



domestic  
abuse  
commissioner

## **Victims and Courts Bill: Commons Second Reading** *Briefing from the Domestic Abuse Commissioner*

### **About the Domestic Abuse Commissioner**

The Domestic Abuse Act 2021 established the Office of the Domestic Abuse Commissioner, to provide public leadership on domestic abuse issues, play a key role in overseeing and monitoring the provision of domestic abuse services in England and Wales and promote best practice, including in multi-agency working.

The role of the Commissioner is to encourage good practice in preventing domestic abuse; identifying victims and survivors, and perpetrators of domestic abuse, as well as children affected by domestic abuse; and improving the protection and provision of support to people affected by domestic abuse from agencies and government.

### **Domestic abuse and the Victims and Courts Bill**

The Victims and Courts Bill will have its Second Reading in the House of Commons on 20 May 2025. The Commissioner warmly welcomes measures in the Bill to ensure victims of domestic abuse can access information about their perpetrator's release from prison. This is critical for safety planning and was a recommendation she made in her recent report on the criminal justice response to domestic abuse, [Shifting the scales](#). She also welcomes provisions to strengthen the powers of the Victims' Commissioner. However, as the Bill is currently drafted, notable gaps remain.

**Firstly, the Bill fails to encompass the Family Justice System and much needed reforms to the long-standing issue of Presumption of parental involvement in cases relating to child contact and domestic abuse.**



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It is critical that government seize this opportunity to address the issue of Presumption to proactively align with the Parliamentary intention of the Domestic Abuse Act 2021 to recognise children as victims of domestic abuse in their right.

**Secondly, whilst there are some welcome provisions addressing the Criminal Justice System, there is a notable absence of provisions to implement effective defences for victims and survivors of domestic abuse who offend.**

Such a measure has been [championed by the Centre for Women's Justice](#) and was also recently recommended in the Commissioner's recent report on the criminal justice response to domestic abuse. This Bill is a critical opportunity to ensure victims and survivors who find themselves caught up in the criminal justice system as defendants, either through counter allegations or where they are coerced into offending, are not unjustly prosecuted.

## **Recommendations**

The Commissioner therefore recommends:

*In relation to the presumption of parental involvement –*

1. The Presumption of parental involvement is removed due to its incompatibility with the Domestic Abuse Act 2021; and
2. the Children Act 1989 is amended to better reflect the new provisions of the rights of children in domestic abuse situations.

*In relation to effective defences for victims of domestic abuse –*

3. Effective defences are introduced, separate to duress, for victims and survivors whose alleged offending results from their experiences of domestic abuse.

These issues are explored in further detail below.

## **The background: Presumption of parental involvement**

The Commissioner holds serious concerns about the way in which the present Presumption of parental involvement is applied in private family law proceedings relating to allegations of domestic abuse. Primarily, that the Presumption is often

interpreted as one of contact which overrides the child's welfare as established in section 1 of the Children Act 1989. It is also inconsistent with section 3 of the Domestic Abuse Act 2021, which recognises children as victims of domestic abuse in their own right and prohibits post-separation abuse, including coercively controlling behaviours.

The Commissioner considers the application of the law, which must be abuse-informed, to be vital to the safeguarding of children and adult survivors of domestic abuse. The Presumption therefore must be removed and replaced with positive duties towards children and adult survivors of domestic abuse within the Children Act 1989, to ensure alignment with the Domestic Abuse Act 2021 and the Istanbul Convention 2011. Addressing the Presumption is an opportune time to integrate explicit reference to domestic abuse and the voice of the child (in line with Article 12 of the UN Convention on the Rights of the Child 1989) within section 1 of the Children Act 1989.

Furthermore, there should be a Presumption against involvement in cases relating to parallel criminal proceedings or when children are in refuges, in any scenario.

Increased efforts will also be required in parallel with removal of the presumption to ensure the same issues do not persist and that a culture of minimising abuse is addressed, as a matter of positive legal duty to the child. This includes mandatory and ongoing training for the judiciary and all Family Court actors, informed by specialist domestic abuse experts, as recommended in the Commissioner's 2023 report on the Family Court, [Domestic Abuse and the Family Court: Achieving Cultural Change](#). It will only be with concerted, joined up and sustained efforts that child victims of domestic abuse will be properly safeguarded.

## **The background: Effective defences for victims of domestic abuse**

Victims and survivors of domestic abuse are found, with alarming prevalence, within the criminal justice system. [More than half](#) (57%) of women in prison report having experienced domestic violence, and 53% report having experienced emotional, physical or sexual abuse during childhood. For many, [their offending is directly linked to their experiences of domestic abuse](#) – whether due to counter allegations as the perpetrator seeks to evade prosecution, or as they try to protect themselves from further abuse. [Some face malicious allegations](#), as perpetrators use the criminal justice system as another tool of abuse. Research also indicates that [women are three times more likely to be arrested](#) than their male partners at a domestic abuse incident involving counter-allegations, often where they have used force to protect themselves from further harm from their abuser.

It is clear that policy and practice changes are needed across every point in the criminal justice system to ensure that victims and survivors are not wrongly arrested, charged, prosecuted or sentenced – including clear guidance, training, and provision of support for victims and survivors. However, as such changes are being progressed and whilst victims and survivors are still being unjustly prosecuted, it is critical that they can access a statutory defence when they are coerced into offending, in order to mitigate the impact of this criminalisation.

[Research](#) has made clear that in practice, the common law defence of duress is inaccessible for victims of coercive and controlling behaviour. Additionally, these cases are not being considered within the Law Commission’s review of the law of murder and by association self-defence. It is therefore clear that legislative change is needed.

### **Further information**

The Office of the Domestic Abuse Commissioner would be pleased to discuss these recommendations in further detail with any interested persons. If you are interested in doing so, please contact the Commissioner’s policy team on:

[commissioner@domesticabusecommissioner.independent.gov.uk](mailto:commissioner@domesticabusecommissioner.independent.gov.uk).

