



CRIME AND DISORDER OVERVIEW AND SCRUTINY COMMITTEE

5 October 2021

Subject Heading:	Domestic Abuse Act 2021
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Policy context:	The report provides a summary of the Domestic Abuse Bill 2021
Financial summary:	There are no direct financial implications arising from this report.

The subject matter of this report deals with the following Council Objectives

Communities making Havering	[x]
Places making Havering	[x]
Opportunities making Havering	[]
Connections making Havering	[]

SUMMARY

The Domestic Abuse Bill received Royal Assent on the 29 April 2021.

RECOMMENDATIONS

That the Crime and Disorder Overview and Scrutiny Committee note the contents of the report.

REPORT DETAIL

1. Background

In January 2019, the government introduced the Domestic Abuse Bill 2017-19 following a consultation on transforming the response to domestic abuse.

The legislation was reintroduced in March 2020 as the Domestic Abuse Bill 2019-21, and received royal assent on 29 April 2021.

The Act:

- creates a statutory definition of domestic abuse
- establishes the office of Domestic Abuse Commissioner
- prohibits offenders from cross-examining their victims in person in the family courts
- creates a domestic abuse protection notice (DAPN) and domestic abuse protection order (DAPO)
- provides a statutory basis for the Domestic Violence Disclosure Scheme (Clare's law) guidance
- creates a statutory presumption that victims of domestic abuse are eligible for special measures in the criminal courts
- enables domestic abuse offenders to be subject to polygraph testing as a licence condition following release from custody
- places a duty on local authorities to give support to victims of domestic abuse and their children in refuges and safe accommodation
- requires local authorities to grant new secure tenancies to social tenants leaving existing secure tenancies for reasons connected with domestic abuse

2. Definition of Abuse

The act creates a statutory definition of domestic abuse based on the existing cross-government definition.

'Abusive behaviour' is defined in the act as any of the following:

- physical or sexual abuse
- violent or threatening behaviour
- controlling or coercive behaviour
- economic abuse
- psychological, emotional or other abuse

For the definition to apply, both parties must be aged 16 or over and 'personally connected'.

'Personally connected' is defined in the act as parties who:

- are married to each other
- are civil partners of each other
- have agreed to marry one another (whether or not the agreement has been terminated)
- have entered into a civil partnership agreement (whether or not the agreement has been terminated)
- are or have been in an intimate personal relationship with each other

- have, or there has been a time when they each have had, a parental relationship in relation to the same child
- are relatives.

We are currently reviewing all policy documents across the Council to ensure that the new definition is reflected. Training will be amended to reflect the changes in the DA Bill.

3. Domestic Abuse Commissioner

Under the Act, the government must appoint and fund the office of independent Domestic Abuse Commissioner responsible for:

- representing victims and survivors
- educating the public about domestic abuse
- monitoring the response of local authorities, the justice system and other statutory agencies
- holding statutory bodies to account in tackling domestic abuse

The Commissioner would have the power to hold statutory bodies and government to account and recommend how they can improve the response to abuse.

The Act places a duty on certain public bodies, including local authorities and government ministers to cooperate with the Commissioner and to respond to each recommendation within 56 days.

On 18 September 2019, Nicole Jacobs was appointed as the Designate Domestic Abuse Commissioner. This appointment ensured that the crucial work of the Commissioner could begin and was an opportunity to test the model before it was codified in law.

4. Cross Examination in family courts

The act prohibits offenders from cross-examining their victims in person in the family courts.

There would be an automatic ban on cross-examination in person where:

- one of the parties has been convicted of, given a caution for, or charged with certain offences against the other
- an on-notice protective injunction is in place between the parties
- there is 'other evidence' of domestic abuse perpetrated by one party against another.

The government has said that it will specify the offences and evidence of abuse required for this automatic ban in later regulations.

The act gives the court powers to:

- prohibit cross-examination in person where likely to either diminish the quality of the witness's evidence or cause significant distress to the witness
- appoint a legal representative to carry out cross-examination on behalf of a party who is prohibited from cross-examining the witness in person

The government has said that this court-appointed representative will be funded centrally.

5. Domestic abuse protection notice (DAPN) and domestic abuse protection order (DAPO)

The Act introduces two new civil protection injunctions:

- a domestic abuse protection notice (DAPN) – for immediate protection following an incident
- a domestic abuse protection order (DAPO) – flexible, longer-term protection for victims

These new injunctions are based upon the existing domestic violence protection notice (DVPN) and domestic violence protection order (DVPO).

5.1. DAPNs

A DAPN could provide that the accused party may not:

- contact the person for whose protection the notice is given
- come within a specified distance of any premises in England or Wales in which that person lives
- evict, exclude, prohibit from entering or require leaving that person from the premises (if they live together)

It could be issued by police against a party in response to a domestic abuse incident where there are reasonable grounds to believe that:

- the party has been abusive towards a person aged 16 or over to whom the party is personally connected
- it is necessary to give the notice to protect that person from domestic abuse, or the risk of domestic abuse, carried out by the party.

5.2. DAPOs

Under the act, a DAPO could be used to prevent a party from being abusive to another person aged 16 or over to whom they are personally connected by:

- prohibiting the party from doing things described in the order, and/or
- requiring the party to do things described in the order

The conditions in a DAPO could be varied over time by the courts and would be able to cover positive and/or negative requirements. For example, a DAPO could:

- prohibit any form of contact between the parties
- require the party to be assessed for suitability for a substance misuse programme

Under the act, a DAPO could be applied for in different courts by:

- victims
- police
- other third parties specified in the legislation

The courts would also be able to make a DAPO during existing court proceedings.

A court can make a DAPO where it is satisfied that:

- on the balance of probabilities, the party has been abusive towards a person aged 16 or over to whom the party is personally connected
- the order is necessary and proportionate to protect that person from domestic abuse, or the risk of domestic abuse, carried out by the party.

In Q1 There were 71 DAPN served to perpetrators of DA across the BCU, of which 57 were authorised as a DAPO. Havering account for 23 DAPO's that were authorised from the 26 DAPN's.

Our BCU partners in Barking and Dagenham had 15 DAPO's authorised from 23 DAPN's and Redbridge 19 DAPO's authorised from 22 DAPN's.

6. Domestic Violence Disclosure Scheme (Clare's law) guidance

The Act creates a statutory basis for the Domestic Violence Disclosure Scheme guidance. This places duties on law enforcement agencies, such as the police.

Under the scheme, an individual or third party can ask the police to check whether a current or former partner has a violent or abusive past. The police should consider disclosing the information if records show that the individual may be at risk of domestic abuse. Police may also make a disclosure to an individual if they receive information (for example, through a criminal investigation or from a third sector agency) about the violent or abusive behaviour of a person that may impact on the safety of that person's current or ex-partner.

Any disclosure made by law enforcement must be:

- reasonable
- proportionate
- based on a credible risk of harm

In Q1, there were 78 requests made in the BCU, with Havering accounting for 46 of these referrals. Out of all the disclosures requested in Havering, 17 have resulted in successful disclosure.

Our BCU partners in Barking and Dagenham had 20 request and Redbridge had 12 requests.

7. Special Measures in criminal court

The Act creates a statutory presumption that victims of domestic abuse are automatically eligible for special measures in the criminal courts on the grounds of fear or distress. A party would be automatically eligible whenever an allegation is made that the behaviour of the other party falls within the definition of 'domestic abuse' set out in the act. Under special measures, witnesses could give evidence, for example:

- in private
- using a live video link
- from behind a screen

Currently, special measures are only provided in the criminal courts when there is a belief that the quality of the witness's evidence is likely to be diminished due to their fear or distress about testifying. Victims will not have to satisfy the fear or distress test to be eligible for special measures. It will remain a matter for the court to decide which (if any) of the measures would be appropriate.

8. Secure Tenancies and Housing

The Act requires local authorities to grant a new lifetime tenancy to a tenant or a member of their household when re-housing an existing lifetime social tenant or offering an existing lifetime social tenant a new sole tenancy in their home if it's satisfied that the:

- tenant or a member of their household has been a victim of domestic abuse
- new tenancy is granted in connection with the abuse

The Act places a duty on tier one local authorities in England to provide support victims of abuse and their children living in:

- a refuge
- specialist safe accommodation
- dispersed accommodation
- sanctuary schemes
- second stage accommodation

Tier one local authorities include county councils, the Greater London Authority, and metropolitan and unitary authorities.

Under the duty, local authorities must provide domestic abuse support. This includes:

- support for children
- counselling and therapy
- housing-related advice and support
- communicating with other health and social care providers
- specialist support for victims with complex needs and/or protected characteristics
- helping victims to recognise the signs of abusive relationships to prevent re-victimisation.

Currently the Greater London Authority in conjunction with MOPAC are conducting a pan London mapping exercise of support services.

Extra-territorial jurisdiction.

Tier 2 Local authorities, such as Havering, have a duty to work with Tier 1 authorities to implement the DA Bill. The Home Office have provided statutory guidance which aims to provide advice and guidance to local authorities on how to implement the DA Bill. The Council via the Violence Against Women and Girls Strategic group and the Havering Community Safety Partnership are working with our multi agency partners to ensure we are compliant with the DA bill and statutory guidance.

IMPLICATIONS AND RISKS

Financial implications and risks:

There are no financial implications arising directly from this report which is for information only.

Legal implications and risks:

The Council has a statutory duty to ensure that it is compliant with the Domestic Abuse Act 2021.

There are no apparent legal implications in noting the content of the Report.

Human Resources implications and risks:

There are no specific Human Resource implications or risks arising directly from this report. Staff will receive appropriate training on the changes where necessary.

Equalities implications and risks:

This report relates to information requested by the committee rather than policy. There are no direct equalities implications or risks associated with this report.

The Public Sector Equality Duty (PSED) under section 149 of the Equality Act 2010 requires the Council, when exercising its functions, to have 'due regard' to:

- (i) The need to eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Equality Act 2010;
- (ii) The need to advance equality of opportunity between persons who share protected characteristics and those who do not, and;
- (iii) Foster good relations between those who have protected characteristics and those who do not.

Note: 'Protected characteristics' are age, disability, gender reassignment, marriage and civil partnerships, pregnancy and maternity, race, religion or belief, sex/gender, and sexual orientation.

The Council is committed to all of the above in the provision, procurement and commissioning of its services, and the employment of its workforce. In addition, the Council is also committed to improving the quality of life and wellbeing for all Havering residents in respect of socio-economics and health determinants.