



The Law Society

Consultation on cross-government definition of domestic violence

**Law Society of England and Wales
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Introduction

The Law Society is the representative body for more than 140,000 solicitors qualified in England and Wales practising both at home and across the globe. The Society promotes the interests of the profession by providing advice, training, products and services to its members. It works to develop new legal markets and international networks through representation to governments, regulators and the wider business community.

The Society believes that the definition of 'domestic violence' should include 'coercive control', and should be extended to those aged under 18.

Summary

The Law Society welcomes the Government's intention to agree a common definition of domestic violence, to be applied consistently across all Government agencies. This will ensure greater clarity and certainty in how domestic violence is detected and addressed, enable greater coordination across agencies and initiatives, and foster a better understanding of the needs victims. The recent debates in the House of Lords on the Legal Aid and Sentencing and Punishment of Offenders Bill are a striking example of the difficulties that can arise in the absence of a common definition.

The Law Society believes that the current definition of domestic violence is too limited. Practice Direction 12J, relating to Residence and Contact Orders, defines it as: 'includ[ing] physical violence, threatening or intimidating behaviour and any other form of abuse which, directly or indirectly, may have caused harm to the other party or to the child or which may give rise to the risk of harm.' Similarly, the widely recognised and accepted ACPO/CPS definition of domestic violence comprises elements such as coercive control: 'any incident of threatening behaviour, violence or abuse (psychological, physical, sexual, financial or emotional) between adults, aged 18 and over, who are or have been intimate partners or family members, regardless of gender and sexuality.' (Family members are defined as mother, father, son, daughter, brother, sister and grandparents, whether directly related, in-laws or step-family).

In the Supreme Court case of *Yemshaw v London Borough of Hounslow* [2011] UKSC 3, Lady Hale gave the leading judgment where the court held that domestic violence in the Housing Act 1996 includes not only the usual concepts of physical violence, threatening or intimidating behaviour, but any other form of abuse which, directly or indirectly, may give rise to the risk of harm.

The government definitions should be brought more closely in line with usage in the judicial system. The term 'domestic violence' should be changed to 'domestic abuse'.

We would therefore be in favour of Option 2.

In terms of the categories to which this provision should extend, we see no reason why this term should not be extended to those under 18. Domestic violence is rarely directed solely at the adult partner in the relationship, and it always has important and life-long effects on the children who witness it.

The consultation document notes that:

In 2009, the NSPCC conducted research with young people aged 13-17 in mainstream education which examined their experiences of physical, emotional and sexual forms of violence in their partner relationships (Barter et al, 2009¹). The research found that:

- *25% girls (the same proportion as for adult women) and 18% boys experienced some form of physical abuse;*
- *75% girls and 50% boys reported some sort of emotional abuse; and*
- *33% girls and 16% boys reported some form of sexual abuse*

It is important to appreciate that the Family Law Act 1996 part IV

- *permits applications by those **under 16** provided they have obtained permission of the court - and may grant permission if the child has sufficient understanding to make the proposed application - section 43*
- *and that the original definition of associated persons has been widened by s4 DVCVA 2004 to include those who have or have had "an intimate personal relationship .of significant duration" s62(3)(ea).*

Local authorities have systems in place to provide protective measures to children, but there are a number of reasons why these measures might not be practical or applicable to teenagers: lack of resources, competing priorities, or high thresholds. A *Community Care* survey of frontline child protection workers found 82% felt thresholds had risen in their area in the past year. This was across all types of abuse although it was most acute in cases of neglect and emotional abuse (which includes child witnesses of domestic violence). *Community Care* research¹ has also shown that there is a high overlap between the occurrence of emotional abuse from exposure to domestic violence and direct physical and sexual abuse and neglect of children by domestically violent parent/carers. A history of domestic violence is a key risk factor for multiple abuse of children. While the impacts of domestic violence on children and young people varies, studies generally indicate that they take the form of internal disorders such as anxiety, depression and withdrawal and, in some cases, symptoms akin to post-traumatic stress disorder, and disorders affecting behaviour such as aggression.

Extending the definition of 'domestic violence' to those under 18 would send a strong message to perpetrators, and provide additional protection and remedies for children.

A single legislative definition of domestic violence would foster a shared understanding across government departments, local authorities, police services, courts and tribunals, and agencies such as the Child Maintenance and Enforcement Commission. It would provide a basis for the development of policy and practice, and would give victims greater confidence that family violence will be recognised and treated consistently. Including children within this definition would emphasise the importance of tackling domestic violence whoever the victims are in the family.

¹ 'Evidence Base on Assessing Risk in Domestic Violence Cases', *Community Care*, September 2011