidence for a prosecution case. In the proposed 'License to Practise' scheme, an emphasis must be placed on training police to sensitively communicate with victims of abuse and deal effectively with perpetrators. At present, victims are often re-traumatised by interactions with the police, who may tactlessly disregard their testimonies and lack the compassion to ensure victims feel safe, comforted and supported following an attack.²³ Further, there is evidence that police are sometimes manipulated by

¹⁹ Lizzie Dearden, 'Police treated domestic abuse victim as 'attacker' and took her phone days before murder, reports find', The Independent, (8 January 2018), <https://www.independent.co.uk/news/uk/crime/domestic-abuse-police-katrina-ohara-failingsdorset-phone-taken-attacker-stuart-thomas-stalking-a8148726.html>.

²⁰ HMIC, 'Everyone's business: Improving the police response to domestic abuse', (27 March 2014), p.7, <https://www.justiceinspectors.gov.uk/hmicfrs/wp-content/uploads/2014/04/improving-the-police-response-to-domesticabuse.pdf>.

²¹ Harriet Agerholm, 'Police failing to attend one in nine domestic violence incidents, figures show', The Independent, (10 December 2017), <https://www.independent.co.uk/news/uk/home-news/domestic-violence-abuse-police-reports-devon-cornwall-humbersideresponse-a8085146.html>.

²² Harriet Agerholm, 'Police told to 'stop pushing responsibility' for domestic violence prosecutions onto victims', The Independent, (30 April 2017), <https://www.independent.co.uk/news/uk/home-news/domestic-violence-pushing-responsibility-prosecutionsvictims-convictions-hmic-zoe-billingham-a7706446.html>.

²³ Health Talk, 'Women's experiences of Domestic Violence and Abuse', <http://www.healthtalk.org/peoples-experiences/domesticviolence-abuse/womens-experiences-domestic-violence-and-abuse/role-police-domestic-violence-and-abuse>.

perpetrators, who use well-practised behaviours to persuade them of their ‘innocence’ and shift the blame onto the victim (as occurred in Katrina O’Hara’s case).²⁴ In order to achieve a training regime and content that is thorough, effective and fit for purpose, we urge the Government and the College of Policing to consult the independent women’s sector when designing programmes.

Oversight on performance

14. Liberty welcomes the introduction of a dedicated Domestic Abuse Commissioner. The person appointed should have spent time with people who have lived experience of abuse and be receptive to high quality evidence from women’s groups and human rights organisations. The Commissioner should oversee the performance of statutory agencies and local services when responding to abuse. If there are operational or resourcing problems, the Commissioner should report back to the relevant Government department in order to rectify these issues. There should also be a statutory obligation on the recipient of the Commissioner’s report to respond within a specified period of time to explain what steps they intend to take to address any concerns.²⁵
15. The new Commissioner must also work with the Victims’ Commissioner to ensure all victims of abuse are supported by the state – regardless of their background. To realise the potential of the role, the Commissioner must understand intersectionality within domestic abuse, particularly for migrant, disabled and BAME women. In doing so, the post-holder should scrutinise any new policies and legislation that could have a negative impact on some victims of abuse (e.g. new immigration laws). Therefore, it should be the role of the Domestic Abuse Commissioner to actively and autonomously call for improvements in domestic abuse policy, practice and legislation – with meaningful independence and oversight.

Victims’ rights to safety, security and support

Refuges and safe accommodation

16. The Government must provide sufficient funding to local authorities to open and reopen more refuge spaces across the country. Failure to provide adequate or appropriate services risks violating victims’ right to life (Article 2 ECHR), freedom from cruel, inhuman or degrading treatment (Article 3 ECHR), and the right to privacy and a family life (Article 8 ECHR). The Government should be prioritising these crucial human rights in order to comply with Article 2(2) of the Istanbul Convention, which states that, “*parties shall ensure that policies... place the rights of the victim at the heart of all measures*”.
17. However, in recent years the Government has instead repeatedly cut funding to refuges and withdrawn financial support for victims’ services. More than 65 per cent of England’s local authorities have subsequently slashed their spending on refuges²⁶, and 17 per cent of specialist women’s refuges were

²⁴ See section on ‘Examples of controlling or coercive behaviour’, in College of Policing, ‘Major investigation and public protection: Context and dynamics of domestic abuse’, <https://www.app.college.police.uk/app-content/major-investigation-and-publicprotection/domestic-abuse/context/>.

²⁵ The system whereby a Coroner may make a “Prevention of Future Deaths” report following an inquest with its attendant obligations presents a potentially useful model, <https://www.judiciary.gov.uk/wp-content/uploads/2013/09/guidance-no-5-reports-to-prevent-future-deaths.pdf>.

²⁶ Jamie Grierson, ‘Council funding for women’s refuges cut by nearly £7m since 2010’, The Guardian, (23 March 2018), <https://www.theguardian.com/society/2018/mar/23/council-funding-womens-refuges-cut-since-2010-england-wales-scotland>.

forced to close between 2010 and 2014.²⁷ A third of all referrals to refuges are routinely refused²⁸ and in one day in 2017, 94 women and 90 children were turned away.²⁹ This is unacceptable - no victim should be denied safety. We believe that the Government's grant funding commitment of £33.5m is insufficient to compensate for the catastrophic cuts to refuges and safe accommodation services since 2014. Further - in November 2016 - 50 local authorities had not received any allowances from this central pot.³⁰ If tackling domestic abuse is truly a priority for this Government, it must take domestic abuse service needs into account as part of their annual spending budget.

18. It is a welcome suggestion that the National Statement of Expectations (NSE) on Violence Against Women and Girls (VAWG) should be embedded into the Government's approach. We recommend that the Government pays close attention to their self-imposed commitments outlined in the NSE, including: working with the specialist VAWG sector to ensure a secure future for a range of services, putting the victim at the heart of service delivery, embedding access to mental health service provision, and mapping out local women's support groups – including those led by BAME women for BAME women.³¹ Ultimately, the Domestic Abuse Commissioner should have oversight on whether the NSE is met and working in line with national strategy on domestic abuse.

Assisting victims with complex needs

19. The Government must ensure that migrant women are not doubly discriminated against as a result of being a victim of abuse *and* not having independent or settled status. Victims with complex needs are also more likely to stay with abusive partners as they have fewer support networks, may be more isolated, do not have adequate access to services, and fear reprisal from authorities. These groups include: migrant women, victims of abuse who have been accused or convicted of crimes, disabled victims, and those with low socio-economic status or economic insecurity.
20. For victims who have been convicted of crime, we believe the approach should be twofold: (1) preventative, and (2) rehabilitative. Firstly, the Government needs to improve the support networks and overall response to domestic abuse, to prevent victims from turning to offending behaviour in the first place. The Prison Reform Trust has described domestic abuse as a “*driver*” to women's offending, and revealed that 57 per cent of women in prison report having been victims of domestic violence.³² In these cases, incarceration leads to further trauma and can exacerbate mental health issues for victims – potentially violating women's right to life (Article 2 ECHR), and freedom from inhuman or degrading treatment (Article 3 ECHR). Self-harm and suicides are rife - 46 per cent of women in prison report

²⁷ Harriet Agerholm, 'Fears for victims of domestic abuse as number of police charges plummets in one year', The Independent, (2 April 2017), <https://www.independent.co.uk/news/uk/crime/domestic-abuse-police-charges-fall-cases-rise-fear-for-victimsa7663036.html>.

²⁸ Ibid.

²⁹ Women's Aid, SOS Save Refuges Save Lives, <https://www.womensaid.org.uk/what-we-do/campaigning-and-influencing/campaignwith-us/sos/>.

³⁰ The Week, 'The truth about British funding for women's refuges', Checked Out, (12 December 2017), <http://www.theweek.co.uk/checked-out/90364/the-truth-about-british-funding-for-women-s-refuges>.

³¹ Home Office, Violence Against Women and Girls – National Statement of Expectations, (December 2016), p.3, https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/574665/VAWG_National_Statement_of_Expectations_-_FINAL.PDF.

³² Prison Reform Trust, 'There's a reason we're in trouble', Domestic abuse as a driver to women's offending', (December 2017), passim, http://www.prisonreformtrust.org.uk/Portals/0/Documents/Domestic_abuse_report_final_lo.pdf.

having attempted suicide at some point in their lifetime.³³ There is something fundamentally wrong with a system that incarcerates women with poor mental health and who are victims of crimes often far worse than the ones they have committed. We recommend: Sentencing Guidelines should provide for judges to take domestic abuse into account as a specific mitigating factor, probation management should consider the risk of returning a victim to abuse, and we need a whole system approach that considers the recommendations made by Baroness Corston in her report on *'women with particular vulnerabilities in the criminal justice system'*.³⁴

No Recourse to Public Funds – a discriminatory barrier to safety

21. The 'No Recourse to Public Funds' (NRPF) requirement is discriminatory and harmful to BAME and migrant women, who are more likely to be turned away from a refuge space due to their immigration status. In fact, four in five BAME women are turned away from safe accommodation spaces.³⁵ Women subject to the NRPF rule are also more likely to stay with their abusers, as they cannot secure safe accommodation or support themselves independently. This creates a two-tier system of safety for domestic abuse victims, based on nationality, immigration status and race. This risks undermining women's right to life (Article 2 ECHR), freedom from cruel and degrading treatment (Article 3 ECHR), and the prohibition of discrimination (Article 14 ECHR). It also directly contravenes Article 4(3) the Istanbul Convention, that specifies any measures to, "*protect the rights of victims shall be secured without discrimination on any ground such as ... national or social origin ... migrant or refugee status, or other status*". Liberty supports the arguments expressed by many BAME women's services and civil liberties groups that the NRPF scheme should be abolished.³⁶ At the very least, if not abolished, this discriminatory status should be delinked from women's eligibility for refuge spaces. We believe the Government cannot meet its legal and policy obligations under the NSE on VAWG, the Istanbul Convention, and under fundamental human rights laws until no victim of abuse is turned away.
22. We also call for the immediate enforcement and expansion of the Destitute Domestic Violence Concession (DDVC). Presently, the scheme is only open to women in the UK on spousal visas, and almost a quarter of all applications have been rejected since it was first introduced in 2012 (with the proportion of refusals increasing every year).³⁷ The restrictive time frame in which victims receive the DDVC should be increased from three months to six months, and this vital safety net must be accessible for all victims of abuse with insecure immigration status.

³³ Women in Prisons, 'Key Facts – A round-up and latest key statistic regarding women affected by the criminal justice system', <http://www.womeninprison.org.uk/research/key-facts.php>.

³⁴ Baroness Corston, 'Women with particular vulnerabilities in the criminal justice system', 2007, <http://pactcharity.org/sites/default/files/corston-report-march-2007.pdf>.

³⁵ Imkaan, 'Capital losses: The state of the specialist BME ending violence against women and girls sector in London', 2016, p.9, https://drive.google.com/file/d/0B_MKSoEcCvQwdjXQm5GVDBISmM/view.

³⁶ Amnesty International, Southall Black Sisters, 'No Recourse, No Safety – the Government's failure to protect women from violence', (March 2008), https://thewomensresourcecentre.org.uk/wp-content/uploads/2012/12/amnesty_no_recourse.pdf.

³⁷ Gareth Evans, 'Meet the women forced to choose between domestic abuse and poverty', New Statesman, <https://www.newstatesman.com/politics/uk/2016/03/meet-women-forced-choose-between-domestic-abuse-and-poverty>.

Enhancing victims' protections in the criminal and civil justice system

Legal aid provisions

23. The legal aid system must be reformed to meet the needs of victims. We acknowledge that legal aid is currently available for immigration applications under the domestic violence rule and for private family law proceedings using the domestic violence gateway, but these are extremely difficult to obtain through the normal means-tested eligibility procedures. There are also other types of cases that will be out of scope for legal aid. Although exceptional case funding may be available if human rights law so requires, this type of funding is very difficult to secure and very limited in availability.³⁸ The Ministry of Justice must address these issues in order for the UK to be compliant with Article 57 of the Istanbul Convention, which provides that there should be “*a right to legal assistance and to free legal aid for victims not just for injunctions but for satellite litigation arising from domestic violence*”. We recommend that the extremely low means test must be increased and the evidential burdens on domestic abuse claimants must continue to be reduced – in order for the system to be fair, open, and accessible.

The Government's proposed civil order schemes – our concerns

24. Liberty is concerned about the new Domestic Abuse Protection Notice (DAPN) and Domestic Abuse Protection Order (DAPO) scheme proposed in the Government's recent consultation. We believe this is a distraction from areas where Government resources should be allocated, namely: improving access to safe accommodation, improving victims' ability to pursue prosecution through the criminal justice system, and transforming the culture and attitudes towards domestic abuse within statutory agencies. Further, the proposed civil orders scheme poses many unjustifiable threats to civil liberties. We believe there are viable alternatives, which provide stronger safety mechanisms without compromising on fundamental human rights.

25. A DAPN or a DAPO can be imposed on an individual *before* there has been a criminal charge, conviction or acquittal, *and* the breach of a DAPO would amount to a criminal offence under the Government's proposed scheme. These measures circumvent the criminal justice system as a person may end up incarcerated based on facts determined by a legal process that falls far below the standard of fair process necessary to justify a criminal conviction. This is a clear threat to the rule of law. Liberty is also concerned that victims who are afraid of criminalising their abusers will face the same fears in relation to the proposed civil order scheme.

26. Introducing positive requirements as conditions of such an order could also disproportionately interfere with the accused's right to liberty and right to privacy (Articles 5 and 8 ECHR). For instance, a notification requirement would compel an individual to share personal details with the police, including where they live and current intimate relationship, before they have been convicted of a crime. This greatly infringes their privacy rights. Liberty has historically opposed the Domestic Violence Disclosure Scheme (DVDS) – otherwise known as 'Clare's Law' – for its inefficacy and the fact that it puts the emphasis on women to

³⁸ Monidipa Fouzder, 'Exceptional case funding scheme 'inaccessible', High Court told', The Law Society Gazette, (10 June 2015), <https://www.lawgazette.co.uk/law/exceptional-case-funding-scheme-inaccessible-high-court-told/5049313.article>.

take their protection into their own hands.³⁹ Refuge has also argued that the DVDS is ineffective, and that it would not make any meaningful difference to victims.⁴⁰

27. Related to this, we are deeply troubled by the suggestion that electronic monitoring should be used as part of the DAPO scheme, and could be flexibly imposed by the courts. The Government has suggested using controversial new GPS tracking technology to monitor an alleged perpetrator's location, establish their behaviour patterns, or provide evidence of someone's movements. No details have been given of any statutory safeguards, or any review, variation or appeal process. Liberty believes this risks violating an individual's right to liberty and right to privacy (Articles 5 and 8 ECHR). We have further concerns about the effectiveness of this technology, which was described as "*fundamentally flawed*" and a "*waste of public money*" following a Ministry of Justice deployment.⁴¹ The Council of Europe have also voiced concerns about using electronic monitoring at the pre-trial stage, concluding that it should be avoided.⁴² EAW have expressly disagreed with the Government's electronic monitoring proposal, stating that they are, "*concerned that this proposal would be used differently by different courts and may give [a] false sense of security to victims and interested agencies.*"⁴³ We support the independent women's sector when we say that the Government's electronic monitoring proposals are ill-conceived and ineffective – such a scheme is likely to cause more harm than good.
28. Liberty also opposes the Government's proposal to increase the use of conditional cautions in domestic abuse cases. Conditional cautions require a person to comply with coercive conditions that are rehabilitative, reparative or punitive in nature – and failure to comply may result in prosecution for the offence. Conditional cautions have historically been intended to allow police to deal with 'low-level' offending. But domestic abuse is not a 'low-level' offence – it is an offence of the most serious kind and therefore police should not be given wide-ranging powers as an alternative to the proper criminal justice process. For these reasons, DPP guidance restricts the use of conditional cautions for domestic abuse cases – it is stated to be rarely appropriate in these circumstances.⁴⁴ Therefore, we urge the Government to reconsider this strategy.

Delivering justice through a fair legal process

29. The Government has correctly identified that victims often fail to pursue justice through criminal proceedings and routinely retract cases. Yet the Government has incorrectly identified the reasons behind this. Victims of abuse choose not to engage with the justice system due to mistrust, a lack of confidence in a system that they feel is stacked against them⁴⁵, fear of being reported to immigration

³⁹ Jamie Grace, 'Dodgy DVDS: some problems with the national roll-out of the Domestic Violence Disclosure Scheme', Centre for Crime and Justice Studies, <https://www.crimeandjustice.org.uk/publications/cjm/article/dodgy-dvds-some-problems-national-rollout-domestic-violence-disclosure>.

⁴⁰ The Telegraph, 'Clare's Law' plans criticised by violence charities', (5 March 2012),

<https://www.telegraph.co.uk/news/uknews/law-and-order/9123151/Clares-Law-plans-criticised-by-violence-charities.html>.

⁴¹ Public Accounts, 'Summary: Offender-monitoring tags', (23 January 2018),

https://publications.parliament.uk/pa/cm201719/cmselect/cmpubacc/458/45803.htm#_idTextAnchor000.

⁴² Mike Nellis, 'Standards and Ethics in Electronic Monitoring', Council of Europe, (June 2015),

<https://rm.coe.int/handbookstandards-ethics-in-electronic-monitoring-eng/16806ab9b0>.

⁴³ EAW, 'DRAFT Submission to Government Consultation on the proposed Domestic Violence and Abuse Bill', (April 2018),

<https://www.endviolenceagainstwomen.org.uk/wp-content/uploads/Updated-EAW-DVA-Bill-Consln-Submission-DRAFT-FOR-WEBSHARING-26-APR-18.pdf>.

⁴⁴ CPS, 'Domestic Abuse Guidelines for Prosecutors', <https://www.cps.gov.uk/legal-guidance/domestic-abuse-guidelinesprosecutors>.

⁴⁵ NR Foundation, 'Domestic Violence: Making it through the Criminal Justice System', p.4, <https://www.nr-foundation.org.uk/downloads/Domestic-Violence-making-it-through.pdf>.

enforcement in some cases, and fear of retribution by their perpetrators.⁴⁶ In order to improve this, we suggest two main changes: (1) resources and funding should be given to Independent Domestic Violence Advocates and specialist domestic abuse services, so that advocates can support victims throughout the judicial process, and (2) victims need a guarantee that they will not be reported to the Home Office as a result of pursuing a criminal case, and that they will not be further victimised during the process. Eradicating the culture of disbelief in the courtroom is the first step to ensuring that victims do not feel isolated or further traumatised by proceedings themselves.

30. Liberty disagrees with the Government's proposals for a 'fast track' trial process as a solution to this problem. A 'fast track' system, where cases must be decided within two weeks, risks running unfair trials and providing 'watered-down' justice. In these plans, the Government claims that faster trials will apply only to 'straightforward' cases, but the Government fails to define what a 'straightforward' domestic abuse case is. Such a standard risks encouraging reductionist assessments of cases that rely on stereotypes and snap judgments, gloss over complex forms of abuse, or ignore non-physical types of offending behaviour. It would create a two-tier system where those without complex needs may have their cases dealt with expediently, and others are still subject to major delays. Such a proposal is inherently unjust. We need an overhaul of the entire system to make it more efficient, rather than offering an unequal 'fast track' process for some.

Amendment on abortion rights

31. Liberty supports amending the Domestic Violence and Abuse Bill to ensure that women and pregnant people in Northern Ireland have access to safe and legal abortions. Presently, s.58 and s.59 of the Offences Against the Person Act 1861 criminalise the termination of a pregnancy, unless there is serious danger to the pregnant person's life. Breaking this outdated law is punishable by incarceration – for which the maximum penalty is life in prison. This even applies to those who have had abortions following rape, incest or due to fatal foetal abnormalities.
32. We believe this is an infringement of fundamental human rights. The Committee on the Elimination of Discrimination against Women (CEDAW) has stated that thousands of women and girls are subjected to *"grave and systematic violations of rights due to restrictive access to abortion ... in Northern Ireland."*⁴⁷ The CEDAW Vice-Chair – Ruth Halperin-Kaddari – went further and commented that, *"The situation in Northern Ireland constitutes violence against women that may amount to torture or cruel, inhuman or degrading treatment"*.⁴⁸ Liberty supports this view.
33. In a recent landmark ruling, the Supreme Court indicated that existing abortion legislation in Northern Ireland is incompatible with human rights law in cases of fatal foetal abnormality and sexual crime.⁴⁹ There was a majority view that the legislation infringed the right to respect for private and family life

⁴⁶ Marianne Hester, 'The Criminal Justice System response to domestic violence', https://ec.europa.eu/justice/grants/results/daphne-toolkit/en/file/2983/download?token=eTb_OD07.

⁴⁷ CEDAW, 'Report of the inquiry concerning the United Kingdom of Great Britain and Northern Ireland under article 8 of the Optional protocol to the Convention on the Elimination of All Forms of Discrimination against Women', February 2018, http://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/GBR/INT_CEDAW_ITB_GBR_8637_E.pdf.

⁴⁸ OHCHR, 'UK violates women's rights in Northern Ireland by unduly restricting access to abortion – UN experts', February 2018, <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=22693&LangID=E>.

⁴⁹ In the matter of an application by the Northern Ireland Human Rights Commission for Judicial Review (Northern Ireland), Reference by the Court of Appeal in Northern Ireland pursuant to Paragraph 33 of Schedule 10 to the Northern Ireland Act 1998 (Abortion) (Northern Ireland) [2018] UKSC 27, per Lady Hale and Lord Kerr.

(Article 8 ECHR) and Lord Kerr and Lord Wilson would have held that it is also incompatible with the right not to be subjected to inhuman or degrading treatment (Article 3 ECHR). Although this judgment is not binding – due to a technical point on standing – the Supreme Court made some robust and pointed comments about the human rights implications of the 1861 Act. Lord Kerr concluded that although no declarations were made, the court’s views on the human rights arguments *must* be considered by those who have the power to make this decision.

34. Although this issue has been gaining traction in parliament, it certainly needs greater focus. A cross-party coalition has called for the Prime Minister to act, by ensuring that Westminster is given the opportunity to vote for repeal of s58 and s.59. Liberty supports this call to protect women’s fundamental human rights, bodily autonomy and reproductive freedom. We hope to see this action taken as quickly as possible, and view the Domestic Violence and Abuse Bill as a clear opportunity to take this necessary step.

Conclusion

35. As EAWW acknowledge, the upcoming Domestic Violence and Abuse Bill is a “*once in a generation*” attempt to end abuse and protect survivors.⁵⁰ However, the Government’s current strategy does not offer this opportunity. In order to transform the response to domestic abuse, ministers must fully comprehend the flaws of the present system and identify the key areas that need to change in order to keep victims safe. The Government should listen more carefully to the voices of the independent women’s sector and measure its proposals by the standards set out in the Istanbul Convention. The Government must also ensure that this system is human rights compliant. Therefore, Liberty calls for: an end to the discriminatory treatment of migrant victims of abuse, adequate public service provisions for *all* victims, a concerted effort to transform statutory agencies’ culture of disbelief into one of compassion, adequate refuge and safe accommodation spaces so that no victim is turned away, and a commitment to making our legal system accessible and supportive for victims – as well as fair and just for those accused.
36. Liberty also acknowledges that domestic abuse disproportionately impacts women and so the Government’s strategy must consider this Bill as part of its wider strategy to end all violence against women and girls. Former Home Secretary – Amber Rudd – promised the new law would “*fundamentally change the way we as a country think about domestic abuse.*”⁵¹ We sincerely hope that the final legislation does indeed do this. However, the Government’s proposals at present offer no real ‘fundamental changes’ that achieve the desired outcomes called for by us, by the independent women’s sector, and most importantly, by victims. We urge the Government to ensure these needs are met by the Domestic Abuse and Violence Bill.

⁵⁰ EAWW, ‘DRAFT Submission to Government Consultation on the proposed Domestic Violence and Abuse Bill’, (April 2018), <https://www.endviolenceagainstwomen.org.uk/wp-content/uploads/Updated-EVAW-DVA-Bill-Consln-Submission-DRAFT-FOR-WEBSHARING-26-APR-18.pdf>.

⁵¹ James Millar, ‘Victoria Atkins: “The domestic abuse bill will be a game-changer”’, The House Magazine, (21 May 2018), <https://www.politicshome.com/news/uk/home-affairs/law/house/house-magazine/95261/victoria-atkins-%E2%80%9C-domesticabuse-bill-will-be>.