

Consultation Response

Home office: strengthening the law on domestic abuse

Ref 2314

Date: 15 October 2014

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This consultation seeks views on whether the current law on domestic abuse needs to be strengthened to offer better protection to victims. It is specifically focused on whether we should create a specific offence that captures patterns of coercive and controlling behaviour in intimate relationships, in line with the government's non-statutory definition of domestic abuse.

Key points and recommendations

- This is a largely hidden issue for older people. It is under-recorded and under-researched.
- Clear evidence of the scale of the issue is difficult to obtain as the Crime Survey for England and Wales 'intimate personal violence' self-completion section is only offered to adults aged up to 59. We believe that this needs to be remedied.
- Making the domestic abuse definition a statutory one would bring diverse areas of work together to more effectively protect what we believe to be a potentially large number of hidden victims.
- The wording of any proposed law needs to be updated to reflect the wide range of domestic *abuse* issues, rather than focussing solely on domestic *violence*.

Does the current law adequately provide sufficient protection to victims of domestic abuse?

We believe that, for older people, domestic abuse is a hidden issue with hidden victims. Domestic abuse also occurs in myriad forms, and it is not clear that the current law is applied consistently, or able to respond effectively to, this variety in relation to older people.

Older people may be particularly affected as what may be perceived as 'low level' individual incidents can, when part of a longstanding pattern of cumulative abusive behaviour, have consequences that can equal or surpass any individual incident. This, in combination with other specific risk factors for older people including the development of health needs, retirement from work (resulting in increased contact), abuse resulting from stress associated with caring roles and social or geographical isolation may make older people more vulnerable to abuse. Age-related needs may increase both the mental and physical impact of domestic abuse, and the ability of victims to recover.

Additionally, for some older people, there will be factors that may make them less likely to disclose domestic abuse. These include concerns about sharing information considered to be private, and embarrassment and shame about a situation of domestic abuse. The impact of domestic abuse can be profound for those who may be reliant on a partner to provide care and financial support.

There is evidence from criminal cases and a Serious Case Review that agencies have not recognised domestic abuse issues for older people and have not put into place protective or supportive measures that may have reduced the risks of harm¹. However, clear evidence of the scale of the issue is difficult to obtain as the Crime Survey for England and Wales 'intimate personal violence' self-completion section is only offered to adults aged up to 59. We believe that this needs to be remedied.

There is a particular need, in our view, for practitioners in the Police, NHS and Social Services to be able to more effectively differentiate between a social care need, caused by a condition such as dementia, from a pattern of behaviour which can be considered abusive. Better awareness and application of the Mental Capacity Act 2005, in cases where domestic abuse of older people is identified or suspected, is also needed to ensure that older people's rights are maintained, whilst those who lack capacity to make specific decisions are effectively protected.

Domestic Violence Protection Orders (DVPOs) could form an element in protective responses to older people with needs for care and support who are experiencing domestic abuse, giving the victim much needed room to consider their own wishes and feelings. However it is not at all clear that consideration of DVPOs forms part of the usual practice toolkit for local multi agency adult safeguarding practice (it does not form part of many current adult safeguarding procedures).

The Crime & Disorder Act 1998 promotes multi-agency working in relation to the provision of services for victims of domestic violence, rather than abuse. This may lead to limitations in the responses that can be offered under this Act in cases where physical violence is not apparent or suspected. Again, for older people, this may mean that issues of domestic abuse are not considered.

The same issues apply for the Domestic Violence, Crime and Victims Act 2004. This refers primarily to violence rather than abuse other than in a specific section on 'Causing or allowing the death of a child or vulnerable adult' (section 5, which creates a criminal offence). This means that it can only be used reactively where there have been concerns about the abuse of an adult leading to death, rather than preventatively.

In summary, current law may offer a reasonable level of protection in cases where domestic violence is a factor, particularly where significant individual incidents have occurred. It is far less effective at supporting those experiencing forms of domestic abuse, which occur over time but have a long term cumulative effect.

¹ The cases of Mary Russell, Margaret Castle, Doreen Mann, Margaret Beardon, Dorothy Parsons and Sylvia Rowley-Bailey

In what ways could the law be strengthened?

The wording of any proposed law needs to be updated to reflect the wide range of domestic *abuse* issues, rather than focussing solely on domestic *violence*.

Understanding of the Mental Capacity Act needs to be promoted and any proposed Code of Practice or Guidance should take account of the framework of the Mental Capacity Act. Assessing the mental capacity of an individual to make a decision about their welfare, accommodation or safety can be particularly complex in situations where there is, or is suspected to be, domestic abuse where the person is cared for by, or lives with, a family member or intimate partner.

How would any changes you suggest be practically implemented?

Clear, widely disseminated, guidance will be key to successful implementation. This should include case examples that refer specifically to the needs of older people. Identification of all stakeholder and potential stakeholder groups is also required. Domestic abuse issues link a range of very diverse national and local organisations and groups including public health, NHS, Ambulance, Police, Fire & rescue, third sector, health and wellbeing boards, Adult and Child Safeguarding Boards, MAPPA, MARAC, Healthwatch and CQC. Any proposed Code of Practice or guidance should be highlighted for these organisations, with a proposal that training should be made available and operational procedures amended to reflect this guidance.

Does the current law sufficiently capture the Government's non-statutory definition of domestic abuse?

Domestic abuse approaches to date have tended to highlight partner violence, however there is a need to consider the impact of family and intergenerational forms of domestic abuse that particularly affect older people.

We welcome the expansion of the definition of domestic abuse, and the specific inclusion of statutory enquiries into suspected financial abuse, set out in the Care Act. However we are concerned that, for older people, the potential remedies that these may allow are stifled by patchy implementation. This may partly be a direct result of this not being a legal definition.

For older people issues such as psychological, financial, physical and sexual abuse may also be dealt with through adult safeguarding, rather than criminal justice, processes. In some contexts, therefore, these issues may not come to the attention of the police, and only statutory guidance under 'No secrets' guidance, rather than law, will apply. The Care Act strengthens this by placing Safeguarding Adult Boards (including the local authority and the police) on a statutory footing, but guidance is awaited on what *actions* local authorities and other partners should take where their enquiries indicate that abuse has, or

is, taking place. This may be of particular benefit to adults who need care and support in cases where both adult safeguarding issues and domestic abuse issues co-exist.

By using the language of 'domestic abuse' in law, rather than 'domestic violence' the opportunities to join currently segmented areas of supportive and protective work will increase. This, in turn, will lead to better outcomes for older people experiencing all forms of domestic abuse.