

LIBERTY

PROTECTING CIVIL LIBERTIES
PROMOTING HUMAN RIGHTS

**Liberty's response to the Government's
consultation on the Domestic Violence
and Abuse Bill 2018**

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About Liberty

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

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

Liberty's policy papers are available at
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Introduction

1. Liberty welcomes this opportunity to respond to the Government's consultation on the Domestic Violence and Abuse Bill 2018. Domestic abuse is one of the UK's most pressing and devastating human rights issues. It affects thousands of people across the country every day. For the year ending March 2017, the Office for National Statistics estimated that 1.9 million adults had experienced domestic abuse – approximately 1.2 million were female.¹ These acts of violence and abuse have a devastating impact on the lives of victims and their children, who often have to choose between losing their families, homes and safety or enduring further harm.
2. We support the Ending Violence Against Women Coalition's (EVAW) view that the Government's approach to eradicating domestic abuse should be "*compassionate, effective and just*".² Many of the proposals in the consultation are appropriate and welcome. However, there are aspects of the proposed legislation which cause concern from a civil liberties perspective and others that do not go far enough to ensure that all victims of abuse are protected. At present, the proposals fail to take into account crucial human rights considerations, particularly in relation to migrant victims with unsettled status and victims with complex needs. By neglecting these groups, the system will continue to perpetuate unfairness, as victims from different backgrounds are treated unequally when reporting abuse or seeking support. Further, the proposals as they stand are not robust enough to ensure that (1) statutory agencies are responding appropriately, thoroughly and proficiently to incidents, (2) abuse is recognised in all its forms, and (3) that authorities are accountable for their actions or inactions in individual cases.

Strengthening the legislative definition of domestic abuse

The need for a comprehensive and consistent definition

3. We welcome the move to consolidate the legal definition of domestic abuse and we particularly support the proposals to include: (1) abuse by family members and extended family members, (2) to include both single incidents and patterns of behaviour, and (3) to use the wider term of 'economic abuse' as opposed to 'financial abuse'. However, the codification of domestic abuse into UK legislation must be consistent with current legal guidance. The legislative definition of domestic abuse should accord with the family law practice direction - Practice Direction 12J - which deals specifically with this issue. The practice direction was recently updated by the President of the Family Division – Sir James Munby -- who recognised that specific forms of violence against women and girls (VAWG) which particularly impact black and ethnic minority (BAME) communities are less likely to be recognised as forms of abuse without a clear definition.³ As a result, the practice direction expressly refers to forms of abuse such as forced marriage, so-called 'honour-based' violence, abandonment and dowry abuse, which have cultural specificity.⁴ For the avoidance of doubt, and to ensure cultural forms of abuse are properly recognised, the new definition of domestic abuse in the Bill should mirror those in the practice direction, in addition to the other proposals supported above.

¹ Office for National Statistics, 'Domestic abuse in England and Wales: year ending March 2017' Report, Statistical Bulletin, (23 November 2017),

<https://www.ons.gov.uk/peoplepopulationandcommunity/crimeandjustice/bulletins/domesticabuseinenglandandwales/yearendingmarch2017#how-prevalent-is-domestic-abuse>.

² EVAW, Submission to Government Consultation on the proposed Domestic Violence and Abuse Bill, (April 2018), <https://www.endviolenceagainstwomen.org.uk/wp-content/uploads/Updated-EVAW-DVA-Bill-Consln-Submission-DRAFT-FOR-WEB-SHARING-26-APR-18.pdf>.

³ Stewarts Law, 'Revisions to the Family Court's obligations in domestic abuse cases', (22 November 2017), <https://www.stewartslaw.com/news/revisions-family-courts-obligations-domestic-abuse-cases/>.

⁴ Family Law Practice Directions, 12J(3) – 'Child Arrangements & Contact Orders: Domestic Abuse and Harm', https://www.justice.gov.uk/courts/procedure-rules/family/practice_directions/pd_part_12j.

Recognising abuse beyond the limits of the legal definition

4. Although the new legal definition should be consistent and comprehensive, it cannot be a stand-alone reference point for understanding domestic abuse. The legislation must be accompanied by detailed statutory guidance that outlines examples of other prevalent forms of abuse, while also emphasising that there is no exhaustive list of abusive behaviours. Statutory agencies subsequently need to apply their discretion on a case-by-case basis to determine both recognised and unrecognised forms of abuse.
5. The Serious Crime Act 2015 created the new offence of controlling or coercive behaviour in an intimate or family relationship.⁵ Government guidelines for prosecutors outline that: “*Coercive behaviour is an act or pattern of acts of assault, threats, humiliation and intimidation or other abuse that is used to harm, punish or frighten their victim*” and “*Controlling behaviour is a range of acts designed to make a person subordinate and/or dependent by isolating them from sources of support, exploiting their resources and capacities for personal gain, depriving them of the means needed for independence, resistance and escape and regulating their everyday behaviour*”.⁶
6. Despite coercive control forming part of a system of abuse, which occurs in the majority of domestic abuse cases, only 300 coercive control cases were charged between its introduction in 2015 and 2016.⁷ This does not tally with the 93,590 domestic abuse prosecutions in 2016.⁸ There is clearly an implementation gap between the robust definition of coercive control and the ability to recognise and charge this offence in practice. To increase its usefulness, statutory guidance to the new legislation must explain that coercive control often works in tandem with other forms of abuse, and so statutory agencies must consider whether it is present in *any* given case. They must also ensure that victims are aware of the relevant options to seek safety, justice and appropriate remedies if they have been subject to coercive control.
7. In particular, the types of abuse that should be explicitly referenced in statutory guidance include: perpetrators using threats concerning immigration status as part of violence and abuse, threats of forced labour and domestic servitude of victims from low-income or low-status backgrounds by their partners and family members (these of course being separate criminal offences which ought to be investigated and prosecuted in any event),⁹ and online and digital abuse. Following this, the guidance should remind authorities that in addition to all the specified forms of abuse, behaviours are constantly changing, and therefore anything that involves “*any incident or pattern of incidents of controlling, coercive or threatening behaviour, violence or abuse...*” is domestic abuse and should be treated as such.

Improving reporting mechanisms for victims and developing responses by statutory agencies

Reporting without fear

8. Although the Government acknowledges that there are barriers to reporting abuse, there is minimal focus on resolving this through the creation of safe reporting mechanisms. The main fears victims experience when wishing to report abuse include: a general fear of authorities, fear of being disbelieved and turned away, fear of retribution from perpetrators and fear of immigration enforcement for those with insecure status. These barriers to reporting, particularly fear of immigration enforcement, have scarcely been recognised by the Government. Yet they are a crucial reason why so many victims are reluctant to report abuse, feel disenfranchised within a system that should be built around their protection, and ultimately put

⁵ s.76, Serious Crime Act 2015, <http://www.legislation.gov.uk/ukpga/2015/9/section/76/enacted>.

⁶ Crown Prosecution Service, Domestic Abuse Guidelines for Prosecutors, <https://www.cps.gov.uk/legal-guidance/domestic-abuse-guidelines-prosecutors>.

⁷ Crown Prosecution Service, Violence Against Women and Girls Report, 10th edition, (2016-17), p.1, https://www.cps.gov.uk/sites/default/files/documents/publications/cps-vawg-report-2017_1.pdf.

⁸ Ibid, p.2.

⁹ s.1 Modern Slavery Act 2015, <http://www.legislation.gov.uk/ukpga/2015/30/contents/enacted>.

their lives at risk. EVAW recognises that migrant women have, “a perceived and real risk of being detained or deported rather than assisted if they report abuse, coupled with considerable barriers in accessing protection, support and specialist services.”¹⁰ As a result, many victims face a harrowing choice between continued abuse, being removed from the UK or being locked up indefinitely in detention.

9. The fact that statutory agencies’ operations cause victims to fear reporting abuse is contrary to the Istanbul Convention. Art 20(2) of the Convention expressly states that, “Victims need access to health care and social services without fear of discrimination.”¹¹ Yet a range of government policies that deliberately link immigration control to public services mean that migrant victims of abuse are routinely discriminated against by healthcare, social services and other statutory agencies. The Government *must* comply with the Istanbul Convention in this Bill. In November 2017, the Government stated it would only, “take steps towards ratification when we are satisfied that the UK complies with all articles of the Convention”. However, the Government has failed to meet its self-imposed standard. Ministers must ensure this Bill enables the UK to finally ratify the Istanbul Convention. The Government should take this opportunity to listen to the responses of women’s and civil liberties organisations to rectify areas where the UK is currently not compliant. The Convention is considered a ‘gold standard’ by the UN¹², so it is crucial that our own domestic legislation matches this model provision and upholds victims’ basic human right to live free from violence.
10. Migrant victims’ fear of reporting abuse is inextricably linked to the Government’s hostile environment agenda. The fear that health professionals, banks, landlords, employers, homelessness charities and even schools may report migrants and their families to immigration enforcement is regularly realised, and is the deliberate, explicit policy choice of this Government.¹³ Liberty has provided evidence on the known bulk data-sharing schemes and how they operate, namely between: (1) the Home Office, Department for Health and Social Care (DHSC) and NHS Digital with respect to patient medical records, (2) the Home Office and the Department for Education with respect to children’s school records, (3) the Home Office and Cifas with respect to bank accounts, (4) the Home Office and DVLA with respect to driving licences, and (4) the Home Office, the Department for Work and Pensions (DWP) and Her Majesty’s Revenue and Customs (HMRC) with respect to employment records and welfare benefits.¹⁴ These policies prioritise immigration enforcement over the need to provide safety and security to victims of domestic abuse. As we state in our briefing to the Independent Chief Inspector of Borders and Immigration (ICIBI), “These agreements are ... anathema to good government to the extent that they subordinate legitimate public policy aims such as the protection of public health, the prevention of serious crime, homelessness support, and child safeguarding, to immigration enforcement priorities.”¹⁵
11. Freedom of Information responses revealed in May 2018 that of the 45 police forces asked, more than half said they refer victims of crime to the Home Office.¹⁶ A Home Office spokesperson, in response to these findings commented that “victims of crime must be treated first and foremost as victims”.¹⁷ However,

¹⁰ EVAW, ‘Women Living in a Hostile Environment’, distributed at meeting on ‘Domestic Violence & Abuse Bill: will it increase justice and protection for migrant women?’ at Portcullis House, Westminster, London, (2 May 2018).

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

¹² UN Women, ‘The Istanbul Convention: strengthening the response to ending violence against women’, (5 March 2013), <http://www.unwomen.org/en/news/stories/2013/3/the-istanbul-convention-strengthening-the-response-to-ending-violence-against-women>.

¹³ For further information, see: ‘A Guide to the Hostile Environment – the border controls dividing our communities and how we can bring them down’, edited by Liberty, (April 2018), <https://www.libertyhumanrights.org.uk/sites/default/files/HE%20web.pdf>.

¹⁴ Liberty’s written evidence to the inspection of partnership working between the Home Office and other government departments by the Independent Chief Inspector of Borders and Immigration, (May 2018), p 4-5.

¹⁵ Ibid, p.5.

¹⁶ Diane Taylor, ‘Victims of crime being handed over to immigration enforcement’, The Guardian, (12 May 2018), <https://www.theguardian.com/uk-news/2018/may/14/victims-crime-handed-over-police-immigration-enforcement>.

¹⁷ Ibid.

this is clearly not the approach that police forces have been taking. Particular cases of concern include a woman who was beaten by her partner and was then herself arrested by police and detained in Yarl's Wood immigration removal centre.¹⁸ There are also fears that other vulnerable people with insecure immigration status, including rape victims, are now too afraid to report crimes.¹⁹ Our greatest concern is that these individuals may be specifically targeted by police forces and the Home Office. As one former Chief Superintendent describes, they may be considered "*low-hanging fruit*" as these victims are vulnerable, isolated and exposed, making them easy to arrest, detain or deport.²⁰ If the Government truly wishes to transform the response to domestic abuse, it must recognise the disconnect between routinely referring victims of crime to immigration enforcement and their commitment to protect victims of abuse.

12. The following case studies demonstrate that current reporting mechanisms for migrant victims of abuse are anything but safe:

Case studies collected by EAW as part of their response to the Domestic Violence and Abuse consultation²¹

S's husband threatened to kill and attempted to strangle her. He then left her stranded. She was supported by a specialist women's service to report her experience to the police, but instead of investigating her report they appeared to be more interested in her immigration status. They asked her questions about her immigration status causing her to panic and become distressed. Officers had to be reminded that their priority was to assist her as a domestic violence victim and not to police her immigration status. They have taken no further action against the perpetrator.²²

KB came to the UK from Bolivia on a six-month student visa. She lived with her partner and their daughters here for two years. Her partner subjected her to emotional and psychological abuse throughout this period. KB did not report the abuse to social services or the police because her partner threatened that her daughters would be taken away and that she would be deported. KB was then denied a refuge space because of her immigration status. As she had no other option, KB has continued to live with the perpetrator in the same house.²³

V is epileptic and has visual and mobility impairments. She has five children and was dependent on her abusive husband's asylum claim. When her husband was taken into detention, she asked for Social Services' support. Their response was to take her children into care, rather than to provide her with support, as they felt she did not have the capacity to care for them. Eventually, when her husband was released from detention the children were returned to her. V now feels it is better to live with an abusive partner rather than risking asking for support again.²⁴

AE came to the UK with her husband and their children. She left her husband when he became abusive. She was a victim of FGM and was terrified about being sent back to Nigeria because her two daughters were at risk of being cut. The perpetrator told AE that he had been managing the paperwork regarding their immigration status, but she found out that this was a lie and that she had in fact become an 'overstayer'. AE sought immigration assistance but was incorrectly advised. She had a real fear of detention and deportation. She has been left in a state of limbo, uncertainty and at very high risk of abuse.²⁵

C was forced to marry a British national in Somalia when she was 16. She was unable to get a spousal visa because her husband did not earn enough to support her, but she was granted leave to enter the UK 'outside the immigration rules' under Article 8, ECHR. In the UK, C's husband was extremely abusive and eventually

¹⁸ Catrin Nye, Natalie Bloomer and Samir Jeraj, 'Victims of serious crime face arrest over immigration status', BBC's Victoria Derbyshire programme, <http://www.bbc.co.uk/news/uk-44074572>.

¹⁹ Ibid.

²⁰ Former Chief Superintendent Dal Babu, Ibid, <http://www.bbc.co.uk/news/uk-44074572>.

²¹ EAW, 'Women Living in a Hostile [Environment]', Personal Stories, <https://www.endviolenceagainstwomen.org.uk/wp-content/uploads/Personal-Stories-Women-Living-in-a-Hostile.pdf>.

²² Ibid, original case study provided by Southall Black Sisters.

²³ Ibid, original case study provided by Latin American Women's Rights Service (LAWRS).

²⁴ Ibid, original case study provided by Safety for Sisters,

²⁵ Ibid, original case study provided by London Black Women's Project.

she contacted the police, who failed to help her. C had no means of financially supporting herself and her children, and was refused the Destitute Domestic Violence Concession (DDVC)²⁶ on the basis that she had not entered the UK on a spousal visa. It took a legal challenge for the High Court to rule that C should get financial support.²⁷

13. Migrant victims of abuse need and deserve genuine assurances from the Government and from key statutory agencies that they will not be interrogated or referred to the Home Office on account of their immigration status. From homeless women presenting to housing officers, to traumatised women recounting their stories to the police, no victim should be threatened or denied protection by the state. Liberty supports the call of Step Up Migrant Women (SUMW) and the Latin American Women's Rights Service (LAWRS) for a firewall²⁸, to prevent public services sharing information with immigration authorities about migrant victims of abuse. We also support SUMW's recommendation that the Bill must include safe-reporting policies to comply with the Human Rights Act 1998 (HRA). To strengthen the protection of victims' rights: "*practices of the police and statutory agencies should comply with Articles 2, 3, 4 and 8 of the HRA by upholding their duty of providing safety for all victims of violence, putting the safety of victims as paramount over immigration control*".²⁹ Liberty supports the conclusion of SUMW that there should be (1) clear rules and guidance (through applying the Victim's Code) outlining that there should be no questioning of domestic abuse victims over nationality or immigration status, (2) no data-sharing of victims' information for immigration enforcement purposes, and (3) provision to enable reporting to other statutory services and areas in the public sector.³⁰

'Compassionate, effective and just' responses to domestic abuse

14. The consultation does not outline any concrete plans to improve statutory agencies' responses to domestic abuse. We disagree with the Government's attempt to limit the groups it should 'focus its efforts' on to only three agencies. The Government instead needs to adopt a holistic approach and provide sufficient funding and resources to ensure *all* statutory agencies are appropriately empowered to recognise abuse. This responsibility is codified in equality law and applies to all public services. The Public Sector Equality Duty (PSED) – set out at s.149 of the Equality Act 2010 – requires public bodies to have "*due regard*" to "*advance equality of opportunity*".³¹ Although the PSED does not impose a positive obligation on public bodies to take certain actions, they must consider the consequences of their decisions and any subsequent discriminatory impact – failure to do so can be legally challenged. The Government's proposals should emphasise firstly, that all statutory agencies must follow necessary protocol and guidance to improve their responses to domestic abuse (for example, imminent new housing guidance³² and Authorised Professional Practice for police³³), and secondly, that all public bodies have a legal duty to consider victims' rights when making decisions on domestic abuse cases.

²⁶ The DDVC is available to people who are in the UK on a partner visa and whose relationship breaks down because of domestic violence. It provides a short period of time to apply for welfare benefits (up to 3 months) so that they can make an application to settle in the UK. It is only available to people already here on a partner visa. See further, at paragraph 37.

²⁷ Ibid, original case study provided by Southall Black Sisters.

²⁸ A means to prohibit the sharing of information between services for immigration enforcement purposes – Fizza Qureshi, 'Firewalls and Tunnels: Migrants Need Protecting from the State', Migrants Rights Network, (November 2017), <https://migrantsrights.org.uk/blog/2017/11/06/firewalls-tunnels-migrants-need-protecting-state/>.

²⁹ SUMW, 'Domestic Violence and Abuse – Consultation: Template by Step Up Migrant Women campaign on safe reporting', (25 April 2018), p.2.

³⁰ Ibid, p.5.

³¹ s.149 Equality Act 2010, <https://www.legislation.gov.uk/ukpga/2010/15/section/149>.

³² Ministry of Housing, Communities and Local Government, 'Improving access to social housing for victims of domestic abuse', (30 October 2017), <https://www.gov.uk/government/consultations/improving-access-to-social-housing-for-victims-of-domestic-abuse>.

³³ College of Policing, 'Major investigation and public protection: Authorised Professional Practice on domestic abuse', (21 September 2015), <https://www.app.college.police.uk/app-content/major-investigation-and-public-protection/domestic-abuse/>.

15. Evidence clearly demonstrates that the overall police response to domestic abuse is inadequate and ineffective. A lack of training, failure to recognise the level of risk present, and a culture of disbelief result in devastating consequences for victims. These failings are encapsulated in the case of Katrina O'Hara, who was murdered in 2016 by her abuser after the police wrongly classed *her* as the 'attacker' and seized her phone.³⁴ Katrina's tragic and avoidable death is symptomatic of a much larger issue. In 2014, a review of all 43 police forces in England and Wales by Her Majesty's Inspectorate of Constabulary (HMIC) found that there were serious deficiencies in police operations concerning domestic abuse, including: "*alarming and unacceptable*" weaknesses in some core policing activity, poor management and supervision to enforce the right attitudes of officers, failure to prioritise action to tackle abuse on a day-to-day level, and officers lacking the skills and knowledge to engage confidently and competently with victims of domestic abuse.³⁵ In recent years, there have been widespread reports of other police shortcomings. The Independent revealed in 2017 that the number of domestic abuse incidents going unattended by police is 'soaring', with officers failing to show up in at least 39,686 incidents in 2016.³⁶ Police have also been accused of 'pushing responsibility' for prosecution onto victims, rather than tracking down evidence and building a case themselves.³⁷ The police should be using their powers to protect victims of abuse, yet there is a clear disparity between the approach to victims of other crimes and victims of domestic violence. As Zoe Billingham (HMIC Inspector) stated, "*They wouldn't tell a victim of burglary: 'Do you want us to do something about this?' Would that ever happen? So why should that question be put – and we know it still is – to victims of domestic abuse?*"³⁸
16. These police failures have resulted in violations of victims' rights right to life (Article 2) and their right to freedom from inhuman or degrading treatment (Article 3) of the European Convention on Human Rights (ECHR). In relation to Article 3, following extensive litigation, the Supreme Court in 2018 established (contrary to the submissions of the Metropolitan Police and the Home Office) that there is a legal obligation on the police to investigate crimes involving serious violence (including sexual assaults). Where the police fail to do so as a consequence of a serious operational or systemic failure, this constitutes a violation and compensation can be claimed (*Commissioner of Police of the Metropolis v DSD and another* [2018] UKSC 11).
17. However, the legal duty under Article 3 established by *DSD* alone will not be sufficient – it must be accompanied by proper training to improve the overall police response to domestic abuse. We welcome the Government's proposals, but emphasise that any new training scheme must be nuanced and consider the different stages of the investigative process – from crisis management in initial call outs, to escorting victims from their homes when fleeing an abuser, to collecting evidence for a prosecution case. The Government's proposed 'License to Practise' scheme, which aims to train police officers in public protection roles to the same strict standards required by officers who are licensed to carry firearms, could be beneficial, but it must include the right type of specialised training. One area, for example, that is commonly omitted from police training is how to sensitively communicate with victims of abuse and deal effectively with perpetrators. At present, victims are often re-traumatised by interactions with the police, who may tactlessly disregard their testimonies and lack the compassion to ensure victims feel safe,

³⁴ Lizzie Dearden, 'Police treated domestic abuse victim as 'attacker' and took her phone days before murder, reports find', The Independent, (8 January 2018), <https://www.independent.co.uk/news/uk/crime/domestic-abuse-police-katrina-ohara-failings-dorset-phone-taken-attacker-stuart-thomas-stalking-a8148726.html>.

³⁵ HMIC, 'Everyone's business: Improving the police response to domestic abuse', (27 March 2014), p.7, <https://www.justiceinspectors.gov.uk/hmicfrs/wp-content/uploads/2014/04/improving-the-police-response-to-domestic-abuse.pdf>.

³⁶ Harriet Agerholm, 'Police failing to attend one in nine domestic violence incidents, figures show', The Independent, (10 December 2017), <https://www.independent.co.uk/news/uk/home-news/domestic-violence-abuse-police-reports-devon-cornwall-humberside-response-a8085146.html>.

³⁷ Harriet Agerholm, 'Police told to 'stop pushing responsibility' for domestic violence prosecutions onto victims', The Independent, (30 April 2017), <https://www.independent.co.uk/news/uk/home-news/domestic-violence-pushing-responsibility-prosecutions-victims-convictions-hmic-zoe-billingham-a7706446.html>.

³⁸ Ibid.

comforted and supported following an attack.³⁹ Further, there is evidence that police are sometimes manipulated by perpetrators, who use well-practised behaviours to persuade them of their ‘innocence’ and shift the blame onto the victim (as occurred in Katrina O’Hara’s case).⁴⁰ In order to achieve a training regime and content that is thorough, effective and fit for purpose, we urge the Government and the College of Policing to consult the independent women’s sector when designing programmes.

Oversight on performance

18. Collecting data that will allow for oversight and accountability is vital. But any form of improved data collection needs adequate safeguards that are General Data Protection Regulation (GDPR) and HRA-compliant, and should only be used in the interests of the victim and not for any other purpose, such as immigration enforcement. The domestic abuse bulletin and data tool, to be annually compiled by the Office for National Statistics, would be a useful resource but it must also display the full picture in the UK – for instance it must account for the experiences of migrants, victims of abuse with complex needs, victims who carry criminal records, and any other marginalised victim groups. The resource should be a reflective tool, highlighting both improvements and failings over the year in the response to domestic abuse. We are concerned about the Government’s proposal to improve collection and usage of domestic violence data in the Department for Education’s ‘child in need’ census for families. This needs to be done with care and sensitivity. Data should be collected to inform better protection of children who witness abuse, and should not be used to gather other information about the child or their family in the way that the schools census was used for immigration enforcement purposes.⁴¹
19. Liberty welcomes the introduction of a dedicated Domestic Abuse Commissioner, who will have an overview of whether policies, legislation and operations are working for victims. This person must be carefully appointed, and they must have meaningful oversight and independence. They should have spent time with people who have lived experience of abuse and be receptive to high quality evidence from women’s groups and human rights organisations. The Commissioner should oversee the performance of statutory agencies and local services when responding to abuse. If there are operational or resourcing problems, the Commissioner should report back to the relevant Government department or representative body in order to rectify these issues and there should be a statutory obligation on the recipient of the Commissioner’s report to respond within a specified period of time to explain what steps they intend to take to address the concerns.⁴² They must robustly call out any shortcomings in service provision and work with the Victims’ Commissioner to ensure all victims of abuse are supported by the state – regardless of their background. To realise the potential of the role, the Commissioner must understand intersectionality within domestic abuse. We support SUMW’s proposal that the Commissioner should, *“pay attention and act as a champion to increase awareness of how migrant, disabled, [and] BME women experience and report violence and access justice through the existing system.”*⁴³ The new Commissioner must also ensure the National Statement of Expectations (NSE) on VAWG is met and working in line with national strategy on domestic abuse, and that new policies and/or legislation which could have a negative impact on some victims of abuse are properly scrutinised. As ERAW suggests, this may include, *“analysing any new immigration legislation for disproportionate impact on women who’ve experienced VAWG, highlighting possible unintended consequences of welfare changes which could enable economic abuse by reducing independence, or exploring housing policy to create greater protections for women and*

³⁹ Health Talk, ‘Women’s experiences of Domestic Violence and Abuse’, <http://www.healthtalk.org/peoples-experiences/domestic-violence-abuse/womens-experiences-domestic-violence-and-abuse/role-police-domestic-violence-and-abuse>.

⁴⁰ See section on ‘Examples of controlling or coercive behaviour’, in College of Policing, ‘Major investigation and public protection: Context and dynamics of domestic abuse’, <https://www.app.college.police.uk/app-content/major-investigation-and-public-protection/domestic-abuse/context/>.

⁴¹ For further information on the schools census, please see: <https://www.libertyhumanrights.org.uk/boycott-school-census>.

⁴² The system whereby a Coroner may make a “Prevention of Future Deaths” report following an inquest with its attendant obligations presents a potentially useful model, <https://www.judiciary.gov.uk/wp-content/uploads/2013/09/guidance-no-5-reports-to-prevent-future-deaths.pdf>.

⁴³ SUMW, ‘Domestic Violence and Abuse – Consultation: Template by Step Up Migrant Women campaign on safe reporting’, (25 April 2018), p.5.

children who experience abuse to abuse to remain in their homes.”⁴⁴ Therefore, the Commissioner should have active and autonomous oversight to continually reflect and call for improvements in domestic abuse policy, practice and legislation.

Victims’ rights to safety, security and support

Refuges and safe accommodation – the heart of a supportive system

20. To effectively transform the response to domestic abuse, it is vital that the Government provides sufficient funding to open and reopen more refuge spaces. Local authorities need more money to be able to adequately meet the need in their local areas, and to provide victims with permanent residency options. Failure to provide adequate or appropriate services risks violations of victims’ right to life (Article 2 ECHR), freedom from cruel, inhuman or degrading treatment (Article 3 ECHR) and the right to privacy and a family life (Article 8 ECHR). The Government should be prioritising these crucial human rights in order to comply with a key provision in the Istanbul Convention, which states that, “*parties shall ensure that policies... place the rights of the victim at the heart of all measures*” (Art 7(2) of the Istanbul Convention).
21. However, in recent years the Government has done anything but put victims at the heart of all measures. It has instead repeatedly cut funding to refuges and withdrawn financial support for victims’ services. More than 65 per cent of England’s local authorities have subsequently slashed their spending on refuges as a result of budget cuts, and councils have reduced their spending on refuges by nearly a quarter since 2010.⁴⁵ Further, 17 per cent of specialist women’s refuges were forced to close between 2010 – 2014 and a third of all referrals to refuges are routinely turned away.⁴⁶ For instance, from 2016 – 2017, 60 per cent of all referrals to refuges were declined, generally due to a lack of available space.⁴⁷ In one day in 2017, 94 women and 90 children were turned away.⁴⁸ This is unacceptable. No victim should be denied safety. Although the Government has outlined spending £33.5m of grant funding on refuges and other safe accommodation services since 2014, in November 2016, 50 local authorities had not received any allowances from this central pot allocated to tackle domestic abuse - and in any event this seems unlikely to compensate for the catastrophic cuts suffered by refuge services prior to 2014.⁴⁹ Funding for victims’ services and refuges needs to adequately meet the demand for spaces, and provisions need to be distributed to local authorities fairly and efficiently. If 1.9 million adults experienced domestic abuse from 2016 – 2017, then local authorities need to have the resources to accommodate any person who presents in need. It is for the Government to ensure this is possible as part of their annual spending budget.
22. We also call on the Government and local authorities to ensure that victims are not constantly displaced from area to area. Of course, where their safety requires them to be housed at a considerable distance from their residence at the time of the abuse, or moved at any subsequent point, this should be permitted following a valid risk assessment. Otherwise, displacement of domestic abuse victims across the country or from refuge to refuge must be avoided, as this is disruptive to their recovery and journey to independence. Displacement also impacts any children involved, as they have to move schools each time

⁴⁴ EAW, ‘Draft Submission to Government Consultation on the proposed Domestic Violence and Abuse Bill’, (April 2018), p.22, <https://www.endviolenceagainstwomen.org.uk/wp-content/uploads/Updated-EVAW-DVA-Bill-Consln-Submission-DRAFT-FOR-WEB-SHARING-26-APR-18.pdf>.

⁴⁵ Jamie Grierson, ‘Council funding for women’s refuges cut by nearly £7m since 2010’, The Guardian, (23 March 2018), <https://www.theguardian.com/society/2018/mar/23/council-funding-womens-refuges-cut-since-2010-england-wales-scotland>.

⁴⁶ Harriet Agerholm, ‘Fears for victims of domestic abuse as number of police charges plummets in one year’, The Independent, (2 April 2017), <https://www.independent.co.uk/news/uk/crime/domestic-abuse-police-charges-fall-cases-rise-fear-for-victims-a7663036.html>.

⁴⁷ Women’s Aid, SOS Save Refuges Save Lives, <https://www.womensaid.org.uk/what-we-do/campaigning-and-influencing/campaign-with-us/sos/>.

⁴⁸ Ibid.

⁴⁹ The Week, ‘The truth about British funding for women’s refuges’, Checked Out, (12 December 2017), <http://www.theweek.co.uk/checked-out/90364/the-truth-about-british-funding-for-women-s-refuges>.

their parent is moved to another location, which detrimentally affects their social development and educational life. We ask the Government to ensure that refuges and safe accommodation for victims of abuse are appropriately distributed across the UK, equipped to house victims for as long as necessary, and provide safe pathways to independent living once they are ready to leave.

23. We welcome the proposals made in the Secure Tenancies (Victims of Domestic Abuse) Bill 2017, as it does a great deal to ensure housing security for victims of abuse. Our concern is that it only benefits a select group of victims who are affected by abuse, namely those living in council accommodation. Victims' rights should be mirrored in other areas of property law – for instance victims should not have to forgo joint tenancies and/or joint ownership to abusive partners if they have equal rights to the property. The Government also needs to ensure policy and guidance is implemented by housing authorities to support victims of abuse – particularly when making homelessness decisions and providing urgent accommodation and support through s.17(1) of the Children Act 1989.
24. The Government needs to ensure that safety and security provisions comply with Article 18(4) of the Istanbul Convention, in that we *“need the empowerment and economic independence of women victims to be encouraged”*, not stripped away. It is a welcome suggestion that the NSE on VAWG should be embedded into the Government's approach – however, many aspects of this policy have been ignored in the consultation itself. We recommend that the Government pays close attention to the following self-imposed commitments, as set out in the NSE:
- a. *“Work with the specialist VAWG sector and other local partners to ensure a secure future for a range of services, including Rape Crisis Centres, specialist BME-led provision (including working to address issues such as FGM and forced marriage), national helplines and refuges.”*⁵⁰
 - b. *“Put the victim at the centre of service delivery... Local areas should ensure that services are flexible and responsive to the victim's experience and voice.”*⁵¹
 - c. *Services should be “locally-led and safeguard individuals at every point.”*⁵²
 - d. Commissioners should *“have sufficient local specialist support provision, including provision designed specifically to support victims from marginalised groups e.g. Specialist BME-led refuges... [and] have access to a broad diversity of provision, considering how services will be accessible to BME, disabled, LGBTQQI and older victims and survivors, and those from isolated or marginalised communities.”*⁵³
 - e. Commissioners should *“access and build in access to mental health service provision for victims of all types of VAWG, effectively linking up such services with, for example, health services, Rape Crisis Centres, specialist BME women's services or support for adult survivors of child sexual abuse.”*⁵⁴

⁵⁰ Home Office, Violence Against Women and Girls – National Statement of Expectations, (December 2016), p.3, https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/574665/VAWG_National_Statement_of_Expectations_-_FINAL.PDF.

⁵¹ Ibid, p.4.

⁵² Ibid, p.4.

⁵³ Ibid, p.5.

⁵⁴ Ibid, p.5.

- f. *“Map out local women’s support groups, including those led by BME women for BME women, to find out who they reach and what expertise they have so that this can be threaded into aims.”*⁵⁵

Assisting victims with complex needs

25. We welcome the Government’s proposals to better assist victims of abuse with complex needs, including those with mental health issues, drug and alcohol dependency, those with children, women who have been accused or convicted of a crime, victims with disabilities, and migrants. With regards to the latter - as EAW and SUMW have noted - for many migrant, refugee or asylum-seeking women, their immigration status is often used as a tool by perpetrators to threaten, intimidate, exploit and control them. As EAW notes, *“threats concerning women’s immigration status, and control of documents and application processes related to settled status or citizenship, are also common where there is domestic abuse.”*⁵⁶ The Government needs to ensure that migrant women are not doubly discriminated against as a result of being a victim of abuse *and* not having independent or settled status. We have seen how widely these women are caught up in the country’s ‘hostile environment’ policies and the barriers this creates to the safety and security they need.
26. The Government also has to address the fact that the most vulnerable groups of victims are more likely to stay with abusive partners, as they have fewer support networks, may be more isolated, do not have adequate access to services, and fear reprisal from authorities. These groups include: migrant women, victims of abuse who have been accused or convicted of crimes, and those with low socio-economic status or economic insecurity.
27. Another barrier to justice for victims with complex needs is the lack of access to legal aid available in domestic abuse cases. We acknowledge that legal aid is currently available for immigration applications under the domestic violence rule and for private family law proceedings using the domestic violence gateway, but these are extremely difficult to obtain through the normal means-tested eligibility rules. There are also other types of cases for which victims may need legal aid but which will be out of scope. Although exceptional case funding may be available if human rights law so requires, this type of funding is very difficult to secure and very limited in availability.⁵⁷ This means that many victims who may be involved in satellite proceedings relevant to domestic abuse issues are unable to access legal aid, even though they definitely do not have enough money to pay for a lawyer. The Ministry of Justice must address these issues in order for the UK to be compliant with the Istanbul Convention, which provides that there should be *“a right to legal assistance and to free legal aid for victims not just for injunctions but for satellite litigation arising from domestic violence”* (Article 57, the Istanbul Convention).
28. Although the evidential barriers to accessing legal aid have been recently lowered, there is still no standalone ‘right’ to legal aid and legal assistance.⁵⁸ Therefore, the extremely low means test must be increased and the evidential burdens must continue to be reduced. We urge the Government to consider the recommendations made in the LASPO review (June 2017), which specifically outlines the detrimental impact of legal aid cuts to domestic abuse cases.⁵⁹ This impact has been felt in courtrooms across the country. In May 2018, District Judge Simon Read commented that the inaccessibility of legal aid for cases of this kind created a ‘likelihood’ of a miscarriage of justice.⁶⁰ His concerns about the legal aid system

⁵⁵ Ibid, p.8.

⁵⁶ EAW, ‘Draft Submission to Government Consultation on the proposed Domestic Violence and Abuse Bill’, (April 2018), p.4, <https://www.endviolenceagainstwomen.org.uk/wp-content/uploads/Updated-EAW-DVA-Bill-Consln-Submission-DRAFT-FOR-WEB-SHARING-26-APR-18.pdf>.

⁵⁷ Monidipa Fouzder, ‘Exceptional case funding scheme ‘inaccessible’, High Court told’, The Law Society Gazette, (10 June 2015), <https://www.lawgazette.co.uk/law/exceptional-case-funding-scheme-inaccessible-high-court-told/5049313.article>.

⁵⁸ The Law Society, ‘Boost for justice for victims of domestic violence after legal aid rule change’, (8 January 2018), <http://www.lawsociety.org.uk/news/press-releases/boost-for-justice-for-victims-of-domestic-violence-after-legal-aid-rule-change/>.

⁵⁹ The Law Society, ‘Access Denied? LASPO four years on: a Law Society review’, (June 2017), p.16.

⁶⁰ *JY v RY* [2018] EWFC B16, <http://www.bailii.org/ew/cases/EWFC/OJ/2018/B16.html>.

arose when hearing a child contact arrangements case, in which the female victim had to appear in the same court as her former partner, who she had accused of rape and sexual abuse. Both parties were unrepresented for the entirety of the proceedings, which led District Judge Simon Read to remark that if the parties had been represented, “*there is a very strong likelihood that the outcome of the fact finding would have been different, and most probably a truer reflection of what really happened, had the parents been represented. It would surely have concluded sooner, more fairly, and at far less expense to the public purse than ultimately was the case, with two wasted days at Court. It may also have been less painful for the participants.*”⁶¹ Without legal representation, many victims continue to be cross-examined by their alleged abusers in court – around 24 per cent of victims over the past year – despite a Government pledge in 2017 to end this appalling practice.⁶² These issues must be addressed by the upcoming Bill, otherwise countless more victims will remain without access to justice.

29. The proposals outlining support mechanisms for victims who have been convicted of crime do not go far enough. We believe the approach should be twofold: (1) preventative, and (2) rehabilitative. Firstly, based on the suggestions outlined in this briefing, the Government needs to improve its overall response to domestic abuse in order to provide victims with better support, to prevent them from turning to offending behaviour in the first place. A report by the Prison Reform Trust in 2017 describes domestic abuse as a driver to women’s offending.⁶³ It revealed that 57 per cent of women in prison report having been victims of domestic violence.⁶⁴ The report also acknowledges that there are strong links between women’s experience of domestic and sexual abuse and coercive relationships and offending behaviour – which often traps them in a vicious cycle of victimisation and criminal activity.⁶⁵ In these cases, imprisonment leads to further trauma and can exacerbate mental health issues – potentially violating women’s right to life (Article 2 ECHR), and freedom from inhuman or degrading treatment (Article 3 ECHR) through self-harm and suicide. The risk to life is particularly pertinent, as 46 per cent of women in prison report having attempted suicide at some point in their lifetime – this is twice the rate of men (21 per cent) and more than seven times higher than the general population.⁶⁶ If women were provided with better support networks, had their reports taken seriously by the police, and were able to access safe accommodation away from their abusers, this could help prevent a great deal of women’s offending behaviour. There is something fundamentally wrong with a system that incarcerates women who are mentally ill and who are victims of crimes often far worse than the ones they have committed.

30. Liberty’s recommendations to tackle this issue are as follows:

- a. Sentencing Guidelines should provide for judges to take domestic abuse into account as a specific mitigating factor.
- b. Probation management should consider the risk of a victim returning to abuse when making decisions about releasing women back into the same community, without any protections or legal safeguards against the abuser.
- c. We need a ‘whole system approach’ that is properly invested in. The recommendations made by Baroness Corston in her 2007 report on ‘women with particular vulnerabilities in the criminal justice system’ could serve as a useful starting point. She sets out a blueprint for a “*distinct, radically different, visibly-led, strategic, proportionate, holistic, woman-centred, integrated*

⁶¹ Ibid, per District Judge Simon Read at para 35(13).

⁶² Owen Bowcott, ‘Domestic abusers still able to cross-examine victims in court’, The Guardian, (30 May 2018), <https://www.theguardian.com/society/2018/may/30/domestic-abusers-still-able-to-cross-examine-victims-in-court>.

⁶³ Prison Reform Trust, ‘There’s a reason we’re in trouble’, Domestic abuse as a driver to women’s offending’, (December 2017), passim, http://www.prisonreformtrust.org.uk/Portals/0/Documents/Domestic_abuse_report_final_lo.pdf.

⁶⁴ Ibid, p.7.

⁶⁵ Ibid, p.4.

⁶⁶ Women in Prisons, ‘Key Facts – A round-up and latest key statistic regarding women affected by the criminal justice system’, <http://www.womeninprison.org.uk/research/key-facts.php>.

approach” to women in the criminal justice system.⁶⁷ These recommendations appear to have fallen by the wayside, yet could provide the foundations for a more humane and effective approach to addressing female offending behaviour.

No Recourse to Public Funds – a discriminatory barrier to safety

31. The Government offers no meaningful assistance to women who are subject to a ‘No Recourse to Public Funds’ (NRPF) requirement. Donating a mere £250,000 to one specialist women’s service (Southall Black Sisters’ No Recourse Fund) is hardly enough to accommodate that one organisation’s NRPF service need, yet alone all the vulnerable victims subject to this condition across the country. The NRPF requirement is discriminatory as it largely impacts BAME migrant women, who are subsequently more likely to be turned away from a refuge space due to their immigration status. In fact, four in five BAME women are turned away from safe accommodation spaces. The NRPF rule also means that women subject to this condition are more likely to stay with their abusers as they do not have the means to secure safe accommodation or support themselves independently. This in effect creates a two-tier system of safety for domestic abuse victims, based on nationality, immigration status and race. This risks undermining women’s right to life (Article 2 ECHR), freedom from cruel and degrading treatment (Article 3 ECHR), and the prohibition of discrimination (Article 14 ECHR). It also directly contravenes a key provision in the Istanbul Convention, that specifies any measures to, “*protect the rights of victims shall be secured without discrimination on any ground such as ... national or social origin ... migrant or refugee status, or other status*” (Art 4(3)). Liberty supports the arguments expressed by many specialist BAME women’s services and civil liberties groups (including Amnesty International) that the NRPF scheme should be abolished.⁶⁸ At the very least, if not abolished, this discriminatory status should be delinked from women’s eligibility for refuge spaces. We believe the Government cannot meet its legal and policy obligations under the NSE on VAWG, the Istanbul Convention, and under fundamental human rights laws until no victim of abuse is turned away. The system that currently exists to exclude migrant women with insecure status from accessing support is unjust. As Vivienne Hayes, CEO of the Women’s Resource Network, states this is “*a disastrous situation and the whole barrier of access needs to be removed. It is a women’s human rights issue.*”⁶⁹

32. We also call for the enforcement and expansion of the Destitute Domestic Violence Concession (DDVC). Presently, almost a quarter of all applications for the DDVC have been rejected since it was first introduced in 2012 – and the proportion of applications being rejected increases every year.⁷⁰ The reasons for these refusals are often menial, bureaucratic and unjust. For instance, ‘*failing to provide information when asked*’ is a common mistake made by women whose first language is not English. This capitalises on human error to deny victims the support they need. Further, the DDVC is far too narrow and only applies to victims who have entered the UK on a spousal visa. This restrictive approach undermines the very purpose of the DDVC – namely to help women with insecure status to escape abusive relationships. Southall Black Sisters have run two test cases which argue that women who enter the UK on conditions that mirror that of a spousal visa applicant should also be entitled to the DDVC.⁷¹ In one case, the High Court directed the Home Office to provide financial support (as though under the DDVC) to a woman who was granted leave to enter the UK outside the immigration rules, under Article 8 human rights grounds.⁷² This vital safety net must be extended to all other victims of abuse.

⁶⁷ Ibid, p.1.

⁶⁸ Amnesty International, Southall Black Sisters, ‘No Recourse, No Safety – the Government’s failure to protect women from violence’, (March 2008), https://thewomensresourcecentre.org.uk/wp-content/uploads/2012/12/amnesty_no_recourse.pdf.

⁶⁹ Gareth Evans, ‘Meet the women forced to choose between domestic abuse and poverty’, New Statesman, <https://www.newstatesman.com/politics/uk/2016/03/meet-women-forced-choose-between-domestic-abuse-and-poverty>.

⁷⁰ Gareth Evans, ‘Meet the women forced to choose between domestic abuse and poverty’, New Statesman, <https://www.newstatesman.com/politics/uk/2016/03/meet-women-forced-choose-between-domestic-abuse-and-poverty>.

⁷¹ Southall Black Sisters, ‘Test cases on the DDV Concession’, <https://www.southallblacksisters.org.uk/case-news/test-cases-ddv-concession>.

⁷² Ibid.

33. Liberty is also concerned about the lack of funding available to migrant domestic workers. Those who flee a violent employer are unable to access short-term support because of the NRPF rule, and are also denied a genuine right to change employer. These individuals are particularly vulnerable, as they often come from backgrounds of extreme poverty and are dependent on their employer for both accommodation and wages. We ask the Government to acknowledge that overseas domestic workers are also often victims of domestic violence, and therefore the DDVC should be made available to them.
34. Lastly, we believe that the time frame in which victims receive the DDVC should be increased from three months to six months. Three months is not sufficient time for a victim of abuse to escape a life-threatening relationship, recover from these traumatic circumstances and establish a stable and entirely financially independent life.

Enhancing victims' protections in the criminal and civil justice systems

Domestic Abuse Protection Orders

35. Liberty is concerned about the new Domestic Abuse Protection Notice (DAPN) and Domestic Abuse Protection Order (DAPO) scheme proposed in the consultation. We believe this is a distraction from areas where Government resources should be allocated, namely: improving access to safe accommodation, improving victims' ability to pursue prosecutions through the criminal justice system, and transforming the culture and attitudes towards domestic abuse within statutory agencies. Further, the civil orders scheme outlined in the consultation poses many unjustifiable threats to civil liberties. The purpose of these proposals presumably is to afford greater protection to victims of abuse – however we believe there are viable alternatives (as mentioned above), which provide stronger safety mechanisms without compromising on fundamental human rights.
36. A DAPN or a DAPO can be imposed on an individual *before* there has been a criminal charge, conviction or acquittal, *and* the breach of a DAPO would amount to a criminal offence under the Government's proposals. These measures circumvent the criminal justice system as a person may end up incarcerated based on facts determined by a legal process that falls far below the standard of fair process necessary to justify a criminal conviction. Where criminal sanction results from breach of a civil order, this in effect creates a personal criminal code that a person must abide by - a code set by the conditions of the DAPO, rather than the individual being measured against general legislative criminal standards. This is a clear threat to fair process and the rule of law. Liberty is also concerned that those who are afraid of criminalising their abusers will face the same fears in relation to the proposed civil order scheme.
37. Our second concern is that the introduction of positive requirements as conditions of an order would disproportionately interfere with the accused's right to liberty and right to privacy (Articles 5 and 8 ECHR). The suggested notification requirement, in which an individual would need to notify certain personal details to the police, including details of where they live and current intimate relationships, compromises privacy rights in a context where these individuals have not been convicted of a crime. Liberty has historically opposed the Domestic Violence Disclosure Scheme (DVDS) – otherwise known as 'Clare's Law' – for its inefficacy and the fact that it puts the emphasis on women to take action to protect themselves from abuse.⁷³ When the scheme was first proposed by the Government, Refuge – a leading domestic violence charity – argued that the DVDS would not be supported by, "*any of us with the expertise to judge its chances of success*" and questioned (1) how many women would use the scheme, and (2) what meaningful difference this would make, considering the Government's own impact assessment suggested that at best the DVDS would result in an annual reduction of 0.5 per cent in

⁷³ Jamie Grace, 'Dodgy DVDS: some problems with the national roll-out of the Domestic Violence Disclosure Scheme', Centre for Crime and Justice Studies, <https://www.crimeandjustice.org.uk/publications/cjm/article/dodgy-dvds-some-problems-national-roll-out-domestic-violence-disclosure>.

domestic violence.⁷⁴ In January 2018, statistics showed that there are discrepancies in its application numbers between areas, and in some regions it is particularly low: for instance 3.3 per 100,000 people in West Yorkshire.⁷⁵ Therefore, we oppose the proposition to include the DVDS as a potential 'positive requirement' under the DAPO scheme.

38. Related to this, we are deeply troubled by the suggestion that electronic monitoring should be used as part of the DAPO scheme, and could be flexibly imposed by the courts. The proposals suggest using new technologies (including controversial GPS tracking) to monitor an alleged perpetrator's location, to establish behaviour patterns, or provide evidence of someone's movements e.g. compliance with an exclusion zone. Liberty believes this risks violating an individual's right to liberty and right to privacy (Articles 5 and 8 ECHR). The Council of Europe have expressed concerns about using electronic monitoring at the pre-trial stage, concluding that, "*using [electronic monitoring] on suspects who would comply with their non-custodial requirements without the additional element of [electronic monitoring] ... should be avoided.*"⁷⁶ The Government has suggested that there will be statutory safeguards in place to ensure electronic monitoring is only used where necessary to prevent further abuse and where it is proportionate to do so. However, no such details are given in the consultation document and the Government has failed to set out proposals for review, variation or appeal of a decision to impose electronic monitoring. We further have concerns about the effectiveness of this technology. The Ministry of Justice have recently been accused of delivering a "*fundamentally flawed*" new generation electronic monitoring programme, which was deemed to be a "*waste of public money*".⁷⁷ Further, EAW have expressly disagreed with the Government's electronic monitoring proposal, stating that they are, "*concerned that this proposal would be used differently by different courts, is unlikely to be policed/enforced given current police capacity, and may give [a] false sense of security to victims and interested agencies.*"⁷⁸ We support the independent women's sector when we say that these electronic monitoring proposals are ill-conceived and ineffective – such a scheme is likely to cause more harm than good.
39. If a civil orders scheme of this kind is valid at all, any orders imposed must be grounded in a fair process to ensure they do not disproportionately interfere with the accused's fundamental rights. Indefinite orders fail to account for the possibility of changes in the factors relevant to the initial risk assessment, including consideration of the current circumstances of the victim, the behaviour of the abuser and their compliance with the order. License to issue indefinite orders also creates an incentive to impose them, in order to avoid ongoing obligations to review the circumstances, especially in a court system that is already overwhelmed. They largely increase the risk that the DAPO scheme will become an inappropriate substitute for the criminal justice process.

Conditional cautions

40. The proposals also suggest increasing the use of conditional cautions in domestic violence cases. Liberty opposes this, as we have long been concerned that out of court disposals that result in deprivations of

⁷⁴ The Telegraph, 'Clare's Law' plans criticised by violence charities', (5 March 2012),

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

⁷⁵ Georgina Morris, 'Justice by geography' as Clare's Law figures reveal discrepancies in force use', The Yorkshire Post, (8 January 2018), <https://www.yorkshirepost.co.uk/news/crime/justice-by-geography-as-clare-s-law-figures-reveal-discrepancies-in-force-use-1-8945497>.

⁷⁶ Mike Nellis, 'Standards and Ethics in Electronic Monitoring', Council of Europe, (June 2015), <https://rm.coe.int/handbook-standards-ethics-in-electronic-monitoring-eng/16806ab9b0>.

⁷⁷ Public Accounts, 'Summary: Offender-monitoring tags', (23 January 2018),

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

⁷⁸ EAW, 'DRAFT Submission to Government Consultation on the proposed Domestic Violence and Abuse Bill', (April 2018), <https://www.endviolenceagainstwomen.org.uk/wp-content/uploads/Updated-EAW-DVA-Bill-Consln-Submission-DRAFT-FOR-WEB-SHARING-26-APR-18.pdf>.

liberty are incompatible with Article (5)(1) ECHR.⁷⁹ Conditional cautions require a person to comply with coercive conditions that are rehabilitative, reparative or punitive in nature – and failure to comply may result in prosecution for the offence. This renders a person subject to an unlawful deprivation of their liberty without the necessary intention to pursue legal proceedings. Conditional cautions historically, moreover, have been intended to allow police to deal with ‘low-level’ offending. But domestic abuse cases are not ‘low level’ offences - they are offences of the most serious kind and therefore police should not be given wide-ranging powers to administer conditional cautions as an alternative to the proper criminal justice process.

41. For this reason, DPP guidance restricts the use of conditional cautions for domestic abuse cases – it is stated to be rarely appropriate in these circumstances.⁸⁰ The general interpretation of this guidance is that ordinarily, conditional cautions should not be used in domestic abuse cases because of the complexity of these matters and because conditional cautions are generally recommended for minor and/or isolated incidents of low level offending only. The case of *R (Robson) v CPS* [2016] EWHC 2191 (Admin); 29 July 2016, held that conditional cautions *can* be offered in *some*, rare domestic abuse cases, however the nature of the crime and the circumstances of the offender must warrant this and the case must immediately be referred to a prosecutor. Therefore, we believe it would be contrary to both law and policy to change the circumstances in which out of court disposals can be used in domestic abuse cases.
42. Further, Liberty has consistently raised concerns about how summary justice of this type can undermine judicial standards, make individuals subject to arbitrary and inconsistent decision-making, and damage public perceptions of the police and the justice system as a whole. As a result of cost-saving and target-achieving desires, it appears that persistent alleged offenders and those suspected of serious offences are not being prosecuted when they should be. An HMIC report found that, contrary to national guidance, out of court disposals are being used to deal with those who appear to be persistent offenders and for alleged offences whose nature or gravity mean that they should not be dealt with out of court.⁸¹ We have the same concerns about the proposal to increase the use of conditional cautions in domestic abuse cases. We urge the Government to reconsider this strategy and to adhere to current policy, practice and legal precedent.

Delivering justice through a fair legal process

43. The Government has correctly identified that victims often fail to pursue justice through criminal proceedings and routinely retract cases. Yet the Government has incorrectly identified the reasons behind this. Victims of abuse choose not to engage with the justice system due to mistrust, a lack of confidence in the system which they feel is stacked against them, the fear of being reported to immigration enforcement in some cases, and fear of retribution by their perpetrators. In order to improve this, we suggest two main changes: (1) resources and funding should be given to Independent Domestic Violence Advocates and specialist domestic abuse services, so that advocates can support victims throughout the justice process, and (2) victims need a guarantee that they will not be reported to the Home Office as a result of pursuing a criminal case, and that they will not be further victimised during the process. Eradicating the culture of disbelief is crucial to achieving this, so that victims do not feel isolated or further traumatised by proceedings themselves.

⁷⁹ “Everyone has the right to liberty and security of the person. No one shall be deprived of his liberty save in the following cases and in accordance with the procedure prescribed by law: ... the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent him committing an offence or fleeing after having done so.”, Article 5 (1)(c) ECHR.

⁸⁰ CPS, ‘Domestic Abuse Guidelines for Prosecutors’, <https://www.cps.gov.uk/legal-guidance/domestic-abuse-guidelines-prosecutors>.

⁸¹ Criminal Justice Joint Inspection, ‘Exercising Discretion: The Gateway to Justice’, (June 2011), p.4, <https://www.justiceinspectors.gov.uk/hmicfrs/media/exercising-discretion-the-gateway-to-justice-20110609.pdf>.

44. Liberty disagrees with the Government's proposals for a 'fast track' trial process as a solution to this problem. A 'fact track' system, where cases must be decided within two weeks, risks running unfair trials and providing 'watered-down' justice. In these plans, the Government claims that faster trials will apply only to 'straightforward' cases, but the Government fails to define what a 'straightforward' domestic abuse case is. Such a standard risks encouraging reductionist assessments of cases that rely on stereotypes and snap judgments, gloss over complex forms of abuse, or ignore non-physical types of offending behaviour. It would create a two-tier system where those without complex needs have their cases dealt with expediently, and others are still subject to major delays. Such a proposal is inherently unjust. We need an overhaul of the entire system to make it more efficient rather than offering an unequal 'fast track' process for some.
45. We are also concerned about the proposed legislative assumption that all victims of abuse should be treated as eligible for assistance through special measures. The problem with a legislative assumption is that such measures become the norm, regardless of whether the measures would inhibit the ability of the court to effectively test that evidence (which is the normal test). This interferes with fair trial considerations (Article 6 ECHR) and may not necessarily improve the victim's ability to give effective evidence in court. The balance needs to be carefully weighed up to enable more victims to feel confident and protected to press charges and participate in the criminal justice system, while also ensuring evidence can be properly examined in court. We suggest that the current scheme should remain unchanged, however victims should always be encouraged to make an application for special measures where appropriate – it will then be for the court's discretion to award these when necessary.
46. The Government proposes outlining domestic abuse as an aggravating factor in sentencing. We support this view as sentencing should indeed consider the devastating impact of abuse on the victim and on any children affected. Offences should also be considered more serious where there has been a violation of trust, in repeat cases, where there is a continuing threat, and if abuse was perpetrated over a long period of time. However, sentences must be proportionate and pay due regard to other options on a case-by-case basis. There should be clear sentencing guidelines on this to ensure that higher sentences are passed proportionately and justifiably.

The role of technology in domestic abuse cases

Combatting online and digital abuse

47. The prevalence of online and digital abuse has continued to rise. As Jess Phillips, Chair of the All Party Parliamentary Group (APPG) on Domestic Violence said, *"It's time that the legislation reflected the reality of abuse ... and that online abuse is recognised as being an integral part of patterns of abuse. It is not a 'separate' issue – it is part and parcel of violence against women."*⁸² The APPG's report on 'Tackling domestic abuse in a digital age' also examines these issues and outlines important recommendations.⁸³ The Government should take note of these suggested actions which aim to modernise the response to online forms of domestic abuse and violence. Liberty particularly supports the following:
- a. *"The crime [of online abuse] must be sanctioned robustly, without blaming victims. Policies, strategies, training and awareness-raising on domestic abuse and coercive control by Government, statutory agencies and support services – including specialist domestic abuse*

⁸² Women's Aid, 'APPG on Domestic Violence launches new report on tackling online abuse', (28 February 2017), <https://www.womensaid.org.uk/appg-domestic-violence-launches-new-report-tackling-online-abuse/>.

⁸³ Women's Aid, 'Tackling domestic abuse in a digital age: a recommendations report on online abuse by the all-party parliamentary group on domestic violence', (February 2017), <https://1q7dqy2unor827bqjls0c4rn-wpengine.netdna-ssl.com/wp-content/uploads/2015/04/APPGReport2017-270217.pdf>.

*services – must routinely cover the nature and impact of online abuse, and highlight the extent of the overlap between offline and online forms of the crime.*⁸⁴

- b. *“We recommend that the Government convenes a cross-sectoral working group – including industry and other stakeholders – to establish guidelines for online providers in preventing and tackling gendered online abuse, and responding to domestic abuse and VAWG cases.”*⁸⁵
- c. *“Police Forces and Police and Crime Commissioners must also ensure that action to tackle online abuse is a central part of their domestic abuse and VAWG strategies, and is appropriately funded and prioritised at the local level.”*⁸⁶

48. In relation to the second recommendation, although we believe that online providers have an important role to play to indicate how to tackle domestic abuse online, this has to be a careful balancing act between the protection of victims and the protection of free speech (Article 10 ECHR). Liberty has had a long-standing concern about s.127 of the Communications Act 2003, as it is broadly drafted, dangerously vague and was drawn up long before the emergence of social network platforms such as Facebook and Twitter. The provision outlines that a person is guilty of an offence if the person: *“(1)(a) sends by means of public electronic communications network a message or other matter that is grossly offensive or of an indecent, obscene or menacing character; or (1)(b) causes any such message or matter to be sent.”*⁸⁷ We believe that s.127 is not appropriate for prosecutions relating to incidents of abuse on social media, and patterns of online harassment and abuse should be pursued under anti-harassment laws instead, including through the Protection from Harassment Act 1997. Guidelines issued in 2012 by the Crown Prosecution Service (CPS)⁸⁸ should be considered in full when determining the threshold to be met when prosecuting incidents of online abuse. Liberty would be extremely concerned if s.127 were to become the routine route for challenging abuse conducted on digital platforms.

49. We welcome the Government’s proposal that frontline services and specialist domestic violence organisations should be trained on how to protect and safeguard women and other vulnerable persons online. We believe this should be done across the board and training should also be offered to service users so that they can learn how to protect themselves. Specialist technology organisations and providers could run these workshops and training sessions, to ensure that victims properly understand how to navigate what can sometimes be complex privacy settings online.⁸⁹

50. Liberty has a number of concerns about the TecSOS initiative, which the Government proposes to roll out on a national scale. Although we recognise that this mobile technology has been used across Europe and allows victims to directly contact the police, we believe that (1) victims should not have to compromise their civil liberties to use this technology, and (2) there are much more significant needs to improve police responses and expanding the use of TecSOS could undermine these efforts.

- a. First, we are concerned about the data protection and privacy rights of the user. TecSOS uses tracking technology to monitor the location of victims for quick call outs.⁹⁰ It is not clear how this tracking system operates – whether it is constantly on or whether it is controlled by the user. If the mechanism works through constant monitoring, we believe this would violate users’ right to

⁸⁴ Ibid, p.3.

⁸⁵ Ibid, p.4.

⁸⁶ Ibid, p.4.

⁸⁷ s.127 Communications Act 2003, <https://www.legislation.gov.uk/ukpga/2003/21/section/127>.

⁸⁸ Index on Censorship, ‘Social media and free speech’, (19 December 2012), p.2. <http://www.indexoncensorship.org/2012/12/social-media-prosecution-dpp/>.

⁸⁹ For details of the complexity of protecting Facebook data, see: Hannah Couchman, ‘A how-to guide to protecting your Facebook data’, Liberty, (7 April 2018), <https://www.libertyhumanrights.org.uk/news/blog/how-guide-protecting-your-facebook-data>.

⁹⁰ Secured by Design, ‘TecSOS uses technology to help victims of domestic abuse’, <http://www.securedbydesign.com/news/tecsos-uses-technology-to-help-victims-of-domestic-abuse/>.

privacy unless they have given meaningful consent to be tracked at all times. Further, it is not clear what safeguards are in place to protect this data. The TecSOS system will contain extremely sensitive information on vulnerable victims of abuse, including their location and any disclosures made to the police during call outs. The Government must ensure that the systems used are absolutely secure, fit for purpose, and not susceptible to interception or hacking.

- b. We also have reservations about this technology as the subsequent use of any data collected may not always be in the victims' interests; indeed, there must be clear rules to ensure that the data is not stored or used for any other purpose. Information could be used against a victim, for instance where they have approached the perpetrator (allowing the perpetrator to claim that the victim provoked an incident) or where there are inconsistencies in where the victim says they were at any given time (as location tracking could prove otherwise). It may also be possible for defendants in criminal proceedings to apply for disclosure of this data in case it provides evidence to undermine the complainant's account; for a victim to have such intimate and private data handed over to their abuser would amount to a serious violation of their privacy. To take this data at face value is dangerous and fails to understand the complexities and nuances of abusive relationships and victims' behaviour. Therefore, although we recognise the value of new technology, data protection safeguards must be applied properly and in accordance with Article 8 ECHR. In our view, for the TecSOS initiative to work in the victim's interest without infringing their privacy rights, we recommend the following:
 - i. The TecSOS tracking function should only be activated when the user wants to alert the police as to their whereabouts, as a result of an incident.
 - ii. There should be a publicly available Privacy Impact Assessment (PIA) for this technology to determine how safe these devices are for victims to use, particularly addressing how easily data can be intercepted or hacked by third parties. The Vodafone Foundation,⁹¹ which designed this technology, must either make their PIA available publicly, or if they have not yet completed a PIA we urge them to suspend all use of TecSOS phones until one has been completed.
 - iii. Safeguards must be in place to ensure data collected by TecSOS phones is not used against the victim in any way. We would suggest as part of this, that information from TecSOS phones should not be permitted to be used as evidence in legal proceedings.
- c. Second, expanding the use of TecSOS could undermine other more important efforts to improve police responses. The initiative is misguided in its approach – the problem is not getting police to domestic abuse incidents *faster*, the issue is (1) getting police to turn up in the first place, (2) getting police to take action when they attend the scene, and (3) getting police to follow up on cases properly to support victims. We would urge the Government to prioritise the suggestions Liberty has made at paragraphs 11 – 17 of our response before investing any further in TecSOS.

Body-worn cameras – an Article 8 issue

51. Liberty strongly opposes the Government's proposal to introduce the wearing of body worn cameras by police who attend domestic abuse incidents. The routine use of body worn cameras in responding to incidents of domestic violence infringes a person's right to privacy in their own homes and private spaces (Article 8 ECHR). We are also troubled by the specific reasons cited by the Government when making this proposal. The suggestion that a recording can "*provide an immediate and exact record of the disturbance at the scene and the emotional effect on the victim or family*", is deeply problematic and reflects the

⁹¹ Vodafone Foundation, TecSOS, <http://www.vodafone.com/content/foundation/tecsos.html>.

Government's broader lack of understanding and sensitivity to domestic abuse cases.⁹² To propose recording the aftermath of a distressing incident (1) suggests that the victim must behave in a certain way in order to be believed (i.e. extremely emotional or distressed), (2) that there needs to be a clear 'disturbance' (this term only really lends itself to extreme physical violence), (3) interferes with the privacy rights of the victim, their family and any other people present, and (4) is limited in its use – as it can only capture the aftermath of a single incident and therefore is entirely detached from the bigger picture of each particular case.

52. Ultimately, we believe that the use of body worn cameras in domestic abuse cases is an ineffective and unnecessary interference with victims' privacy rights. If the question is an evidential one, to record the aftermath of an incident and how it impacts the victim, there are far better and fairer ways to collect this information. The Government should be working to dispel the culture of disbelief so that victims are listened to and that their accounts are considered carefully. Yet the use of body worn cameras feeds into this culture of disbelief as it suggests that police and prosecutors need video evidence of victims' immediate emotional reaction, rather than trying to understand this through discussions with the victim themselves. Further, the Legal Aid Agency (LAA) needs to accept a wider range of materials and types of evidence which can be submitted to prove domestic abuse in legal proceedings. In January 2018, the Government introduced welcome changes to the gateway evidence criteria – including abolishing the time limit on abuse evidence (which was initially two years and extended to five years).⁹³ However, this can only be a meaningful change if it is properly implemented by the LAA. The independent women's sector has long struggled with the bureaucracy of domestic abuse evidence with the LAA, with forms often returned or deemed insufficient for varying, inconsequential reasons. We need real assurances that the LAA will accept the new evidence types more openly and willingly, and prioritise the protection of victims. There is no need for new evidential categories, such as body worn cameras, when instead due weight can be given to existing evidence types.

Conclusion

53. As EAW acknowledge, the upcoming Domestic Violence and Abuse Bill is a "*once in a generation*" attempt to end abuse and protect survivors.⁹⁴ However, the current proposals do not offer this opportunity. In order to transform the response to domestic abuse, the Government must fully comprehend the flaws of the present system and identify the key areas that need to change in order to keep victims safe. The Government should listen more carefully to the voices of the independent women's sector and measure its proposals by the standards set out in the Istanbul Convention. The Government must also ensure that this system is human rights compliant. Therefore, Liberty calls for: an end to the discriminatory treatment of migrant victims of abuse, adequate public service provisions for *all* victims, a concerted effort to transform statutory agencies' culture of disbelief into one of compassion, adequate refuge and safe accommodation spaces so that no victim is turned away, and a commitment to making our legal system accessible and supportive for victims as well as fair and just for those accused.

54. Liberty also acknowledges that domestic abuse disproportionately impacts women and so the Government's response must consider this Bill as part of its wider strategy to end all violence against women and girls. Former Home Secretary Amber Rudd promised the new law would "*fundamentally*

⁹² HM Government, 'Transforming the Response to Domestic Abuse', p.49, https://consult.justice.gov.uk/homeoffice-moj/domestic-abuse-consultation/supporting_documents/Transforming%20the%20response%20to%20domestic%20abuse.pdf.

⁹³ Ministry of Justice, 'More legal aid support for victims of domestic violence', Press Release, (5 December 2017), <https://www.gov.uk/government/news/more-legal-aid-support-for-victims-of-domestic-violence>.

⁹⁴ EAW, 'DRAFT Submission to Government Consultation on the proposed Domestic Violence and Abuse Bill', (April 2018), <https://www.endviolenceagainstwomen.org.uk/wp-content/uploads/Updated-EAW-DVA-Bill-Consln-Submission-DRAFT-FOR-WEB-SHARING-26-APR-18.pdf>.

*change the way we as a country think about domestic abuse.”*⁹⁵ We sincerely hope that the final legislation does indeed do this. However, the proposals at present offer no real ‘fundamental changes’ that achieve the desired outcomes called for by us, by the independent women’s sector, and most importantly, by victims. We urge the Government to ensure these needs are met by the Domestic Abuse and Violence Bill, and for this legislation to signify the real change we all want to see.

⁹⁵ James Millar, ‘Victoria Atkins: “The domestic abuse bill will be a game-changer”’, The House Magazine, (21 May 2018), <https://www.politicshome.com/news/uk/home-affairs/law/house/house-magazine/95261/victoria-atkins-%E2%80%9C-domestic-abuse-bill-will-be>.