

## Written evidence submitted by Hestia (DAB66)

### PROPOSED AMENDMENTS TO THE DOMESTIC ABUSE BILL

We are grateful to the members of the Public Bill Committee for inviting Hestia to give oral evidence. Following the second reading of the Domestic Abuse Bill (the “**Bill**”), and in the hope of its passage through the Committee Stage, we are writing to set out our proposed amendments to the Bill as it currently stands.

#### 1. WHO WE ARE

- 1.1 This letter has been prepared by Hestia, one of the largest providers of domestic abuse refuges in London and the South East and the main organisation supporting victims of modern slavery in the capital. It is the home of domestic abuse and sexual violence campaign *UK SAYS NO MORE* and developed the Bright Sky domestic abuse app in partnership with Vodafone. This year, it celebrates 50 years of providing support to those in crisis by providing safe-houses, refuge accommodation and support.
- 1.2 We have prepared it with the benefit of pro bono assistance from international law firm Hogan Lovells International LLP and barrister Gordon Nardell QC.

#### 2. SUMMARY

- 2.1 We welcome many of the changes to be introduced by the Bill in its current form, however note that there is a long way to go in protecting and caring for those affected by domestic abuse. This is a momentous opportunity to change lives.
- 2.2 We propose below five amendments to the Bill which we consider to be the most pressing omissions from the Bill in its current state. These proposals cover issues specific to children and adults and are as follows:
  - (a) Children:
    - (i) Proposal 1: Recognise the effect of domestic abuse (both suffered and witness) on children
    - (ii) Proposal 2: Maintain the places of children in refuges or fleeing abuse on NHS waiting lists.
    - (iii) Proposal 3: Provide equivalent priority access to education for children who are victims of domestic abuse.
  - (b) Adults:
    - (i) Proposal 4: Extend the employer’s duty of care.
    - (ii) Proposal 5: Improve the NHS response to the disclosure of domestic abuse.

- 2.3 Our first three proposals concern children. There are around 500,000 children living in the UK that have witnessed severe domestic violence. At Hestia, we know the horrific impact of domestic abuse on their lives. Witnessing and being a victim of abuse has catastrophic implications. Children respond to abuse in different ways but may suffer severe mental health issues, become aggressive themselves or engage in destructive behaviour.
- 2.4 Children are at the core of our *UK Says No More* campaign and we want to see change made to the lives of children affected by domestic abuse. The current bill overlooks them.
- 2.5 We strongly believe that amending the legislation to include these provisions would provide a strong framework to protect both children and adults who are fleeing domestic abuse.

### 3. **OUR PROPOSALS**

#### **Proposal 1: Recognise the effect of domestic abuse (both suffered and witness) on children**

- 3.1 We would like to see explicit recognition in the Bill of children who experience domestic abuse in their household.
- 3.2 We know from the lived experiences of children and those that are now adults that children, even if they are not in the same room, have a physiological and psychological reaction to what they hear.
- 3.3 For too long support services have been commissioned for the adult victims of abuse with little consideration for the needs of their children, which leads to a postcode lottery of support being available for children in refuges.
- 3.4 We propose the Bill extends the obligations of those who exercise functions under the Act to take into account the effect of domestic abuse (both suffered and witness) on children under 16.

**Suggested Provision: New Chapter (1A) After Clause 2**

*Abusive behaviour towards persons under 16*

***Duties in relation to persons under 16***

- (1) *This section applies to each person (C) aged under 16—*
- a. towards whom abusive behaviour takes place (or has taken place) where that behaviour would be domestic abuse if C were aged 16 or over, or*
  - b. who suffers (or has suffered) harm as a result of domestic abuse towards a person with whom C lives or who is in a parental relationship with C.*
- (2) *The Commissioner, the Secretary of State, every relevant local authority, every relevant police force, and every other person exercising functions in connection with domestic abuse must, so far as practicable, exercise those functions so as to—*
- a. prevent abusive behaviour towards persons to whom this section applies;*
  - b. avoid the suffering of harm by persons to whom this section applies as a result of domestic abuse;*
  - c. secure that persons to whom this section applies receive appropriate advice and assistance to ensure their welfare (including their recovery from harm suffered as a result of domestic abuse)*

**Proposal 2: Maintain the places of children in refuges or fleeing abuse on NHS waiting lists**

- 3.5 We would like to see protected status on NHS waiting lists for the places of children fleeing domestic abuse.
- 3.6 Trauma in childhood can lead to severe issues that last a lifetime. Children escaping domestic abuse should not have their vital access to healthcare services delayed by moving to a refuge and/or out of the area. Children fleeing abuse desperately need fast access to healthcare. Protected status on NHS waiting lists is a necessity for these vulnerable children.
- 3.7 Currently, waiting list systems differ from one Clinical Commissioning Group (“CCG”) to the next. As a result, children who are relocated can lose their places for access to vital physical and mental healthcare, which undermines the safeguarding and protection of children in these scenarios.
- 3.8 Priority access is currently afforded to military veterans under the Armed Forces Covenant, meaning that servicemen and the families of servicemen who move around the country retain their relative positions on any NHS waiting list. We propose the same treatment for children forced to move as a result of or bearing witness to domestic abuse. The Armed Forces Covenant is not legally binding. It is reliant on provisions in NHS guidance and implementation by local CCGs. The most effective way to enshrine protection of a child’s relative position on the waiting list would be to include a provision in the new Bill, stipulating specific provisions be made in NHS England guidance.

**Suggested Provision: New Clause after Clause 14**

**Duty to co-operate: children awaiting NHS treatment**

*(1) The Commissioner must within 6 months after section 14 comes into force issue a request under that section to the NHS bodies in England mentioned in subsection (2) to co-operate with the Commissioner to secure that the objective set out in subsection (3) is met within 12 months after that section comes into force and continues to be met.*

*(2) The bodies are—*

*(a) every clinical commissioning group established under section 14D of the National Health Service Act 2006, and*

*(b) every other NHS body in England (as defined in section 14(7)) whose co-operation the Commissioner thinks is necessary to secure that the objective set out in subsection (3) is met.*

*(3) The objective is that where a child affected by domestic abuse has been referred for NHS care or treatment in the area ("Area A") of a clinical commissioning group as a result of being so affected moves to the area ("Area B") of another clinical commissioning group, the child receives that care or treatment no later than it would have been received in Area A.*

**Proposal 3: Provide equivalent priority access to education for children who are victims of domestic abuse**

- 3.9 Local authorities have a duty to provide school places for "looked after children". This should be extended to children who are forced to change schools as a result of domestic abuse.
- 3.10 Children forced to change schools as a result of domestic abuse endure significant disruption to their education, in addition to the trauma they have witnessed in their home lives which severely impacts their mental and physical wellbeing.
- 3.11 Currently, children who are "looked after" by local authorities are given priority status. If a school receives more applicants than it has places, these "looked after" children are allocated places first. Refugee children, children seeking asylum and children who have previously been "looked after" by local authorities are also guaranteed places in oversubscribed schools.
- 3.12 The definition of a "looked after" child (as defined in the Children Act 1989) includes children who are in the care of, or provided with accommodation for longer than 24 hours by, a local authority in the exercise of social services functions as defined by the Local Authority Social Services Act 1970. The School Admissions Code and

accompanying guidance sets out the oversubscription criteria which provide for the issuing of places to looked after children. Children who have fled domestic abuse should receive the same provisions.

***Suggested Provision: New Clause after Clause 56***

***School admissions***

*(1) The Secretary of State must, within six months after this section comes into force, secure that the school admissions code issued for England under section 84 of the Schools Standards and Framework Act 1998 (“1998 Act”) contains such provision as the Secretary of State considers necessary to achieve the objective set out in subsection (5).*

*(2) The Secretary of State must secure that the Commissioner is consulted about any proposed provision under subsection (1).*

*(3) The Welsh Ministers must, within six months after this section comes into force, secure that the Welsh Assembly Government school admissions code issued under section 84 of the 1998 Act contains such provision as the Welsh Ministers consider necessary to achieve the objective set out in subsection (5).*

*(4) The Welsh Ministers must secure that the Commissioner is consulted about any proposed provision under subsection (3).*

*(5) The objective is that—*

*(a) oversubscription criteria for admission to any school to which the school admissions code applies give the same priority to children falling within subsection (6) as to looked-after children (within the meaning of section 22(1) of the Children Act 1989), and*

*(b) the Code contains appropriate guidance about admission of children who have moved home to avoid domestic abuse or who are otherwise affected by domestic abuse.*

*(6) A child falls within this subsection if the child—*

*(a) is in the care of, or provided with accommodation by, a body exercising a function which, if the body were a local authority, would be a social services function of the kind mentioned in section 22(1)(b) of the Children Act 1989, or*

*(b) has moved home as a result of being affected by domestic abuse.*

**Proposal 4: Extend the employer's duty of care**

- 3.13 During the C-19 lockdown, the introduction of Safe Spaces for victims of domestic abuse by businesses across the UK including Boots, Superdrug and Morrisons has demonstrated the huge impact that businesses can have in supporting victims of domestic abuse.
- 3.14 Experiencing domestic abuse can significantly affect a person's work life as well as their home life. Victims may have to relocate, impacting their ability to get to work, and the effects of the abuse (whether physical, psychological or financial) may affect their performance or ability to work at all.
- 3.15 Some employers have policies in place which introduce practical measures to support domestic abuse victims. For example, Vodafone plans to offer up to ten days of paid leave to victims of domestic abuse and provide specialist training for human resources managers to enable them to support employees experiencing domestic abuse or violence. Hestia is part of a coalition of domestic abuse charities and organisations carrying out a programme called *Everyone's Business*, which aims to encourage as many employers as possible to consider how they can support their employees impacted by domestic abuse.
- 3.16 However, despite these efforts, only 5% of employers have a domestic abuse policy of any kind in place. A provision in the Domestic Abuse Bill making it mandatory for employers to provide care and support for their employees who suffer abuse has the potential to make a significant practical difference to victims and survivors alike. The duty to make reasonable adjustments for employees with disabilities in the Equality Act 2010 provides a potential model to put this into practice.

***Suggested provision: New Clause after Clause 56***

***Code of practice: employer's duty of care***

*(1) In this section:*

*(a) "Worker" means an individual who has entered into or works under a contract of employment or any other contract, whether express or implied and (if it is express) whether oral or in writing, whereby the individual undertakes to do or perform personally any work or services for another party to the contract whose status is not by virtue of the contract that of a client or customer of any profession or business undertaking carried on by the individual; and*

*(b) "Employer" means the person to whom the worker undertakes to perform the work or services in question.*

*(2) The Secretary of State must issue a code of practice (a "code") containing provision designed to ensure that persons affected by domestic abuse who are*

*workers receive appropriate care and support from their employer in relation to their work.*

*(3) A code may include provision requiring an employer to make reasonable adjustments for the purpose of ensuring that persons affected by domestic abuse are not, by reason of being so affected, placed at a substantial disadvantage in relation to their work in comparison with persons who are not so affected.*

*(4) The Secretary of State may revoke or amend a code.*

*(5) Before issuing, revoking or amending a code the Secretary of State must—*

*(a) issue proposals, and*

*(b) consult the Commissioner and such other persons as the Secretary of State thinks appropriate.*

*(6) Failure to comply with a provision of a code does not of itself make a person liable to civil or criminal proceedings; but a code shall be—*

*(a) admissible in evidence in criminal or civil proceedings, and*

*(b) taken into account by a court or tribunal in any case in which it appears to the court or tribunal to be relevant, including (in particular) any case in which a question arises as to whether an employer is in breach of a duty of care owed to a worker.*

### **Proposal 5: Improve the NHS response to disclosure of domestic abuse**

- 3.17 Despite the fact that a high proportion of domestic abuse victims are likely to access NHS services, currently NHS staff are not formally obliged to inquire about domestic abuse or make referrals to specialist services following a disclosure.
- 3.18 The majority of referrals to specialist services are made by the police rather than by medical professionals. Policies and strategies are formulated at the Trust level, with no guarantee of consistent advice or training across the organisation. In response to the Domestic Abuse Bill, NHS England has said it will produce a four-year plan, but this is awaiting publication.
- 3.19 The Domestic Abuse Bill should include provisions which oblige the Domestic Abuse Commissioner to produce a Code of Practice for healthcare providers in the UK, providing consistent and clear standards for inquiry and disclosure, staff training and all aspects of treating patients who may be the victim (or perpetrator of) domestic abuse, including children.

***Suggested provision: New Clause after Clause 56***

**Healthcare Code of Practice**

*(1) The Commissioner must issue a code of practice containing practical guidance and statements of best practice in relation to the treatment by NHS bodies and healthcare professionals of individuals who are affected by domestic abuse.*

*(2) A code of practice may include provision about, among other things—*

*(a) enquiries that a healthcare professional should make when treating a person who the professional believes may be affected by domestic abuse;*

*(b) the circumstances in which information about domestic abuse given to a healthcare professional by such a person may, or should, be disclosed, and to whom.*

*(3) Before issuing a code, the Commissioner must consult on a draft of the code persons appearing to represent such of the following as the Commissioner considers appropriate—*

*(a) NHS bodies in England (within the meaning of section 14) and corresponding bodies in Wales;*

*(b) healthcare practitioners;*

*(c) providers of specialist domestic abuse services;*

*(d) individuals who are, or have been, affected by domestic abuse.*

*(4) The Commissioner must submit a code issued under subsection (1) to the Secretary of State who must as soon as practicable lay it before Parliament.*

*(5) If, within the 40-day period, either House of Parliament resolves not to approve the code, the code does not come into force.*

*(6) If no such resolution is made within that period—*

*(a) the Secretary of State must publish the code as soon as practicable after the end of the 40-day period, and*

*(b) the code comes into force at the end of the period of 21 days beginning with the last day of the 40-day period.*

*(7) If as a result of subsection (5) no code is in force, the Commissioner must as soon as practicable issue a further code.*

*(8) The Commissioner must keep under review the code in force under this section, and may issue amendments to the code or a replacement code.*

*(9) Subsections (3) to (6) apply to such amendments and to any further code issued under subsection (7).*

*(10) Failure to comply with a provision of a code does not of itself make a person liable to civil or criminal proceedings; but a code shall be admissible in evidence in legal proceedings and shall be taken into account by a court or tribunal in determining a question arising in the proceedings if –*

*(a) the question relates to a time when the provision was in force, and*

*(b) the provision appears to the court or tribunal to be relevant to the question.*

*(11) But a person is not to be under any greater duty or liability as a result of a provision of a kind mentioned in subsection (2) than would apply to that person in the absence of that provision.*

*(12) In this section, "the 40-day period" means–*

*(a) if the code is laid before both Houses of Parliament on the same day, the period of 40 days beginning with that day, or*

*(b) if the code is laid before the Houses of Parliament on different days, the period of 40 days beginning with the later of those days.*

*(13) In calculating the 40-day period, no account is to be taken of any period during which Parliament is dissolved or prorogued or during which both Houses of Parliament are adjourned for more than 4 days.*

This Bill is a crucial moment in the fight against domestic abuse. It is imperative that it goes above and beyond to better the lives of children and adults in the United Kingdom.

Yours

Lyndsey Dearlove

Head of UKSNM

Hestia

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