



Stay Safe East Policy Briefing

Domestic Abuse Bill Proposed Amendments: Disabled Survivors

Briefing for the House of Lords

January 2021

The Domestic Abuse Bill represents an exciting opportunity to tackle the profound inequalities faced by Deaf and disabled survivors in finding safety and support and getting justice through the Criminal Justice System. It is only recently, under pressure from survivors and their organisations, that the national policy agenda has begun to consider the issues for Deaf and disabled survivors of domestic abuse. It had hitherto been assumed that Deaf and disabled survivors would be dealt with as 'vulnerable adults' by the Adult Safeguarding process, not as victims of domestic abuse, a gender-based Violence Against Women and Girls matter.

Stay Safe East is a user-led specialist organisation working with disabled survivors of domestic and sexual abuse, hate crime and other forms of abuse.

Stay Safe East supports the measures in the Bill which clarify the definition of domestic abuse, focus on coercive control and improve responses to victims. However, we believe the Bill does not go far enough in addressing the concerns and intersectional needs of Deaf and disabled survivors. This briefing is an update for the House of Lords on the amendments which we put forward when the Bill was making its way through the House of Commons.

About Stay Safe East

Stay Safe East is a user-led London based organisation which supports disabled survivors of domestic and sexual violence, hate crime and other human rights abuses. Founded in 2010 as a local service for East London, in 2018 we extended our services across London as partners in the London Victims and Witnesses Service and in Ascent Plus.



We have supported over 450 survivors of domestic and sexual abuse, 95% of whom are disabled women; they have a range of impairments (physical, sensory or mental health impairments, learning disabilities, neuro-diverse conditions, Deaf Sign Language users, long-term health conditions). Our clients reflect London's diversity. We provide long-term holistic and accessible advocacy and support to our clients; our advocates help clients to get justice and resolution and to gain control over their lives, something they may never have had as disabled women.

Stay Safe East is led by disabled women and takes a holistic, feminist and intersectional approach. Our casework provides the evidence for policy and practice change. We provide training and good practice advice to organisations working with survivors of hate crime or of violence against women and girls.

Whilst we have worked with a small number of Deaf survivors, we believe the expertise on the needs of Deaf people lies with Sign Health, the only specialist service for Deaf victims. Sign Health support our proposals.

Stay Safe East

90 Crownfield Road, London E15 2BG

policy@staysafe-east.org.uk

www.staysafe-east.org.uk

@staysafeeast

A Charitable Incorporated Organisation Charity Number 1153615

Funded by Three Guineas Trust, City Bridge Trust, Trust for London, The Home Office, Mayor's Office for Policing and Crime (MOPAC), Ministry of Justice, London Community Response Fund, and from contracts led by Victim Support and Solace Women's Aid.

Summary of amendments

Amendment 1: Repeal of provisions relating to defence for controlling or coercive behaviour offence (*New clause*)

In section 76 of the Serious Crime Act 2015 (controlling or coercive behaviour in an intimate or family relationship), omit subsections (8) to (10) (which make provision for a defence in proceedings for an offence under that section)

This new clause seeks to repeal the ‘carers’ defence’ for the offence of controlling or coercive behaviour in intimate or family relationships.

Amendment 2: Domestic abuse by people to paid or unpaid carers to whom the victim is personally connected but who are not partners or family members

(Additional sub-clauses to Part 1, Clause 1, sub-sections (a) to (g))

(h) Unpaid carers (neighbours, friends or other individuals) who perform caring duties for the disabled person and with whom the victim has a ‘personal connection’

(i) Paid carers – Personal Assistants, paid care workers and other paid individuals in a position of trust who perform caring duties for the disabled person and with whom the victim has a ‘personal connection’

- *The relationship should be of significant duration*
- *The alleged abuser should have been providing emotionally or physically intimate support necessary to enabling the person to live e.g. by providing intimate personal care, communication or other support relating to the person’s impairment or their being Deaf, or by having access to the person’s body, money, medication, food, or equipment.*

Amendment 3: Disabled survivors and Welfare Benefits

The Domestic Violence Easement available to survivors claiming Job Seekers’ Allowance or Universal Credit should be extended to disabled survivors claiming Employment Support Allowance or in the Support Group for Universal Credit.

Amendment 4: Hate crime and domestic abuse (*New clause*)

Domestic abuse which involves hate crimes or incidents based on hostility from someone with a personal connection towards the victim because of the victim’s personal characteristics (disability, sexuality, gender identity, ethnicity, faith, age) should be recognised in the Domestic Abuse Bill.

The Domestic Abuse Bill and Disabled Survivors: evidence and context

Disabled women and men are disproportionately affected by domestic abuse. The Crime Survey for England and Wales¹ found that people with a long-term illness or disability were more likely to experience domestic abuse in the last year than non-disabled people. 13.8% of disabled women experienced domestic abuse in 2018-19, compared to 6.4% of non-disabled women overall. This is likely to be an underestimate², particularly in regard to Deaf women, to women with learning disabilities, and to disabled women from BAME communities who have English as a second language. Disabled women are four times more likely to report abuse by multiple perpetrators, more likely to experience abuse for longer. Significantly, disabled women are more likely to experience abuse by a family member than non-disabled women³. The experience of Stay Safe East clients mirrors this data.

Disabled victims may also face specific forms of domestic abuse which usually involve the abuser using the victim's impairment or circumstances to control them, including: blaming the abuse on the woman being disabled; control of food or drink, communication, medication (over/under medication, sometimes alternating to induce an aggravation of the victim's mental or physical health); withdrawal of care; physical violence whilst assisting the victim; restricting access to disability equipment, professional advice or help, or to care support from mental health or adult social care; forced marriage and/or repeated sexual violence against disabled women who have never been given the opportunity for consent; theft of benefits.

Disabled women who rely on the abuser(s) for care, support, communication or negotiating the outside world are particularly at risk but the socially marginalised

¹ The Home Office and Ministry of Justice in their Joint Policy Equality Statement on compliance of the Domestic Abuse Bill with the Public Equality Duty recognized the importance of this disproportionality. https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/904500/ANNE_X_B- Policy Equality Statement- Domestic Abuse Bill July- FINAL.pdf

² The Crime Survey for England and Wales does not cover people 'living in group residences or other institutions'; anyone living at the time of the survey in supported housing, nursing or residential care homes, a secure hospital, a mental health ward or any other institutional setting is omitted. Yet disabled people in these settings are more likely to experience or have experienced abuse, not only from paid care workers, but from family members or partners.

³ Safe Lives <https://safelives.org.uk/knowledge-hub/spotlights/spotlight-2-disabled-people-and-domestic-abuse>

Stay Safe East Policy Briefing

situation of disabled women (and to a lesser extent, disabled men) contributes to the high rates of domestic abuse. Women and girls who have had no access to safe relationship guidance and whom society sees as ‘other’ or ‘damaged’ may have very low expectations. Threats of institutionalization (‘they’ll put you in a home if you speak out’) or that her children will be taken into care are made by many perpetrators, and plays on societal power over disabled women’s lives.

Key issues identified from Stay Safe East’s work with disabled victims/survivors:

- Current guidance and practice on domestic abuse has only just begun to recognise the specific forms of abuse experienced by disabled victims
- Domestic abuse against disabled women and men is poorly recognised or identified by police, social care and other statutory services, whether it is perpetrated by partners or family members
- The gendered nature of domestic abuse is often not recognised when disabled women are the victims
- Abuse by paid and unpaid carers who are not family members is not recognised in law or in practice as domestic abuse
- Responses to disabled survivors often fail to take account of their intersectional needs (faith, sexuality, ethnicity, culture), as they are seen solely as ‘the disabled’
- Domestic and sexual abuse is often experienced by disabled women who have been ‘cuckooed’ by gangs and groups who take over their home
- Disability hate crime is a key component of domestic abuse against disabled women
- Disabled victims/survivors face multiple and complex barriers to accessing services, finding safety or refuge and getting justice
- Existing adult safeguarding processes are failing disabled victims of domestic abuse and, in some cases, increasing the risk
- Mainstream domestic abuse services may struggle to meet the needs of disabled survivors who need long-term support.

Stay Safe East’s amendments to the Domestic Abuse Bill are grounded in the lived experience of disabled survivors we have supported over the past 10 years.

Proposed Amendments to the Domestic Abuse Bill: Disabled Survivors

Amendment 1: the ‘carer’s defence’ (New Clause)

Repeal of provisions relating to defence for controlling or coercive behaviour offence

In section 76 of the Serious Crime Act 2015 (controlling or coercive behaviour in an intimate or family relationship), omit subsections (8) to (10) (which make provision for a defence in proceedings for an offence under that section)⁴.”

This new clause seeks to repeal the ‘carers’ defence’ for the offence of controlling or coercive behaviour in intimate or family relationships.

Justification

For a Legal note from Barrister Catherine Casserley from Cloisters Chambers , please see Appendix 1.

Section 76 of the Serious Crime Act 2015 discriminates both directly and indirectly against disabled victims for the reasons set out overleaf:

- **This is an unnecessary clause:** as set out in the Legal Note in Appendix 1, this provision is **already covered by various provisions in the Mental Capacity Act 2005 (MCA)** which permits decisions to be taken in the best interests of an individual who is lacking capacity. The provisions of the Mental Capacity Act are

⁴ Serious Crime and Domestic Violence Act Part 5 section 76, sub clause 8(a) and 8(B) and 9(A), 9(B) and 10: Controlling or coercive behaviour in an intimate or family relationship

(8) In proceedings for an offence under this section it is a defence for A to show that-

(a) In engaging in the behaviour in question, A believed that he or she was acting in B’s best interests, and

(b) The behaviour was in all the circumstances reasonable.

(9) A is to be taken to have shown the facts mentioned in subsection (8) if—

(a) Sufficient evidence of the facts is adduced to raise an issue with respect to them, and

(b) The contrary is not proved beyond reasonable doubt

(10) The defence in subsection [8] is not available to A in relation to behaviour that causes B to fear that violence will be used against B.

Stay Safe East Policy Briefing

much more robust and clear. In these circumstances, it would not be in the public interest to prosecute as the conduct would be condoned under the MCA provisions. It is possible for a carer's legal representative to argue that the carer's actions were justified in the 'best interests' of the victim without this defense being written in statute in legislation on domestic abuse.

- **This clause is potentially discriminatory:** The 'best interest' defense is most likely to be used when referring to disabled victims where the abuser is a carer who will claim they have the victim's best interests at heart. The defense is most likely to be used in relation to people who have learning disabilities or cognitive impairments, mental health issues, are neuro-diverse or have communication issues (e.g. Deaf victims or those who are non-verbal) and who may have – or be seen to have – capacity issues. It also has implications for any victims who have mental health issues as a result of domestic abuse, who are less likely to receive equal justice.
- **It is often impossible for victims to express (as stated in Clause 10) that they 'fear that violence may be used' against them.** Many victims may not be aware of the risk of physical harm as their lives and thinking are controlled by the abuser, or because their cognition is impaired. Clause 10 also fails to recognize that psychological abuse and coercive behaviour are as oppressive to victims as physical abuse.
- **This clause has the potential to prolong the abuse of disabled victims,** to prevent victims getting justice and to disadvantage disabled victims of coercive control and those lacking the capacity to consent.
- **The purpose of domestic abuse legislation is to protect survivors, rather than to defend the rights of abusers or alleged abusers.** This clause may make it harder to get a case to court, a process that is already difficult for disabled survivors.

Stay Safe East Policy Briefing

We believe this clause will influence – and has influenced – the outcomes of decisions about charging by the Police and CPS⁵. It is a license for abusers to claim ‘best interests’ in a situation which disabled people would consider unreasonable and abusive but the general public, including juries and some parts of the Criminal Justice System, might see as a protective act. Abusers often claim they were protecting the victim ‘for their own good’ when speaking to the police. It reinforces the widely held belief that carers are of necessity benign and have a license to make decisions for the person they are supporting. It may be used as a defense by perpetrators, especially where there is ambiguity about the victim’s capacity. The clause gives a message to the Criminal Justice System that so-called ‘vulnerable victims’ who need other people to ‘act in their best interests’ are not worthy of the same protection as other domestic abuse victims/survivors.

Case study 1⁶

A disabled woman who has cognitive issues due to a brain injury had been a victim of domestic abuse by her partner for many years. Her short term memory is poor at times but she has full capacity. The abuser had made her believe that she had dementia, and had taken control of her money, her medication and her life. He had told the social worker that he did all the shopping and collected her medication ‘because she forgets and gets lost’. He would not let her go out alone for the same reason, alleging she was at risk from others. He had become her appointee for her benefits. He had persuaded her he was acting in her best interests and was protecting her; he was not challenged by any of the professionals which the victim came into contact, and would always be present when she went to appointment. It took several years before a more observant professional noticed the control and manage to speak to her alone. It took her some time and a lot of support to believe she did not have dementia. She is now living independently with some support and strategies for coping with her short term memory issues. This case did not go to court, but had it done so, we have no doubt the perpetrator would have claimed ‘best interest’.

⁵ Stay Safe East requested this information from the CPS in October 2020. The CPS response to our Freedom of Information request on 3rd November 2020 was that “The Crown Prosecution Service (CPS) does not hold any information or data regarding allegations considered or complaints arising at the pre-charge stage and so, it is not possible to filter domestic abuse flagged charging decisions by the protected characteristics (disabled/elderly) in order to identify a potential sample.” The cost of finding of a manual trawl to ascertain if the clause had been used as a defence would be too high.

⁶ Additional case studies can be found in Appendix 2 on pages 19-20.

Amendment 2

Domestic abuse by people to whom the victim is personal connected but who are not partners or family members

Additional sub-clauses to Part 1, Clause 1, sub-sections (a) to (g)

(h) Unpaid carers (neighbours, friends or other individuals) who perform caring duties for the disabled person and with whom the victim has a 'personal connection'

(i) Paid carers – Personal Assistants, paid care workers and other paid individuals in a position of trust who perform caring duties for the disabled person and with whom the victim has a 'personal connection'

additional

- *The relationship should be of significant duration*
- *The alleged abuser should have been providing emotionally or physically intimate support necessary to enabling the person to live e.g. by providing intimate personal care, communication or other support relating to the person's impairment or their being Deaf, or by having access to the person's body, money, medication, food, equipment*

Justification

The Bill refers to abusers who are 'personally connected' to the victim as *partners, spouses or family members* only. The reality of disabled people's lives is that our significant relationships may be different from those of non-disabled people.

Paid and unpaid carers, neighbours who act as formal or informal facilitators or communicators, personal assistants and others are a key part of the lives of disabled people. They often spend a significant amount of time alone with the disabled person in the person's home. In providing care, support or means of communication, they have access to the person's body, money, paperwork, medication, equipment, history and emotions. These relationships may develop to the extent that the disabled person and the other person become 'personally connected' in that they significant in each other's lives. Whilst many informal and

Stay Safe East Policy Briefing

formal carers are supportive, respectful and professional, a significant minority are not. Disabled people are more likely to live alone, and to have been rejected by or been separated from their initial family, or grown up in an institutional setting where they have not had the opportunity for equal relationships. The only people in the lives of a significant number of disabled people may be those who are paid to assist them. This is known to increase the risk of abuse.

The current definition of domestic abuse has a **discriminatory impact** on disabled victims of domestic abuse by non-family carers, who have no access to an Independent Domestic Violence Adviser, refuges or other domestic abuse services or to the network of therapeutic and other services open to other domestic abuse victims.

Stay Safe East is proposing a wider definition of ‘personal connection’ to cover those informal or informal carers who assist or support disabled people and with whom a disabled person might form a personal connection. Trusting someone enough to allow them provide either personal care, or support with day-to-day tasks or communication is in itself an emotionally intimate act which creates a close bond, but also a risk of abuse. It is not infrequent for abusers to target the disabled person and ‘befriend’ them, and persuade them that this is done from an altruistic motivation, whilst at the same time exploiting and abusing the disabled person. The victim will experience the same ambiguity about power and control versus emotional attachment as any other victim of domestic abuse.

Key legislation, case law and guidance supports our points in relation to the definition of ‘personal connection’, ‘family’ and home/domestic settings.

- a) The European Convention on Human Rights (Article 8) refers specifically to “close personal ties” – not just to a family member or partner. The right and ability to maintain family relationships falls within the scope of Article 8.
- b) The notion of “family” is not confined solely to marriage and is a question of fact depending on close personal ties, which has been established in case law⁷.
- c) The notion of “home” does not depend on classification under domestic law. Whether a habitation constitutes a person’s “home” depends on the existence of

⁷ Kroon v Netherlands (1995:19 EHRR 263)

Stay Safe East Policy Briefing

sufficient and continuous links with a specific place⁸ and is therefore fact-specific in each case.

- d) In the Crown Prosecution Service Guidelines on prosecuting domestic abuse⁹, domestic abuse offending is treated as an aggravating factor because of the **abuse of trust**, a key element in extending protection against other perpetrators who are not partners or immediate family members.

We have put forward two separate sub-clauses in our amendment, which distinguishes abuse by unpaid carers from abuse by paid carers, due to the existing legislation in relation to the Care Act which covers paid care workers in a position of trust.

Domestic abuse by informal unpaid carers

Many people with physical, sensory impairments, people with learning disabilities or mental health issues, including older people rely on informal carers to assist them in their daily lives. Many of these informal carers are motivated by friendship and solidarity but a significant minority are not. Some may deliberately target an isolated disabled person in order to abuse them.

Case study 2

A neighbour befriended a woman with learning disabilities who lived alone and had limited access to other support. The neighbor became her carer and provided her with help with shopping and with paperwork. She saw him as the family she no longer had. He then demanded sex, tried to force himself on her and verbally abused her because she would not have sex with him. The woman experienced this as domestic abuse because she saw the man as her family. She was not referred to a domestic abuse service when she finally disclosed the abuse to a worker in a group she attended.

Case study 3

A disabled woman was targeted by a man who was homeless. He gradually gained her trust and over a period of months, she began to see him as her friend and as 'better family than my own'. He assisted her first with shopping (while taking her money), then with household tasks and eventually with personal care. His controlling and intimidating behaviour towards the woman's paid carers led

⁸ Buckley v UK5 (1996: 23 EHRR 101)

⁹ <https://www.cps.gov.uk/legal-guidance/domestic-abuse-guidelines-prosecutors>

Stay Safe East Policy Briefing

them to withdraw the support, leaving him in complete control of the disabled woman's life. There was physical, sexual, emotional and financial abuse. The man then brought his friends into the woman's home; they further intimidated her. When she was eventually able to seek help, her health had deteriorated due to neglect as the man had stopped helping her.

Whilst the actions of the man and his friends could be described as 'cuckooing' (a term used by the police to describe taking over a person's home for criminal or other purposes), they also constitute domestic abuse: the woman had a 'close personal connection' with the abuser which left her dependant on him and open to abuse.

Both of these women experienced abuse by people who had in effect become their family, and with whom they had a close personal connection. They experienced this abuse as domestic abuse.

Domestic abuse by paid carers and personal assistants

Disabled people with high support needs may have live-in Personal Assistants or carers who live in their home all or some of the time; other disabled people have carers, support workers or PAs who work for them several times a day or a week, sometimes over many years. These paid carers may help with intimate personal care, household tasks, understanding paperwork, or with accessing social activities.

Some will be employed directly by the disabled person using a Direct Payment, others will work for charities or commercial care companies. These relationships develop into a very close bond over time, and the carer becomes the person's family. The impact of domestic abuse by a paid carer is often the same as that by a family member who is a carer, and the control is the same.

Case study 4

A disabled woman with a physical impairment had been employing Personal Assistants (PAs) for many years. She had been employing a particular PA for 10 months, and liked the woman, finding her very supportive. The PA had been on holiday with her. The woman saw her as part of her 'family of PAs'. A friend then pointed out to her that the PA was being very controlling, and dictating when the disabled woman went out, what she could eat, and undermining her in front of friends and family. The disabled woman was at first in denial, but then contacted a domestic abuse service. The service said they could not help her, as it was 'not domestic abuse' and advised the woman to contact social

Stay Safe East Policy Briefing

services. She did not wish to do this, as she was worried that social workers would say she couldn't cope and would force her to use an agency. She decided to challenge the controlling PA. At this point, the PA threatened to disclose the woman's sexuality to her family, and became physically abusive, being very rough with the disabled woman when helping her with personal care. The victim was too frightened to say anything more. It took a further 4 months before the woman felt able to speak to a disabled people's organization who referred her to Stay safe East.

Case study 5

A disabled woman with learning disabilities approached Stay Safe East at an event we were attending. She disclosed abuse by an agency carer who had initially been very good but had now become abusive and called her 'ugly' and pulled her hair, had been rough with her when assisting her, and had refused with no reason to assist her to go to some destinations. This had already been reported to Adult Safeguarding, but no action had been taken. We were successful in helping her change agencies and get a new care worker' as she now trusted us, the client then disclosed attempted forced marriage by her family. Had Stay Safe East not used a wider definition of domestic abuse and taken this client on, we have no doubt that the attempt at forcing her to marry would have been successful.

There is of course a separate argument for strengthening the Care Act, as it currently fails disabled victims of any form of domestic abuse, but our casework leads us to the conclusion that having two distinct laws and processes for supporting different victims of the same type of abuse is discriminatory and has led to disabled victims not being protected or supported.

Stay Safe East Policy Briefing

Amendment 3 (New clause)

Disabled survivors: Domestic Violence Easement

The Domestic Violence Easement available to survivors claiming Job Seekers' Allowance or Universal Credit should be extended to Disabled survivors claiming Employment Support Allowance or in the support group for Universal Credit.

Justification

The Domestic Violence Easement¹⁰ introduced in 2012 allows anyone who can provide evidence of domestic abuse (for example a letter from an IDVA or a police report) a three month respite from work related activities if they are claiming Job Seekers Allowance or Universal Credit. However, the Easement does not currently apply to disabled people or those with health conditions who are claiming or start a claim for Employment Support Allowance (ESA), or are in the support group for ESA or Universal Credit (UC). There is no Domestic Abuse Easement from Capability for Work assessments, so disabled victims who are claiming benefits are called for Capability for Work assessments when they are in the process of escaping an abusive relationship. Attending assessments where survivors are asked to justify their impairment can retraumatise disabled survivors and often leads to them being required to attend work related activities, which are not single gender and are activities where abusers can easily find them, or they may end up with no money because they can't cope with the process. Stay Safe East has several examples of victims returning to the abuser because of these assessments, despite our best efforts to support the victim.

As a result, disabled survivors are unintentionally treated less favourably under the concession. The current situation is incompatible with the Equality Act 2010 in that it fails to account for the specific circumstances of disabled victims of domestic abuse.

¹⁰ https://www.legislation.gov.uk/ukdsi/2012/9780111519288/pdfs/ukdsiem_9780111519288_en.pdf

Stay Safe East Policy Briefing

Legal Briefing Note Domestic Violence Easement issue

Catherine Casserley, Barrister at Cloisters Chambers

The Domestic Violence Easement (DVE) creates a distinction between Jobseekers Allowance (JSA), and Employment and Support Allowance (ESA) and Universal Credit. This distinction appears to be discriminatory. The application and scope of the DVC treats applicants of ESA who have a disability or health condition less favourably than those who apply for JSA, who are likely to have no impairment or health condition. This distinction is likely to be a breach of the European Convention on Human Rights (given effect in the UK by the Human Rights Act 1998 – the HRA). In particular, it is likely to constitute a violation of Article 14 of the ECHR, (which provides for not discrimination in the substantive rights afforded by the Convention on the basis of different grounds, including other status) read with the right to peaceful enjoyment of possessions in Article 1 of the First Protocol (A1P1). Welfare benefits – and in particular, discrimination as a result of the way in which they are provided - have been the subject of a significant number of challenges by disabled people before the courts.

Disabled women fleeing domestic violence are likely to constitute “other status”. In one of the most recent (successful) challenges, to universal credit and the difficulties experienced by disabled people who moved areas whilst on it, *R (on the application of TP) V Secretary of State for Work and Pensions* 2020 Lady Justice Rose stated:

“I start from the proposition that the ‘very purpose’ of A1P1 combined with Article 14 is to prevent people from being arbitrarily deprived of their possessions – in this case of their entitlement to the amount of benefit to which they were entitled under the legacy benefit regime – in a way which discriminates against them. The effect of the substantial drop in income on these severely disabled benefits recipients is particularly harsh because of their particular needs and vulnerabilities.” (para 211)

If this provision is not tackled at this point, it seems highly likely that it will be tackled by means of litigation – but those affected by it should not have to go through such a battle when it can be remedied easily now.

Amendment 4: Hate crime within domestic abuse

New clause

Domestic abuse which involves hate crimes or incidents based on hostility from someone with a personal connection towards the victim because of the victim's personal characteristics (disability, sexuality, gender identity, ethnicity, faith, age) should be recognised in the Domestic Abuse Bill.

The guidance on the Bill should ensure that evidence is gathered and that prosecutors ask for an enhanced penalty/sentence on the grounds that the offence is motivated by hostility on the grounds of disability or other protected characteristic.

Justification

An overwhelming majority of Stay Safe East's clients have experienced hostility as part of domestic abuse because they are disabled. Much of the domestic abuse against our clients involves calling them abusive names and mocking their speech, walk, body or other personal characteristic relating to their impairment, as well as using their impairment to abuse them, for example by denying them access to equipment, manipulating medication to make their physical or mental health worse; clients who have an invisible impairment are threatened by the abuser with being 'outed' to family, neighbours, the wider community. This behaviour is consistent with the current Home Office definition of hate crime which refers to:

'hostility towards someone because of their race, faith, disability, gender identity, sexuality'

It would also strengthen the case for a perpetrator to be charged with an aggravated offence, or in cases of disability hate crime (hate law is currently unequal), for prosecutors to ask for an enhanced sentence should the suspect be found guilty.

Recognising hate crime as a component of domestic abuse would help protect victims with protected characteristics. Stay Safe East has also raised this issues in its response to the Law Commission's Consultation on new Hate Crime Laws.

Case study 6

A disabled woman was subjected to 4 years of highly controlling behaviour, physical and sexual violence and psychological abuse by her partner.

Part of the abuse involved belittling her as a disabled woman, mocking her physical impairment, stopping her from sitting down which meant she would collapse, and telling her she was mad. This led to a breakdown in her physical and mental health and a loss of self-esteem for a woman who had been a highly competent professional.

When the case went to court, our client, with our support expressed to the police officer in the case that this was also a hate crime; we helped to provide the evidence. The CPS would not accept this argument so did not ask for an enhanced sentence.

After sentencing, our client and her advocate met with the Barrister and Senior Prosecutor, who would still not accept our arguments. We were told that 'this type of abuse could have happened to anyone'. The perpetrator was convicted, but had the enhanced sentencing been invoked, he would have served a longer prison sentence, leaving the victim safer for longer.

The client told us that had this happened, she would have felt that the years of disability related abuse (she herself also used the word contempt) which she endured would have been recognised, and this would have helped her recovery.

The client asked that her case be used to illustrate the way in which disability hate crime is also part of domestic abuse.

Appendix 1

Domestic Abuse Bill- Best Interests Defence

*Legal note prepared for Stay Safe East by Catherine Casserley
Barrister at Cloisters Chambers*

In discussing the potential removal of this defence, the Parliamentary Under Secretary of State of Justice on 17 June 2020 provided examples to explain the existence of the “best interests” defence during the debate on the DAB. The justifications included: compelling a partner to take medication; compelling a partner to stay at home for their protection; preventing a partner, who is suffering from dementia, from leaving the front garden and getting on the road because they will endanger themselves and others.

- All these examples are **already covered** by various provisions in the Mental Capacity Act 2005 (MCA) which permit acts decisions to be taken in the best interests of individual who is lacking capacity, provisions which are set out below. In these circumstances, it would not be in the public interest to prosecute as the conduct would be condoned under the MCA provisions.
- There should be no justification for administering medication, or depriving someone of liberty, which would not fall within the MCA.
- the MCA is designed (broadly) to provide protection but also to empower those who may lack the mental capacity to make their own decisions about their care and treatment.
- Relevant MCA provisions that would cover the circumstances raised by the Minister are in the following sections:

1 The principles

(5) An act done, or decision made, under this Act for or on behalf of a person who lacks capacity must be done, or made, in his best interests.

4 Best interests

(9) In the case of an act done, or a decision made, by a person other than the court, **there is sufficient compliance with this section if (having complied with the requirements of subsections (1) to (7)) he reasonably believes that what he does or decides is in the best interests of the person concerned**

Stay Safe East Policy Briefing

4B Deprivation of liberty necessary for life-sustaining treatment etc.

(1) If the following conditions are met, D is authorised to deprive P of his liberty while a decision as respects any relevant issue is sought from the court.

(4) The third condition is that the **deprivation of liberty is necessary** in order to–

(a) give the life-sustaining treatment, or

(b) do the vital act.

(5) **A vital act is any act which the person doing it reasonably believes to be necessary to prevent a serious deterioration in P's condition.**

5 Acts in connection with care or treatment

(1) If a person (“D”) does an act in connection with the care or treatment of another person (“P”), the act is one to which this section applies if–

(a) before doing the act, D takes reasonable steps to establish whether P lacks capacity in relation to the matter in question, and

(b) when doing the act, D reasonably believes–(i) that P lacks capacity in relation to the matter, and (ii) that it will be in P's best interests for the act to be done.

(2) **D does not incur any liability in relation to the act that he would not have incurred if P–**

(a) had had capacity to consent in relation to the matter, and

(b) had consented to D's doing the act

6 Section 5 acts: limitations

(1) If D does an act that is intended to restrain P, it is not an act to which section 5 applies unless two further conditions are satisfied.

(2) The first condition is that D reasonably believes that it is necessary to do the act in order to prevent harm to P.

(3) The second is that the act is a proportionate response to–

(a) the likelihood of P's suffering harm, and

(b) the seriousness of that harm.

(4) For the purposes of this section D restrains P if he–

(a) uses, or threatens to use, force to secure the doing of an act which P resists, or

(b) restricts P's liberty of movement, whether or not P resists

(7) But nothing in subsection (6) stops a person–

(a) providing life-sustaining treatment, or

(b) doing any act which he reasonably believes to be necessary to prevent a serious

Appendix 2

Additional case studies: Disabled survivors and ‘best interest’

Abuse involving coercive control which the abuser claims is in the ‘best interest’ of the disabled victim (the ‘Carer’s Defence’)

Case studies provided by Stay Safe East and partner organisations on the Disability and Domestic Abuse Advisory Group

- Perpetrator drives the survivor everywhere, claiming that taxi drivers may take advantage. The victim has no independent means of getting around, and only goes out if the perpetrator lets them.
- Perpetrator attends all appointments with the survivor, stating that they will get confused, meaning there is no space for the victim to make an abuse disclosure
- Perpetrator appears to professionals as a protective factor against the previous abusive partner, whilst the perpetrator is psychologically abusive
- The parents of a 30-year-old woman with learning disabilities claimed that she had agreed to marriage so she could be ‘looked after’ when they were gone. Social services initially agreed with the parents, despite the previous attempt at forced marriage, and only agreed to seek a forced marriage order four months later after prolonged pressure from the organisation advocating for the victim
- The mother of a young Deaf woman with learning disabilities stopped her going out, only letting her go to college with a chaperone as ‘she would be at risk from strange men’, but failed to teach her daughter about safe relationships and was abusing her physically, emotionally and financially.

Stay Safe East Policy Briefing

- The perpetrator said the survivor (who is hearing impaired) would struggle to care for the children without him, having taught them to speak quietly to him so that she struggled to hear them
- Perpetrator was telling the victim to 'stand up straight because your posture will get worse and you will get back pain' when he knew that she could only keep her balance and stay upright if she leant forward, due to MS and balance problems
- A wheelchair user was not taken out of the house for months by parent/carer, claiming that it was not in her best interests to expose her to the cold, and was forced to sleep in her wheelchair when she complained to her support worker
- The perpetrator did not permit his partner access to her own money, claiming that she was unable to manage her finances following an acquired brain injury, and the perpetrator used her money to buy a car
- Paid carers for a 78-year-old woman did not report significant physical bruising (a black eye and severe facial bruising) because her husband claimed that he had to restrain her for her own good
- A woman aged 48 was kept sedated for months 'to help her sleep' after she contacted our helpline

Stay Safe East Policy Briefing

Acknowledgements

With our thanks to:

Catherine Casserley, Cloisters and Stacey Hallet for legal information and advice

The staff and Trustees of Stay Safe East for contributing case studies to this report and supporting our policy work

Members of the Stay Safe East Disability and Domestic Abuse Advisory Group for their comments and advice, sharing case studies and supporting our work on the Bill:

Dr Susie Balderston - University of Birmingham

Marie Vickers and Abigail Gorman- Sign Health Domestic Abuse Services

Lucia Bellini - Choice in Hackney

Monique Francois and Alex Irving – Stay Safe East

Ashley Stephen - Disabled Survivors Unite

Eleanor Lisney - Sisters of Frida

F-P, Survivor

Lizzie Taylor-Wilson - Merton Centre for Independent Living

Lynne Tooze- Respond

Josephine Feeney and Ioana Hanis - Victim Support

Dr Bethan Taylor- MyCWA

Sharmeem Narayan and Joan McGowan - Solace Women's Aid

Jess Assato and Sally Steadman- Safe Lives

Marai Lasai- Independent Consultant

Sabita Kaushal – Home Office Domestic Abuse Team