

Women's **Policy Group NI**

WPG NI Response to PPS Policy on Prosecuting Cases of Domestic Abuse Consultation

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1. Introduction:

The Women's Policy Group (WPG) is a group of policy experts and practitioners who advocate collectively for women and girls by promoting gender equality through an intersectional feminist lens. We challenge systemic injustice and discrimination affecting women and girls by informing society and influencing policy and law. Our work is informed by women and girls' lived experiences and rooted in international human rights law.

The WPG is made up of women from trade unions, grassroots women's organisations, women's networks, feminist campaigning organisations, LGBTQ+ organisations, migrant groups, support service providers, NGOs, human rights and equality organisations and individuals. Over the years this important network has ensured there is good communication between politicians, policy makers and women's organisations on the ground. The WPG is endorsed as a coalition of expert voices that advocates for women in Northern Ireland on a policy level.

If you have any questions or queries about this evidence submission, or would like to discuss this evidence further with the WPG, please contact Elaine Crory, Women's Sector Lobbyist at elaine.croory@wrda.net.

This response was prepared by the following WPG members:

- Elaine Crory – Women's Resource and Development Agency
- Aoife Mallon - Women's Resource and Development Agency
- Jonna Monaghan – Women's Platform

Please note that this response also includes evidence from other WPG work, compiled by a range of WPG members, and not all member organisations have specific policy positions on all the areas covered in this response.

1.1 Endorsements

The WPG would like to endorse the responses submitted to this call for evidence by Women's Aid Federation Northern Ireland and by Women's Platform.

2. Past Consultations Responses, Evidence Submissions and Briefings:

Several members of the Women's Policy Group have been campaigning on matters relating to domestic violence and violence against women and girls for many years. The WPG has published a wide range of evidence including primary research reports, evidence submissions, public consultation responses and specific briefings on issues relating to this consultation. These publications and evidence submissions include:

- Raise Your Voice Response to PPS Policy on Prosecuting Sexual Offences (2022)¹
- WPG Evidence Submission to Justice Committee on the Domestic Abuse and Family Proceedings Bill (2020)²
- WPG Joint Written Response to Call for Views: New Strategies: Domestic and Sexual Abuse Strategy (DOJ, DOH) Violence Against Women and Girls Strategy (TEO) (2022)³
- WPG Response to DOJ Public Consultation on Enhancing Legal Protections for Victims of Domestic Abuse (2021)⁴
- WPG Response to Westminster Northern Ireland Affairs Committee Call for Evidence (2022)⁵
- WPG Primary Research Report on Violence Against Women and Girls in Northern Ireland (2022)⁶
- WPG Primary Research Report on the Impact of COVID-19 on women in Northern Ireland (2021)⁷

2.1. Content from previous WPG Responses

Activists, women's organisations and support providers have spent many years calling for adequate domestic abuse legislation and policies in Northern Ireland. In the current global pandemic, evidence shows that rates of domestic abuse and violence has sharply increased.

¹ Raise Your Voice (2022) 'PPS Policy on Prosecuting Sexual Offences: Raise Your Voice response to consultation document' Available here: <https://static1.squarespace.com/static/5d0b8e80c3c6f40001ed29b5/t/62878b2734c61929bbb87f88/1653050152048/RVYV+response+to+PPS+Policy+on+Prosecuting+Sexual+Offences.pdf>

² WPG (2020) 'WPG Evidence Submission to the Justice Committee on the Domestic Abuse and Family Proceedings Bill' Available here: <https://wrda.net/wp-content/uploads/2020/06/WPG-NI-Evidence-Submission-to-Justice-Committee-05.06.20.pdf>

³ WPG (2022) 'Joint Written Response to Call for Views: New Strategies: Domestic and Sexual Abuse Strategy (DOJ, DOH) Violence Against Women and Girls Strategy (TEO)' Available here: <https://wrda.net/wp-content/uploads/2022/03/WPG-Response-to-Call-for-Views-New-Strategies-Domestic-and-Sexual-Abuse-and-VAWG-Mar-22.pdf>

⁴ WPG (2021) 'WPG Response to DOJ Public Consultation on Enhancing Legal Protections for Victims of Domestic Abuse' Available at: <https://wrda.net/wp-content/uploads/2021/02/WPG-Response-on-Enhancing-Legal-Protections-for-Victims-of-Domestic-Abuse-Public-Consultation.pdf>

⁵ WPG (2022) 'WPG Response to Westminster Northern Ireland Affairs Committee Call for Evidence: The Effect of Paramilitaries on Society in Northern Ireland' Available at: <https://wrda.net/wp-content/uploads/2022/05/WPG-NI-Response-to-Westminster-Northern-Ireland-Affairs-Committee-Call-for-Evidence.pdf>

⁶ WPG (2022) 'Just a Fact of Life: Violence Against Women and Girls in Northern Ireland: Women's Policy Group Research Findings' Available at: <https://wrda.net/wp-content/uploads/2022/04/WPG-VAWG-Research-Report.pdf>

⁷ WPG (2021) 'WPG COVID-19 Feminist Recovery Plan Supplementary Research Report: Putting Women's Voices at the Core' Available at: <https://wrda.net/wp-content/uploads/2021/07/WPG-Feminist-Recovery-Plan-Research-Report-Womens-Voices-at-the-Core.pdf>

Women make up the majority of domestic abuse victims and therefore will be significantly impacted by any measures introduced aimed at tackling and prosecuting cases of domestic abuse. It is imperative that these measures are fit-for-purpose and work towards achieving a culture shift in how we think and speak about domestic abuse.

Short prison sentences, and indeed decisions by PPS to refer serious cases to lower courts with limitations on the severity of sentences that they can impose - communicate something to the public regarding the severity of the offence. This is especially relevant when we see these cases in the context of how crimes such as drug possession are sentenced, where we see a large disparity in sentencing, it communicates a great deal about how our society quantifies the harm done to victims and survivors.

We need to change the culture of how domestic violence and abuse is treated in Northern Ireland and a hefty sentence for domestic abuse is a means of highlighting the gravity of domestic abuse and the intolerance for it in our society.

2.1 Lived experiences collected through WPG Primary Research

The WPG has conducted two primary research projects which looked at the impact of the COVID-19 pandemic on women and the scope, scale and prevalence of violence against women and girls in Northern Ireland, including domestic violence. We would like to highlight some of the findings from this research, relating to domestic abuse, in this section.

Testimonies from WPG Primary Research on Violence Against Women and Girls in Northern Ireland:

"Suffered domestic abuse both physical and verbal for several years from I was 19 yrs old and changed me dramatically as a person, not for the better. It made me anxious, aggressive, afraid, nervous and angry. I probably continue to suffer from PTSD, however, the services just are not available for me to address my issues."

"I experienced domestic abuse from an ex partner in my early 20s. It took years for me to realise that what happened was abuse. I was also raped in my early 30s (he removed condom without my consent). I was hurt and angry for a long time and still struggle to deal with what happened to me in a healthy way."

"At 16 years old I was the victim of Domestic Abuse where he tried to isolate me from friends and would break my phone or take any money I had. Also pushed me around when I got pregnant."

Testimonies from WPG Primary Research on the impact of COVID-19 on Women and Girls in Northern Ireland (relating to domestic abuse):

"I feel that we can pass all the domestic abuse laws, amend how the courts treat rape victims, that we like. But if we don't tackle the reason for the behaviours, toxic patriarchal views of men/women/ relationships, we are just using a toothpick to chip away at an iceberg."

"I have a teenage daughter and i believe that there is not enough knowledge to both male and female on the impact of domestic abuse, or the signs as such of it, bar the obvious of physical abuse, i believe that if i had been educated on this, and or aware of the signs or gate ways of support agencies or any other form of guidance and help, perhaps i may have seen it sooner and left."

"The domestic abuse, continued harassment through court regarding child and online abuse orchestrated by my ex and his new partner have had the single most negative impact on my mental and physical wellbeing in my whole life. In my experience the PSNI, women's aid etc are excellent, courts are archaic and about 100 years behind in dealing with these things. "

The following paragraphs provide an extract from one of the case studies contained in the WPG Primary Research Report titled 'Putting Women's Voices at the Core.' This case study is based on an interview with a survivor of domestic abuse. Lisa is not her real name.

Lisa's husband was physically, psychologically, financially and spiritually abusive towards her, with their marriage being characterised by high levels of coercive control. Her husband controlled the couple's finances and would take and spend all of their money as soon as it was received. This meant that Lisa had no money of her own to buy food or other necessities. Lisa described being extremely hungry, walking the streets, hoping to find a pound coin on the pavement that she could use to buy some food...

Lisa initially did not tell anyone about the abuse, due to the fear of being shamed by her community and bringing shame upon her family. Lisa's husband used this threat of shame to keep her silent; thereby allowing him to maintain control over her and keep her in the abusive relationship. In Lisa's words, the abuse was so severe and she felt so isolated that: "The only way I

could see out was if he died or I died. I used to fantasise about just driving into a wall."

The following paragraphs provide an extract from a case study written as part of WPG primary research into violence against women and girls in Northern Ireland. This case study is based on an interview with a survivor of domestic abuse. Beth is not her real name.

Beth became homeless as a result of domestic abuse perpetrated by her ex-husband. This abuse continued for several years and took many forms including physical, psychological, online and financial abuse. Once Beth became separated from her ex-husband, he took ownership of their house and car, leaving Beth homeless in the midst of the pandemic...

Beth acquired two non-molestation orders which her ex-husband repeatedly broke, forcing her to continuously take time off work to attend court. Beth's ex-husband was eventually charged with a two-year suspended sentence and Beth was granted a one-year restraining order, requiring annual renewal. Beth has little faith that the restraining order will be effective as the non-molestation orders did little to prevent the stalking and harassment by her ex-husband.

The domestic abuse Beth experienced has had long-term impacts on her employment, health, social life and finances. Once Beth left the hostel, she suffered from a breakdown which left her unable to work and in need of specialised mental health support... Beth felt that although she was a victim of abuse, she was being punished by public services after reporting it.

Beth explained, "I was kind of getting punished for reporting him, getting punished for taking him to court, getting punished for being a frontline worker... in the middle of COVID and having to go to a homeless hostel. Like a lot of things could've changed... they [public services] could've done a lot of things differently." In terms of how public services deal with abuse victims, Beth believes "there has to be a plan in place to keep women safe...there just needs to be more support." This involves signposting victims to relevant support services and providing them with adequate and appropriate healthcare support and accommodation...

"You're told to report domestic violence and then you're thinking, well, I can understand why people don't because look what happens."

Some of our main research findings from our primary research into Violence Against Women and Girls, relating to domestic abuse and sexual abuse, included the following:

- 68% of respondents were aware of domestic abuse as a form of violence against women and girls,
- 67.4% of respondents were aware of sexual abuse as a form of violence against women and girls.
- 95.8% of respondents thought that a Strategy on violence against women and girls should address all of the following forms of violence:
 - Domestic abuse
 - Sexual abuse
 - Online abuse
 - Honour-based abuse
 - Economic abuse
 - Coercive control
 - Sexual harassment
 - Street harassment
 - Emotional abuse
 - Unwanted rough sex
 - Misogynistic hate crimes
 - Spiritual abuse
 - Workplace harassment
 - Stalking
 - Forced isolation from family and friends
 - Controlling an individual's style and appearances
 - Systemic violence by the state
- 54.3% of women were aware of all of the above forms of violence against women and girls, including various forms of domestic abuse such as honour-based abuse, economic abuse, coercive control, emotional abuse and forced isolation from family and friends.
- 83% of respondents have experienced or been impacted by men's violence against women and girls
- 82% of those who had experienced or been impacted by men's violence against women and girls first experienced this before the age of 20

Furthermore, our survey on the impact of COVID-19 on women and girls found that 58% of women had been a victim of domestic abuse, stalking, harassment, hate crime or assault.

3. General Comments on the PPS Draft Policy on the Prosecution of Domestic Abuse Offences

For context, it is important to note that international human rights standards, in particular the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) and the Council of Europe Istanbul Convention on taking action against violence against women, which is based on the European Convention on Human Rights, commit States Parties including the UK to take rigorous and effective action on domestic abuse and violence against women and girls. Both are binding on the UK as a State Party to each Convention⁸, and therefore provide a strong mandate for improved prosecution of domestic abuse.

Importantly, these Conventions set out a rights-based framework, which differs significantly from the current Test of Prosecution in Northern Ireland. It would be timely and welcome to further review this Test as, in many cases, it does not adequately relate to domestic abuse offences, creating situations where perpetrators of serious offences are not meaningfully dealt with.

The Istanbul Convention, in particular, integrates action against perpetrators as a core pillar, in addition to setting out comprehensive guidance on protection needed for victims/survivors, including child victims and witnesses. Requirements and guidance under this pillar stress the need for timely investigations and access to immediate protection where required, and also underline the importance of a clear understanding of the structural dynamics of domestic abuse as a basis for investigation and prosecution.

Specifically, the Istanbul Convention commits States Parties to protecting complainants whose immigration status is linked to the perpetrator. It is vital that this is clearly communicated to migrant communities, considering the significant barrier immigration status and reporting to the Home Office constitute for victims/survivors in this community.

CEDAW General Recommendation 35⁹ emphasises that the judicial system must apply law free from gender stereotypes and discriminatory beliefs and practices. In particular, it underlines that the standard of proof typically required may affect women's right to equality, and that this must be addressed. This is particularly relevant relating to the Test of Prosecution, but also the evidence accepted and utilised during prosecution decisions and subsequently trials. Above all, this provides a mandate for

⁸ The UK [ratified](#) the Istanbul Convention in July 2022, following a [Command Paper](#) in the House of Commons in May 2022

⁹ CEDAW General Recommendation 35 on violence against women and girls. Information available here: <https://www.ohchr.org/en/treaty-bodies/cedaw/launch-cedaw-general-recommendation-no-35-gender-based-violence-against-women-updating-general>

new types of evidence that should be considered in prosecution; as noted elsewhere in this response. Witness statements may be difficult or impossible to obtain due to coercive control offending that stops a victim/survivor from disclosing abuse of any kind to an outside person, and consideration should be given to other mechanisms, such as impact statements on health, working life or personal life. It should be noted that GR35 also requires States Parties to allocate 'adequate funding' to judicial structures.

Both Conventions clearly require States Parties to undertake effective training and awareness raising among professionals, to ensure effective and non biased decision making. It is important that this guidance is underpinned by a comprehensive training programme for PPS case officers and prosecutors, to ensure a clear and shared understanding of the dynamics of domestic abuse. In particular, it is vital to integrate victims/survivors and their lived experience in training and capacity building, considering the extremely complex impacts of domestic abuse on victims/survivors. While the consultation document sets out some of this, direct engagement with concrete examples is essential to enable professionals to meaningfully understand the phenomenon of domestic abuse and how pervasive impacts are on all aspects of the victim/survivor's life and identity.

4. Survey Question Responses

This section will provide responses from the Women's Policy Group to the consultation survey questions.

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Q1. At Chapter 2 (see 2.1 and 2.2), is there sufficient information in respect of the legal framework, and in particular the new provisions under the Domestic Abuse and Civil Proceedings Act (NI) 2021?

Yes, with caveats. This section lays out the legal framework well, however there are things that could be clearer or that need further clarification.

Clarity is urgently needed at 2.1.2 on sexual abuse. The phrasing used of a "situation when a person is forced (without consent) to participate in unwanted, unsafe or degrading sexual activity" and then "forced sex" is enormously problematic as it gives the impression that physical force must be used to meet the legal threshold for sexual abuse. Sexual abuse can be perpetrated by grooming, by deceit, by manipulation, while the person is asleep, and a myriad of other possibilities. While this is true in the

law, the choice of language here implies that physical force is a necessity for a charge of sexual abuse. This should be urgently amended to “situation where a person experiences unwanted unsafe or degrading sexual activity without their consent” and “non-consensual sex” respectively.

Q2. At Chapter 2 (see 2.3), is there sufficient information to explain how prosecutors will apply the new domestic abuse offence (Section 1 of the 2021 Act).

Further detail would be beneficial at 2.3.16 on different courts and their powers in terms of sentencing. From the point of view of a victim or survivor, it is important that they understand why a case might be heard in one or another court, and this lack of clarity may lead to a perception that a decision has been made pre-trial as to the seriousness of the case or the impact of the harm done to the survivor. A few sentences explaining the ways in which these decisions are made - or indeed referring the reader to a different policy paper where this is accounted for - would be valuable.

Expand on 2.3.17 regarding the defence to the domestic abuse offence, where the defendant can show that the “course of behaviour was reasonable”. In this section, two examples are used to illustrate where that defence may be used, but it would be helpful to include some examples of things that do not meet the threshold of “reasonable”. This is not just for the purposes of clarification and setting out clearly the purposes of this defence, it is also for the benefit of survivors who - due to the psychological nature of domestic abuse, may be convinced by their abuser that they are indeed not reasonable and that any abuse they experience may be intended as being “for their own good”. Any account of this defence therefore needs to acknowledge the common reality of abusers gaslighting their victim to believe their abuser is in fact their protector, and the extraordinary efforts that need to be made by survivors to overcome that conditioning and report the abuse.

This issue is especially relevant when considering the higher rates of domestic abuse experienced by disabled women and disabled people generally, as the defence could quite easily be manipulated by an abuser to convince police and/or courts that the abuser was engaging in a reasonable course of behaviour. In the Women’s Policy Group’s evidence submission to the Justice Committee on the Domestic Abuse and Civil Proceedings Act (then Bill), we articulated our concerns re this defence¹⁰:

“The WPG NI supports the complete removal of the caveat of “reasonable defence”, as we are deeply concerned with such measures being used as a justification of abuse by defendants. In creating such a provision, we are concerned that perpetrators can justify their abusive behaviour through

¹⁰ <https://wrda.net/wp-content/uploads/2020/06/WPG-NI-Evidence-Submission-to-Justice-Committee-05.06.20.pdf> p. 23 - 28

portraying victims of abuse as mentally unstable, unable to make decisions for themselves, having a history of addiction that can be used against them and so on. Further, victims may suffer from mental health issues caused by abuse and disabled women, who are already more likely to be victims of domestic abuse, could find themselves being disproportionately impacted by the implications of a “reasonable defence.”

We also outlined, in that evidence submission, our concerns about the abuse of older people being explained away in this way, echoing the concerns of the Commissioner for Older People as articulated by then-MLA Rachel Woods: “My main concern is around those who are in care or in caring relationships, and those who have disabilities with their physical health and mental health. The concern has also been raised by 24 Eddie Lynch, the Commissioner for Older People, who has noted the phrasing in clause 12(2)(a) that the evidence: “is enough to raise an issue as to whether the course of behaviour is as described in subsection (1)”. The phrase “enough to raise an issue” seems sufficiently loose as to conceivably allow for victim-blaming as a means of defence. It cannot be the case that the dominant person in a relationship needs only raise a query over the victim’s behaviour in order to rationalise abuse, as such formulation may allow.”

This issue is also relevant to victims/survivors who face mental ill health, and Chapter 3 acknowledges at 3.2.6 that on occasion an offender will attempt to use their victim’s mental health issues - alleged or real - to deny that the alleged events occurred. The draft policy is clear that this must not be accepted outright but assessed on its own merits. This awareness should also be extended to the kinds of claims alleged above; an offender may exaggerate the alleged unreliability of their victim’s memory, exaggerate their victim’s alleged dependence and more. If we can understand that this caveat applies in the case of mental health issues, we should acknowledge it also in terms of other disabilities or alleged addictions; offenders often lie, downplay and exaggerate to their own ends.

Acknowledging that this defence does exist despite our serious misgivings and concerns, at the least the PPS should provide as much clarity as possible to avoid the fear of the potential use of this defence resulting in the victim blaming of survivors and excluding them from seeking or accessing justice.

Q3. Chapter 3 sets out how we take decisions in domestic abuse cases. In your view, does this explain the key issues considered by the prosecutor – including the steps taken where there is a retraction or withdrawal by the victim?

Overall, this section accurately outlines the issues considered by prosecutors in domestic abuse cases. With that said, this is the stage of the process at which the most sensitive decisions are taken and the greatest risk of upsetting outcomes – at least

from the PPS – arises. For this reason it would be valuable to take extra care in the use of language and to ensure that some details are expanded to provide reassurance for victims. These are outlined below.

We recommend a rephrasing of harmful language at 3.1.6 with regard to offenders having “a lot to lose if prosecution leads to a permanent separation” and that a decision to prosecute may “result in some offenders embarking on conduct to maintain a relationship, or alternatively witness intimidation/harassment”. The issue here goes beyond the choice of words; the implication is that the prosecution may cause undue stress – as opposed to entirely deserved consequences – on offenders and that the outcomes of that stress may impact the victim. In reality the victim is already harmed in the case of domestic abuse, regardless of PPS action, and the language must not excuse the offender’s chosen actions regardless of what allegedly precipitated them. Similarly, any suggestion of victim blaming must be expunged, bearing in mind that prosecution most often flows from the victim’s complaint, and if this is the case it is the responsibility of the justice system in all its parts to protect the victim from further harm, not to give succour to the offender.

Clarity is recommended with regards to risk assessments at 3.3.4 – footnote 5 says that these “usually” take place and that they “should” address any risks around children. Mindful that these are police risk assessments and not the work of the PPS, it would be helpful to clarify how often these do not happen, under what circumstances they may not be done, and under what circumstances they will not include any risks around children.

3.3.5 covers special measures at courts, including screens and giving evidence via video link. The WPG takes the view that this should be standard practice when dealing with extremely traumatising and intimate harm such as domestic abuse. Given that it is not, at present, we would suggest that this section should require the prosecutor to offer this to the victim, rather than it being at the prosecutor’s discretion. A prosecutor is not necessarily best placed to assess the needs of a survivor. We are mindful that this is covered in more detail in Chapter 5, and it would be helpful to signpost this fact at this point in the document.

At 3.4.2 a helpful list of reasons a victim might withdraw their support for prosecution is given, but we feel it would benefit from the addition of a consideration of paramilitary intimidation. WRDA research¹¹ and work by Women’s Aid NI has demonstrated that this is a real phenomenon in the lives of women seeking to escape domestic abuse and, because of the nature of paramilitary control of entire

¹¹ Women’s Policy Group Submission to NI Affairs Committee Enquiry: Effects of Paramilitaries on Women p.12-16 Available here: <https://wrda.net/wp-content/uploads/2022/05/WPG-NI-Response-to-Westminster-Northern-Ireland-Affairs-Committee-Call-for-Evidence.pdf>

communities, survivors may fear consequences from their abuser's associates even if their abuser is themselves imprisoned for a lengthy period of time.¹²

In the same list, the mention of a fear of coming face to face with one's abuser in court is another reason to make changes to the provision of special measures as standard, while the fear of their abuser's associates adds credence to arguments to limit the use of the public gallery in these cases.

In terms of worrying language, it is brought into stark relief when, while listing factors that are useful when considering the public interest, this policy lists "the culpability of the defendant" at section 3.4.7. This is rather baffling at best, as their guilt or otherwise has yet to be decided by the court, so it seems to suggest that there are some kinds of alleged domestic abuse for which the abuser may not be responsible. We would urge immediate clarification of this point or removal of it entirely as in its current form it is very harmful and victim blaming language to use.

Finally, Section 3.8 on Alternatives to Prosecution is overall unclear and unhelpful. WPG agrees with Women's Aid NI on this; diversionary disposal is not appropriate in these cases because of the nature of the harm caused and the nature of the offence itself. While 3.8.1 says it is "rarely" appropriate, this is unhelpfully vague and something so sensitive and important needs to be spelled out clearly; when do the PPS consider it appropriate and why? Further questions are raised at 3.8.3 which implies that this course of action may be taken even when the complainant has expressed the desire that this not proceed. Urgent clarification is needed at least, and ideally a rethink of diversionary disposal for these crimes should be considered.

Q4. Chapter 4 provides an overview of how we deal with cases at court, including the sentencing stage. Is any additional information required regarding the PPS's approach?

Overall, this section is excellent, although there are a few instances where some clarification would be welcome.

At 4.1.6 which covers inappropriate cross-examination, it would be welcome both to include the circumstances in which Judges may allow some questioning of the victim, so that they may be prepared to face it and understand why it is allowed. It would also be valuable to include (perhaps in a footnote) what a victim ought to do if they believe the prosecutor did not proactively object to a line of questioning that they believed was inappropriate or damaging to either their case or to their reputation or health.

¹² NI Affairs Committee on the Effect of Paramilitary Activity and Organised Crime on Society in Northern Ireland, 18th January 2023, p. 10-12 Available here: <https://committees.parliament.uk/oralevidence/12544/pdf/>

At 4.1.9, the Policy outlines that the acceptance of alternative pleas will be transparent except in the “most exceptional circumstances”. Any clarification as to what these circumstances may be would be welcome.

At 4.2.4 there is an outline of the mitigating pleas that the defendant can enter before sentencing. Given that this is a very contested issue, and the fact that the prosecutor is empowered to object only when it is disparaging to a prosecuting witness rather than to question its truthfulness or relevance, this is something we urge urgent reform on. The WPG believe that this kind of evidence should not be admitted in either domestic abuse cases or sexual offences cases, it is harmful to the ends of justice.

Q5. Chapter 5 provides an overview of victim and witness issues and the services and other support available. Does this chapter cover all relevant issues or are there other matters that should be dealt with?

Once again, this is an excellent chapter that provides a lot of useful information. We do have a number of requests for clarification, however.

Firstly, at 5.1.1 we appeal again for special measures to be standardised. The PPS seems to recognise throughout this policy that this kind of crime can be extremely traumatising for survivors. Given this is the case, and given that many cases take place with special measures in place, it would seem both simpler, faster, and more mindful of the duty of care to survivors to include these measures as standard, with an option for the victim to “opt-out” if they wish. With regards to the possibility of clearing the court of the public and mindful of the new approach to this issue in cases of serious sexual offences following the Gillen Review recommendations, we would recommend that a similar approach should be taken as standard in cases of domestic abuse.

On a related issue, it is again mentioned at 5.1.3 that a judge makes a decision with regards to allowing or disallowing special measures. An outline of the information the judge uses to make such a decision would be helpful.

Again, we recommend a change of approach to the Victim and Witness Care Unit (VWCU)’s approach to contacting survivors with key information on the progress of their case, any appeals or release of the offender and related matters. While this document does say that these matters “may” be notified to the victim, we recommend a standardised approach and a duty to notify victims and survivors, and to do so in a timely manner. It is not an area of the PPS’s work that has a great deal of positive feedback from survivors, with many saying they had to proactively make contact for updates on their case, and lived in fear of encountering the offender before they were told about changes to bail conditions or adjusted release dates. Given the trauma and fear, as well as the palpable danger, arising from these cases we urge a

review of how this service operates at present and every effort be made to improve the service.

Q6. Annex A provides an overview of issues relevant to particular groups (e.g. men, women, younger people, ethnic minority communities etc.). Is this useful?

The WPG welcome the inclusion of this Annex and the consideration of issues relevant to more marginalised and impacted groups. We also welcome a recognition that a person's intersecting identities mean that they experience many of these marginalising factors at once, and that this presents challenges for those survivors that the PPS need to be cognisant of in their work.

We do have some concerns about some of the content, however.

In the **subsection on men**, the following line is included: "Some women may use children within the relationship to manipulate a male victim, by for example threatening to take away contact rights." The PPS will be aware that these contact arrangements are, when contested, the purview of the family courts and not a right that a woman may bestow or deny to a child's father. In addition, concerns about child contact following family breakdown can apply equally to either partner in any relationship, and including it here, and with this specific phrasing, implies it is a unique concern of men in heterosexual relationships – something women, specifically, do to men, specifically.

Repeating this argument in this language strays close to repeating the debunked and dangerous ideas known as "parental alienation", so often used against women who have left abusive relationships and so ignorant of a child's rights and needs¹³. This document is elsewhere extremely careful to stress that domestic abuse can happen to anyone and be perpetrated by anyone – even in this same section on men who experience abuse – and this sentence takes a markedly different approach. To suggest that "us(ing) children within a relationship to manipulate" is a gendered phenomenon is wrong and dangerous; it repeats misogynist propaganda and its acceptance by authorities like the PPS has a real impact on real families going through the family courts.

This sentence needs to be at least rephrased and ideally used verbatim in the section on women also, as follows: *"Some parents may fear loss of contact with their children should they report domestic abuse, and their partner may threaten to withhold contact should the victim report to police."*

¹³ Women's Aid Federation NI, Briefing on Parental Alienation. Available here: <https://www.womensaidni.org/assets/uploads/2020/06/WAFNI-Parental-Alienation-Briefing.pdf>

In the **sub-section on same sex, bisexual and transgender (LGBT) relationships**, we recommend expanding on the sentence that mentions “there may be threats of removal of children by Social Services” – this is not incorrect, but this is worth clarifying in terms that apply specifically to LGBT relationships but not to other kinds of relationships, for example the issues faced by a partner who may not be biologically related to a child but is their parent, such as through the use of IVF, in a way that would make this a particular challenge.

In the **sub-section on older people**, we urge a rephrasing of the sentence “where the victim is physically impaired or experiencing ill health, abuse may begin as a result of ‘care giver’ stress or anxiety”. This is a really worrying phrasing to use as it implies that abuse is something that happens almost as a natural consequence of stress, as opposed to something that an individual perpetrator holds full responsibility for. There have been real cases where this has formed the substance of the defendant’s case, and while the phenomenon of carers abusing the person they care for is very real the PPS must take care not to suggest that this is an unfortunate chain reaction set off by the victim’s illness or incapacity. The responsibility lies always with the perpetrator. See also our response to Q3 where we query the use of the term “the culpability of the offender” at section 3.4.7, as though some kinds of circumstances justify domestic abuse. It is a victim blaming trope and the PPS needs to amend this.

Please also see our response to Q2 above, with regards to section 2.3.17 on the defence of a “reasonable course of behaviour”. We believe that this provision disproportionately impacts on disabled survivors and elderly survivors.

In the **sub-section on disability**, we have no concerns about the content, but we would urge the PPS to ensure they include more detail, specifically on the disproportionate rates of domestic abuse experienced by disabled women and the particular barriers they face in reporting that abuse, which may include abuse from their caregivers. This is covered in detail in our research on VAWG outlined in section 2. In research that showed 83% of respondents had been impacted by men’s violence against women, that figure rose to 92.4% for disabled women¹⁴.

Please also see our response to Q2 above, with regards to section 2.3.17 on the defence of a “reasonable course of behaviour”. We believe that this provision disproportionately impacts on disabled survivors and elderly survivors.

In the **sub-section on minority ethnic communities**, we have no major concerns, but we note that it rightly mentions honour-based abuse and forced marriage. The WPG

¹⁴ WPG (2022) ‘Just a Fact of Life: Violence Against Women and Girls in Northern Ireland: Women’s Policy Group Research Findings’ p.34 Available at: <https://wrda.net/wp-content/uploads/2022/04/WPG-VAWG-Research-Report.pdf>

believes that these two items should be listed separately as they are separate (if often linked) forms of abuse.

We also argue that the phenomenon of honour-based abuse exists in communities that are not minority ethnic communities, most commonly carried out by paramilitary organisations. Our views on this are informed by Coumilah Manjoo, an expert on honour-based abuse who worked with us on our Feminist Recovery Plan¹⁵. Our position, therefore, is that this belongs here, but that paramilitarism as a phenomenon needs to be considered and integrated into this plan, as it is such a prevalent force in Northern Ireland and in domestic abuse cases here.

In the **sub-section on individuals involved in prostitution**, the WPG urges the PPS to replace the word “prostitution” with “sex work”. This has two major arguments in its favour; it both reduces the stigma and the negative connotations associated with the word “prostitution”, and it encompasses other kinds of sex work, for example online sex work that is not technically ‘prostitution’ as defined here but it is increasing in prevalence and subject to the same kinds of concerns outlined here. It is also in line with the language used in the Gillen Review to describe this line of work.

In the **sub-section on immigrants, refugees and asylum seekers**, the circumstances in which a person wishes to settle permanently in the UK as a victim of domestic abuse are laid out. While the list of things that they need to prove is clearly laid out, it is not clear how the victim may prove that – a guide regarding the kinds of things that would qualify as proof would be valuable. If the standard of proof is a conviction from a UK court, that must be made clear. If they have fled another country because of domestic abuse and come to the UK to seek refuge, it ought to be clear what kind of proof they need to present to have their claim accepted. If the PPS or Home Office have policies relating to these matters, they ought to be linked, summarised or both.

Q7. Thinking about the document as a whole, is the information clear and easy to understand? For example, is there any complex legal language or jargon which needs to be amended or explained?

Overall, the language is clear and free from excessively technical jargon, although the PPS may consider a glossary with technical and legal terms to be included as an annex.

Our main concerns in terms of clear and easy to understand information is that the Policy is occasionally too vague and non-committal when describing things, mentioning for example that a decision is for a judge to make but not clarifying on

¹⁵ Women’s Policy Group Submission to NI Affairs Committee Enquiry: Effects of Paramilitaries on Women p.9-10 Available here: <https://wrda.net/wp-content/uploads/2022/05/WPG-NI-Response-to-Westminster-Northern-Ireland-Affairs-Committee-Call-for-Evidence.pdf>

what grounds, or saying that something “may” be considered or done, but not on what grounds this may happen.

In addition, we have concerns about use of victim blaming language on more than one occasion, however non-intentional, and the perpetuation of harmful stereotypes. We have outlined these in detail above, but they include the suggestion that a decision to prosecute may cause a perpetrator’s behaviour to escalate, rather than an unequivocal statement that they choose this course of action themselves, and the incredibly dangerous statement covered in response to Q6 where it is implied that women weaponise children against men to keep them in abusive relationships, fuelling dangerous myths around family courts and misogynist tropes about women.

Q8. The overall purpose of this policy is to provide guidance on the general principles, commitments and associated working practices, and to explain the standards of service expected from the PPS in cases involving domestic abuse. In your view, does the updated guidance deliver this? (If not, please explain the reasons why).

Overall, yes, although as outlined above, we have concerns that could be amended before publication.

These fall approximately into 3 categories:

1. Clarifying with specific details
2. Avoiding victim blaming implications in phrasing and avoiding the repetition of harmful tropes
3. Policy changes to how things are done by the PPS, for example the provision of special measures as standard

It would be helpful to ensure that easily accessible resources, where key facts are presented in as straightforward language as possible, are available to local communities, so that people of all backgrounds can access them. This includes translations into main languages used in Northern Ireland, and outreach to relevant organisations, who can assist with the correct language and phrasing and support in outreach to communities.

Q9. Are there any other comments you would like to make about this policy?

In addition to the above, and mentioned briefly at Q3 and Q6, please consider the relevance of the Northern Ireland context. The presence of active paramilitary organisations that continue to wield control and are justifiably feared in many communities presents a barrier, not just to the reporting of these crimes and the willingness of a complainant to continue to support a prosecution, but also to the

machinations of justice itself. We realise it is outwith the scope of this document to address the scourge of paramilitarism, but recognising it as an ever-present reality would be helpful as it is a significant factor in willingness to report and likelihood of withdrawal of support for prosecution.

5. Conclusion

To conclude, the NI Women's Policy Group support the introduction of measures to improve the prosecution of domestic abuse cases. However, there are several issues with the proposed PPS Policy on Prosecuting Cases of Domestic Abuse which we have identified and explained in this response. We would like to see these issues addressed before such a policy is implemented and are keen to engage further with the PPS on this work.

ENDS

Please send receipt and link to published response to elaine.crory@wrda.net.

For any questions or queries relating to this submission, please contact:

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