



15 October 2014

Refuge response to Home Office consultation, 'Strengthening the Law on Domestic Abuse'

Refuge has campaigned for a more robust criminal justice response to victims of domestic violence for decades, and we are pleased that the Government has acknowledged that more needs to be done to tackle this horrific crime. However, we do not believe that introducing a new offence that 'captures patterns of coercive or controlling behaviour in intimate relationships' is either a sufficient or workable solution at this stage. We present our concerns and solutions in response to the consultation questions below.

1. Does the current law adequately provide sufficient protection to victims of domestic abuse?

No. Refuge does not believe that the law as it currently stands contains sufficient measures to protect victims of domestic violence. We believe that the law suffers in two main respects: it lacks a gendered focus, and it does not properly address the cumulative harm so often experienced by victims of domestic violence. We also believe there are significant problems with police policies around 'positive action'. We discuss these issues in more detail below.

Violence against women - a gendered crime

Twenty two years ago, in its general recommendation no.19, the UN Committee on the Elimination of Discrimination against Women (CEDAW) declared, "*under general international law and specific human rights covenants, States may.....be responsible for private acts if they fail to act with due diligence to prevent violations of rights or to investigate and punish acts of violence, and for compensation*". The committee recommended that States "*take all legal and other measures that are necessary to provide effective protection of women against gender based violence, including effective legal measures,*

including penal sanctions, civil remedies and compensatory provisions to protect women against all kinds of violence, including violence and abuse in the family.”¹

Underpinning this focus on gender is an acknowledgment that violence against women is discriminatory and a violation of a woman's human rights. Yet despite evidence that violence against women and girls arises from their unequal position in relation to males, very few States (with the exception of Sweden and Spain) have developed gender specific or gender aware legislation to address violence against women, with most applying existing gender neutral laws to remedy these crimes². The UK has taken the latter approach and purports to address the specifics of violence against women and girls through a ‘violence against women and girls’ (VAWG) strategy. However, in reality, the inclusion of men who experience violence within relationships and others who experience abuse within a domestic context means that the Government’s VAWG strategy is more a family violence strategy than a strategy for violence against women and girls.

It may seem tautologous to state, but violence against women means *violence against women* - it does not mean violence against men, it does not mean violence against or between anyone living in the same household or anyone who ever had an intimate or family relationship. It just means violence against women. To obscure this central fact is to distort reality. If one cannot see a problem clearly or if one fails to understand its central tenets, one has little chance of reaching a solution.

If we are all equal before the law, it follows that any unequal status or relationship must be articulated and taken into account. Therefore, unless we somehow enshrine within law the very real difference between male to female violence and its opposite, we may never achieve an appropriate criminal justice system response to the problem. To this end it seems crucial that we abandon the gender neutral dialogue and policy inherent within current 'domestic violence' or 'family violence' frameworks

¹ Committee on the Elimination of Discrimination against Women, General Recommendation 19, Violence against women (Eleventh session, 1992), U.N. Doc. A/47/38 at 1 (1993), reprinted in Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies, U.N. Doc. HRI/GEN/1/Rev.6 at 243 (2003). Cited in Handbook for Legislation on Violence Against Women (2010) United Nations

² The provisions of the criminal law in England and Wales prohibit much of the conduct that falls within the definition of domestic violence, as set out in “*A Call to End Violence against Women and Girls*”.

(CPS) Guidance on Prosecuting Cases of Domestic Violence (2011) provides a detailed guide to the types of behaviour that can occur in cases of domestic violence and the relevant criminal offences that should be considered by prosecutors.

and establish a gender specific focus to the problem of violence against women and girls. We must also develop a legislative framework which acknowledges that male violence perpetrated against a female victim is different in terms of its scale, form and impact when compared with female violence perpetrated against a male.

The criminal response to repeated violence and abuse towards women

When violence and abuse occur within intimate relationships, the proximity of victim and perpetrator increases the likelihood for this crime to be repeated. This risk is likely to continue after a relationship has ended due, for example, to ongoing contact with children.

It is generally accepted that repeated exposure to trauma has the potential to exacerbate and amplify any negative impacts. Viewed in this way, cumulative harm³ generally exceeds the sum of its parts. Yet whilst repeat offences can be viewed as aggravating during sentencing, and evidence of previous abuses may strengthen a current charge⁴, there are concerns that existing UK legislation does not provide the opportunity to address this cumulative harm properly as an offence in itself. For many abused women, the serious harm caused by years of chronic abuse is ignored and the pain suffered reduced to a single charge of common assault. In an attempt to address this, the US and some European States have introduced more severe penalties for repeated incidents of domestic violence⁵. Article 22 of the EU Victims' Directive addresses the importance of protection from repeat victimisation,

³ Research suggests there is a correlation between the number and severity of traumatic events experienced and the severity of PTSD symptoms that follow. The accumulation of trauma over time, particularly if unaddressed, is thought to result in more complex reactions which go beyond the traumatic event(s) itself and lead to more generalised problems, such as loss of trust in others and the world, a feeling of being irrevocably and deleteriously changed, as well as experiencing a persistent sense of hopelessness about the future. Such posttraumatic cognitive change is thought to influence an individual's attitudes and beliefs about the self and the world long after the traumatic event has passed. Nice guidelines describe this phenomenon as 'enduring personality changes following catastrophic trauma' or as 'complex ptsd' others use the term 'post trauma cognitions'.

⁴ CPS Prosecuting Guidelines: Domestic violence. Prosecutors should ensure that the police carry out checks for intelligence when dealing with a domestic violence suspect so the prosecutor is aware previous abusive or violent behaviour. It is very important that this information is provided to the prosecutor at the earliest opportunity. When reviewing charges prosecutors should then ascertain if information pertaining to earlier complainants can be used to: form charges; support an application to adduce the defendant's 'bad character' or 'reprehensible behaviour' under section 101 of the Criminal Justice Act 2003 www.cps.gov

⁵ Handbook for legislation on violence against women. (2010) [United Nations, New York](#); Feasibility study to assess the possibilities, opportunities and needs to standardise national legislation on violence against women, violence against children and sexual orientation violence (2010). [E.U., DAPHNE](#): Violence Against Women: an EU wide survey. (2014) [FRA- European Union Agency for Fundamental Rights](#)

bringing "beyond doubt, the issue of the victim's protection against repeat victimisation under the scope of EU law."⁶

A gendered approach to prosecuting crimes of violence against women: the case of Sweden and Spain

Spain is the only country in Europe to have developed gender specific laws to combat violence against women and that conceptualises these gendered crimes as a human rights issue. In addition, the Spanish Organic Act on Integrated Protection Measures against Gender Violence (2004) incorporates⁷ protective, preventative and supportive provisions alongside the laws necessary to punish offenders. This includes the right to specialist and immediate legal assistance, including legal aid in all administrative processes and judicial procedures directly or indirectly associated with the violence suffered; access to victim support; access to social centres that offer assistance to victims and their children; economic assistance and employment help. Article 47 of this act "requires the Government and the General Council of the Judiciary to ensure that training courses for judges and magistrates, prosecutors, court clerks, national law enforcement and security agents and coroners include specific training on sexual equality, non-discrimination for reasons of sex, and issues of violence against women."⁸

Whilst the Spanish must be applauded for their comprehensive and gender aware approach to crimes of violence against women, the Organic Law 1/2004 has been criticised for failing to bring about a significant reduction in the prevalence of violence against women⁹. Nevertheless, statistics seem to show a slowly increasing number of abused women who report 'overcoming gender based violence',

⁶ Violence Against Women: an EU wide survey. (2014) [FRA- European Union Agency for Fundamental Rights](#)

⁷ "Incorporates provisions on sensitization, prevention and detection and the rights of survivors of violence; creates specific institutional mechanisms to address violence against women; introduces regulations under criminal law; and establishes judicial protection for survivors". Handbook for legislation on violence against women. (2010) [United Nations, New York](#)

⁸ Ibid

⁹ "Judges are reluctant to enforce these laws because of their own biases, regardless of the victim's rights, and there is no mechanism holding them accountable to do so. At the same time, the lack of judicial investigation leads to a high rate of cases that are dismissed". Cusack, S (03/12/2013) looking to CEDAW: An opportunity to protect women's and children's rights in Spain and worldwide. http://opcedaw.wordpress.com/2013/12/04/looking_to_cedaw_english/

"Spanish courts have since passed 145,000 sentences against male aggressors; on average, those convicted have been sentenced to about two years in prison, Ms. Cavanna said. In the past six years, judges also awarded special protection to almost 141,000 women, or 73 percent of the requests. But the number of women who have abandoned legal proceedings before a final ruling, generally in physical abuse cases, has soared 46 percent in the past three years. Ms. Cavanna noted that one of her clients was still awaiting a ruling 20 months after starting legal action. "Changing laws does not solve the problem of malfunctioning courts," she said, "nor does it change overnight attitudes in a society where the machismo ideology is still firmly anchored and in which many judges have not come to accept how serious a problem domestic violence is." Minder, R (23/02/2011) Spain Struggles to Tackle Domestic Violence. New York Times

whilst judicial statistics show an increase in the numbers of perpetrators serving prison sentences for gender based violence offences¹⁰. Spain certainly seems to be the EU State to watch.

Sweden

Sweden's peace reform of 1998 was designed to address repeated (including 'not grave') harms from a gendered perspective. New legislation, introduced to address the crime of gross violation of a person's integrity within the context of a relationship, included an additional component highlighting the particular harm caused to women in abusive relationships - the offence of Gross Violation of a Woman's Integrity¹¹.

The new offence included existing crimes such as unlawful threats, coercion and non-aggravated assault, which could be given a higher penal value when judged together. Each act is considered individually but the specifics of time and place are not required, given the recognition that it is difficult for those abused over time to describe every criminal act in such a way. This latter element gave rise to opposition, with some asserting the accused would have difficulties in defending himself *"if the demands for individualization and exact definitions of single criminal acts were weakened"*¹².

Subsequent to passing the Swedish legislation there were difficulties in implementation including resistance to prioritising violence against women¹³, as well as a more basic confusion about what

¹⁰ The National Strategy for the Eradication of Violence Against Women (2013-2016) which compared data from the Macro-Surveys on Gender Based Violence between 1999-2011.

¹¹ Section 4a: A person who commits criminal acts as defined in Chapters 3, 4 or 6 against another person having, or have had, a close relationship to the perpetrator shall, if the acts form a part of an element in a repeated violation of that person's integrity and suited to severely damage that person's self-confidence, be sentenced for gross violation of integrity to imprisonment for at least six months and at most six years. If the acts described in the first paragraph were committed by a man against a woman to whom he is, or has been, married or with whom he is, or has been cohabiting under circumstances comparable to marriage, he shall be sentenced for *gross violation of a woman's integrity to the same punishment*. (Law 1998:393)

¹² Burman, M (2012) Changes in the Criminal Legal Discourse on Men's Violence against Women in Heterosexual Relationships. <http://www.scandinavianlaw.se/pdf/54-2.pdf>

¹³ *'The 'Vain endeavours' inquiry reviewed the work of the National Group of Authorities for the Protection of Women against Violence', which was established in the spirit of the Kvinnofrid reform and was chaired by the Minister for Gender Equality. Its final report was submitted to the government in 2003 and included recommendations to each member of the Cabinet (Nationellt råd för Kvinnofrid, 2003). In sum, the Group maintained that alarmingly few changes had been effected in the field of violence against women, despite the parliamentary decision made in 1998. It identified a resistance at several levels of society, from local to national authorities. Still influencing the state of affairs was a broad lack of insight and a disinclination to give priority to violence against women. While a process of change had most likely begun, full responsibility had not been accepted, and the process was incomplete. Vital concerns were more education and research and a focus on men's responsibility'* Leander K (2005) Reflections on Sweden's Measures against Men's Violence against Women. *Social Policy & Society* 5:1, 115–125

counts as gross violation of a woman's integrity preventing any cases reaching court¹⁴. Although there is some evidence that prosecutions seem to have increased¹⁵ problems remain in that *“Several forms of male use of psychological violence to gain power and control over women remain excluded, even though the possibilities of considering psychological violence have increased¹⁶”*.

Problems with police 'positive action' policy

Her Majesty's Inspectorate of Constabulary's (HMIC) recent report¹⁷ illustrates very clearly many of the problems with the police response to domestic violence, not least those caused by failures to follow the long established 'positive action' policy of arresting the perpetrator. Refuge is particularly concerned, but sadly not surprised, to find that: *"In some forces there is a high level of cautioning. And in some there are comparatively fewer charges for domestic abuse crimes compared to other victim based crime or violence against the person offences"* (p.98-9). The report states that many officers *'do not understand what is meant in practice by 'positive action''* and that this confusion results in perpetrators of domestic violence not being arrested, even when officers have grounds to do so (p.12). However, we would question whether a lack of clarity or confusion about the positive action policy is the main reason for non-arrest of perpetrators, as this problem predates the policy itself and also because the arrest of abused women does not seem to present the police with as much difficulty. The report states: *"Many women victims that we spoke to in our focus groups explained how perpetrators used various tactics to manipulate and control the situation if the police attended. This may include making a counter-allegation against the victim. In our review of 600 domestic abuse actual bodily harm case files, there was a counter-allegation made in 30 percent of the cases."* (p.34). It also found that: *"It is of concern that women in domestic abuse incidents are arrested to a disproportionate degree, and three times more likely to be arrested for a violent offence than men for a comparable offence"* (p.59). This practice seems to indicate that it may not be confusion about the arrest policy which prevents arrest of male perpetrators but rather institutional sexism. Seen in this light, simply 'reiterating' the positive action policy, as per HMIC's recommendations, and allowing officers to continue to exercise discretion is unlikely to result in positive change for abused women. HMIC's report shows clearly that the positive

¹⁴ Humphries, C, Carter, R (2006) The justice system as an arena for the protection of human rights for women and children experiencing violence and abuse. The Co-ordination Action on Human Rights Violations (CAHRV) and funded through the European Commission, 6th Framework Programme, Project No. 506348

¹⁵ Burman, M (2012) Immigrant women facing male partner violence – gender, race and power in Swedish alien and criminal law. Feminists@law, Vol 2, No 1 (2012)

¹⁶ Burman, M. (2010) 'The Ability of Criminal Law to Produce Gender Equality – Judicial Discourses in the Swedish Criminal Legal System'. Violence against Women, 16, pp. 173-188.

¹⁷ Everyone's business: Improving the police response to domestic abuse (HMIC: 2014)

action policy does not work. Mandatory arrest appears to be the only solution (we present this option again later on in this paper).

2. In what ways could the law be strengthened?

Refuge understands that the Government is proposing to introduce a new criminal offence which would capture patterns of coercive and controlling behaviour in intimate relationships, in line with the Government's non-statutory definition of domestic abuse. Refuge does not believe that this is a sufficient or workable solution.

We believe that greater effort must be made to implement *existing* laws. We know through our daily close contact with 3,000 abused women and children on any given day that very often police officers and other professionals within the criminal justice system do not respond to their calls for help with the seriousness and urgency deserved, **even where serious physical harm has been perpetrated**. This perspective has been confirmed by HMIC's recent report into the national police response to domestic violence. We are therefore concerned that creating a separate domestic violence offence (whether this is called 'domestic violence' or 'coercive control') could lead to it being treated *less* seriously, with the risk that even physical offences may be downgraded.

Refuge believes that domestic violence, or violence against women, should be treated as seriously as any other crime. The first step in ensuring that the criminal justice system responds appropriately to victims is to implement, consistently and robustly, existing legislation. Currently it is possible to prosecute perpetrators who inflict non-physical forms of abuse, such as: psychiatric injury; threats; stalking; harassment; or falsely imprisonment. Yet successful prosecutions, particularly for psychiatric injury, are rare. There is therefore an urgent need for specialist training for criminal justice system professionals, to ensure they understand the basics of violence against women, which would include the fact that it is a form of gender discrimination and generally occurs within the context of ongoing control and repeated abuse.

Analysis of legislation designed to address violence against women both internationally and across Europe confirms that the greatest obstacles to eradicating violence against women are not gaps in legislation but poor implementation of existing laws:

"Overall, our research findings suggest that in the great majority of Member States, gaps in criminal law are not the main problem; it is the failure to implement the law and impose

sanctions that constitutes de facto impunity, implying that violence is taken less seriously when the victim is a woman, a child or an LGBT person. . . . General awareness-raising is not enough; the various professions need to learn their specific roles in the process of punishment, protection and prevention and acquire the skills and knowledge needed to carry out that role. A foundation of interdisciplinary knowledge about human rights, gender and children's rights should be part of every professional's education, but beyond that, in-service training and further education is needed, and certification should be required for those have a decisive part to play in decision-making and shaping responses to violence ”¹⁸.

In sum, those involved in the criminal justice system need to understand the law and implement it in order to protect abused women from harm and to bring perpetrators to justice.

Refuge also believes that criminalising coercive control would also prove unworkable and ineffective. Our concerns are outlined below.

Criminalising coercive control

The concept of ‘coercive control’ is not new and has been recognised within the domestic violence sector since the 1970s after similarities were observed between the abusive tactics of domestic abuse perpetrators and those who abused prisoners of war or hostages¹⁹. By the mid 1990s, commentators were beginning to conceptualise acts of coercive control as human rights abuses. One of the leading voices in this movement is Evan Stark who reframes domestic abuse as a crime against autonomy, freedom, liberty and equality. He asserts that:

“Recognition of coercive control entails defining a new ‘course of conduct’ crime with sanctions appropriate to the rights and liberties that are jeopardized. Such a crime will include elements such as psychological and economic abuse, along with stalking, harassment and isolation, among others. However, for a coercive control law to be effective, it must be written and implemented in a way to avoid manipulation by offenders who claim emotional abuse by victims. That said, with an effective coercive control law in hand, police can assess whether a seemingly trivial incident is an isolated event or part of the pattern typical of the most serious cases.”²⁰

¹⁸ Feasibility study to assess the possibilities, opportunities and needs to standardise national legislation on violence against women, violence against children and sexual orientation violence (2010). E.U., DAPHNE

¹⁹ Camilla Serum and Margaret Singer cited in Family Violence. Ed. Loyd, J.D. (2001) Jones, Ann ‘Women Are Victims of Family Violence?’

²⁰ Stark, E (2012) Re-presenting Battered Women: Coercive Control and the Defense of Liberty. http://www.stopvaw.org/uploads/evan_stark_article_final_100812.pdf

The implication is that individual acts of abuse, such as minor assaults, are often dealt with less seriously because the criminal justice system does not understand these have occurred within the more serious context of ongoing coercive control. Stark goes on to explain that:

“coercion entails the use of force or threats to compel or dispel a particular response. In addition to causing immediate pain, injury, fear, or death, coercion can have long-term physical, behavioral, or psychological consequences²¹.”

Despite ‘coercive control’ being a familiar concept within the domestic violence arena for many years, differences have been noted in the way it is understood and applied²² to victims. Stark cautions that:

“If taken alone, many tactics used in coercive control could typify a “bad” marriage. So it is critical to recognize that it is the combination of these tactics into a pattern of domination that comprises the offense, not the acts themselves. Front-line responders will determine appropriate interventions based on the particular combination of violence, intimidation, humiliation, isolation and control they encounter²³.”

There is little to dispute in an analysis of 'domestic violence' as a human rights issue, nor in the assertion that coercive and controlling behaviours are extremely serious and damaging forms of abuse, which should be taken into account when considering apparently minor assaults or incidents.

What is missing in the concept of coercive control as a new offence is a **gendered focus**, without which there is a strong possibility that male perpetrators will bring claims of coercive control against female victims.

Problems with implementing an offence of coercive control

Notwithstanding concerns about the gender neutrality of coercive control, Refuge is concerned that a discrete offence of coercive control may be difficult for the criminal justice system to understand and implement. Evidencing behaviours that are already criminal - such as stalking, harassment and particularly psychiatric injury - is complex, but these may be easier to evidence than other behaviours - such as financial abuse, isolation or humiliation - even when these occur in a persistent, patterned manner sufficient to constitute a 'course of conduct'.

²¹ Stark, E (2012) *ibid*

²² Kuennan, T (2007) *Analyzing the Impact of Coercion on Domestic Violence Victims. How Much is Too Much.* 22 BERKLEY J. GENDER L. & JUST 2

²³ Stark, E (2012) *Re-presenting Battered Women: Coercive Control and the Defense of Liberty.*
http://www.stopvaw.org/uploads/evan_stark_article_final_100812.pdf

There are a vast range of controlling behaviours used by domestic perpetrators, some of which might meet the threshold for coercion, whilst some might not. For example, it is likely that some damaging forms of control would not be categorised as coercive because they do not involve threats. Specifically, many perpetrators exert control by way of jealousy or by restricting their partner's activities under the guise of 'protection' or 'caring'. Such behaviours are difficult even for abused women to recognise as 'controlling', particularly in the early stages of a relationship. We therefore anticipate that the creation of an exhaustive list of controlling behaviours that meet the as yet unspecified criteria for coercive control, may prove difficult, if not impossible – deciding upon what constitutes a legal threshold for this behavior may be even more difficult to determine.

When deciding if a particular behaviour meets the criteria for coercive control, it may also be necessary for the criminal justice system to consider the context and subjective impact of any alleged coercive control upon the victim. These considerations are clearly articulated by Kuennan²⁴ and by the Magistrates Association who, in discussing whether coercive control ought to be included in a new definition of domestic violence, state:

"What constitutes coercive control will have to be viewed in the context of the relationship and the effect on the 'victim'. This contextual element may be difficult to put into legislation as it will depend on a number of factors such as the 'power' relationship and relative psychological robustness of those involved".²⁵

Then there are problems of evidence: coercive control often takes place in private, domestic settings without the benefit of third party corroboration. Given that many criminal justice professionals lack a nuanced understanding of the gendered dynamics of violence against women, it may be unrealistic to expect a police officer, prosecutor, judge, jury, probation officer or lawyer to unravel these complexities. In addition, there is also the danger victims may be charged with the new offence of coercive control. Providing evidence of such behaviours to satisfy criminal standards is likely to be extremely difficult. There is little detail available to show how this law might work in practice but one assumes it could not, and indeed should not, proceed on the basis of uncorroborated evidence presented by the victim.

²⁴ Kuennan, T (2007) Analyzing the Impact of Coercion on Domestic Violence Victims. How Much is Too Much. 22 BERKLEY J. GENDER L. & JUST 2

²⁵ http://www.magistrates-association.org.uk/dox/consultations/1333550516_domestic_violence_consultation_response.pdf

Criminalising psychological abuse

Inspired by legislative reform in Spain, the French criminalised psychological abuse within relationships²⁶ in July 2010 and rolled out a range of measures to combat violence against women, including emergency phones, a helpline and educational materials for schools. At least 28 EU member states have introduced criminal provisions to either sanction psychological violence or take it into account as an aggravating factor in domestic violence cases. In most jurisdictions, these changes in legislation are so recent that it is too soon to determine their impact, though there is some evidence that crimes of psychological abuse have been difficult to implement, specifically in France²⁷.

Effective criminalisation of psychological abuse in the UK

A law which aims to criminalise psychological abuse would need to provide objective evidence that psychological harm had occurred. Indeed, it is difficult to see how it would be possible or ethical to convict a perpetrator for crimes of 'psychological abuse' without providing robust independent corroborating evidence, to a criminal standard, that the alleged abuse had caused psychological/psychiatric injury to the victim.

There is, of course, legal precedent to bring cases of psychiatric injury to the criminal courts (Ireland vs Burstow [1997]) and so it appears possible to use existing legislation, Assault Occasioning Actual Bodily Harm, contrary to section 47 Offences Against the Person Act 1986, to prosecute perpetrators of non-physical abuse which results in psychiatric injury. CPS guidance states:

Psychological harm that involves more than mere emotions such as fear, distress or panic can amount to ABH. In any case where psychiatric injury is relied upon as the basis for an allegation of ABH, and the matter is not admitted by the defence, expert evidence must be called by the prosecution (R v Chan-Fook 99 Cr. App. R. 147, CA).²⁸

At Refuge we are aware that in order for psychological harm to amount to ABH, it must be of sufficient severity to meet criteria for a psychiatric condition²⁹. Psychiatrists and psychologists, particularly in the context of court, often make reference to criteria outlined in manuals such as such as DSM-5³⁰ or ICD

²⁶ "the law of the 9th July 2010 relative to specific violence against women, violence in the couple, and its impact on children, engaged good practices. This law introduces for the first time the offence of psychological harassment intra couple and this is a breakthrough for considering mental violence. Mostly, this law was inspired by the Spanish framework law of 2004. That's why we have similar measures in common (e.g. hotline, emergency phone, etc.)" Exchange of good practices on gender equality. Measures to fight violence against women. Spain, 16-17 April 2013. Comments Paper - France

²⁷ Kovacs, K (november 201) Doc. 12787 Psychological violence. Report 1. Committee on Equal Opportunities for Women and Men.

²⁸http://www.cps.gov.uk/legal/l_to_o/offences_against_the_person/#a08

²⁹ Refuge was involved with the case of R v Dhaliwal (2006) CA - a case which collapsed because the law could not accept that the psychological harm suffered by Mrs Dhaliwal equated to psychiatric injury and therefore ABH.

³⁰ American Psychiatric Association. (2013). Diagnostic and statistical manual of mental disorders (5th ed.). Arlington, VA: American Psychiatric Publishing

10³¹ to guide their assessment of mental health. In order to meet the criteria for a psychiatric condition, individuals must demonstrate difficulty in a number of specified areas of functioning and behaviour. One of the psychiatric conditions often observed in abused women is post-traumatic stress disorder (PTSD).

Last year, 'complicated post-traumatic stress' (which is particularly prevalent amongst those abused by known individuals in intimate contexts) was included in an expanded definition of PTSD within the psychiatric diagnostic classification system for the first time. Specifically, PTSD criteria now includes an additional category of symptoms within its diagnostic framework, incorporating many of the features of complex PTSD³². The forthcoming ICD-11 plans to include 'Complex PTSD' as an additional diagnostic category³³ which is particularly welcome. These classificatory changes carry significant implications, increasing the likelihood that abused women will be able to obtain a diagnosis of psychiatric injury – and therefore bring a case for non-physical, psychological injury in the criminal courts under existing legislation.

Whilst it is clearly necessary to ensure only serious cases of psychological harm are regarded as criminal, the requirement that the abuse has induced a psychiatric condition can present a considerable hurdle to some legitimate victims. Many abused women suffer serious negative psychological outcomes as a result of their experiences, but not all of these women will satisfy the criteria necessary for diagnosis of a psychiatric illness, even when the psychological consequences are so great that that all aspects of their lives are totally and adversely changed by the abuse suffered. To address this disparity, Refuge has called previously for the legal definition of 'psychiatric injury' to be extended so that it includes psychological impacts of abuse. And so whilst Refuge does not believe it is necessary to introduce new legislation to criminalise most instances of psychological abuse, it may be necessary

³¹ World Health Organization. (1992). The ICD-10 classification of mental and behavioural disorders: Clinical descriptions and diagnostic guidelines. Geneva: World Health Organization.

³² Within DSM-5, PTSD is now identifiable by a cluster of four types of symptoms which generally co-occur following an event, experienced or witnessed, which involved actual or threatened death, serious injury or sexual violation. There is a requirement that the disturbance experienced, regardless of its trigger, must cause clinically significant distress or impairment in the individual's social interactions, capacity to work or other important areas of functioning. The symptoms are: 1) re-experiencing the traumatic event through memory, thoughts, flashbacks or dreams 2) avoidance of thoughts and feelings about the traumatic event 3) persistent symptoms of anxiety or increased arousal, which now include arousal, aggressive, reckless or self-destructive behaviour, sleep disturbances, hyper-vigilance or related problems, 4) negative cognitions and mood, including a persistent and distorted sense of blame of self or others, estrangement from others, significantly diminished interest in activities, as well as an inability to remember key aspects of the event.

³³ Cloitre, M., Garvert, D.W., Brewin, C.R., Bryant, R.A., Maercker, A. (2013) Evidence for proposed ICD-11 PTSD and complex PTSD: a latent profile analysis. *European Journal of Psychotraumatology* 2013, 4: 20706 - <http://dx.doi.org/10.3402/ejpt.v4i0.20706>

to extend the definition of psychiatric injury so that it encompasses all psychological harms resulting from domestic violence.

In summary – Refuge does not believe that current law needs to be strengthened by the introduction of a new offence which would criminalise coercive control. However, we do believe that there are a number of other ways in which the law could be strengthened to better protect victims of domestic violence. These are:

1. An expansion of the definition of psychiatric injury to include all forms of psychological harm caused by repeated incidents of violence and abuse, particularly to women

As outlined above, Refuge believes that recent classificatory changes to the definition of PTSD could make it easier for abused women to obtain a diagnosis of psychiatric injury – and therefore bring a case to the courts using existing legislation (specifically, the Offences Against the Person Act). However, although many abused women suffer serious negative psychological outcomes as a result of their experiences, not all will satisfy the criteria necessary for the diagnosis of a psychiatric illness, even when the psychological consequences are so great that all aspects of their lives are totally and adversely changed by the abuse suffered. We therefore recommend extending the definition of psychiatric injury so that it encompasses all forms of psychological harm resulting from violence inflicted by partners or ex-partners.

2. The development of gender specific legislation or clauses, including a new offence criminalising cumulative harm within the context of woman abuse

Any charge for this new offence would be made *in addition* to the individual charges brought for crimes of violence/abuse towards a single victim. This means that a perpetrator would be charged with individual crimes against his partner in the usual way but that repeat or multiple offences against a single victim would trigger an additional charge reflective of the cumulative harm she has suffered. Sentencing would be aggravated by evidence of psychological harm suffered by the victim or other impacts such as loss of employment consequent to the abuse. This change would enable the law to respond to repeat perpetrators of woman abuse in a way that recognises that the total harm suffered is often greater than the sum of its parts.

3. The introduction of a mandatory arrest policy

Please see page six of this paper for our thoughts on the problems arising from the police policy of 'positive action'. HMIC's report into police failures on domestic violence shows that this policy does not

work – and that simply 'reiterating' the positive action policy, as per HMIC's recommendations, and allowing officers to continue to exercise discretion is unlikely to result in positive change for abused women. Introducing a policy of mandatory arrest appears to be the only solution.

4. Ensuring the resources required to prevent and support women (and their children) affected by violence and abuse are placed on a statutory footing, in a manner similar to the Spanish Organic Law 1/2004

Over the last few years, local authority funding for domestic violence services has been eroded as a result of ongoing austerity measures. Alongside this, we have also seen the emergence of a number of worrying trends in commissioning practices. Taken together, these issues have reduced both the quality and quantity of support services for victims of domestic violence. Refuge believes that ensuring the provision of life-saving services like refuges should not be at the discretion of local authorities. Male violence against women and children is a national problem: it needs a national response. With this in mind, Refuge believes that funding for specialist services for these victims should be placed on a statutory footing.

Alongside these changes, Refuge would urge the Government to take concerted effort to ensure **more effective implementation of existing legislation, enforced by strong leadership and political will**. We are encouraged by the personal commitment and action the Home Secretary has taken following HMIC's report into the police response to domestic violence – including implementing a National Oversight Committee to ensure that progress is made against each of HMIC's recommendations - and would urge further action and leadership of this nature.

3. How would any changes you suggest be practically implemented?

Please see recommendations above.

4. Does the current law sufficiently capture the Government's non-statutory definition of domestic abuse?

Refuge believes that there are a number of problems with the Government's non-statutory definition of domestic abuse which must be addressed before examining questions of whether it has been interpreted sufficiently into law. The definition is resolutely gender-neutral, thus obscuring the fact that domestic violence is largely a problem of male violence against women, arising from deeply entrenched structures of social inequality between men and women. The gender neutrality of the definition is particularly confusing given that it explicitly includes female genital mutilation (FGM) within its remit. Refuge is also concerned that the definition conflates intimate partner violence with family violence, implying that the complex dynamics underlying domestic violence are also present in violence perpetrated between family members. The techniques used by perpetrators of domestic violence to maintain power and control over women have been well researched and documented: they are complex and rooted in sexist norms and structures. The same cannot be said of violence perpetrated between, for example, siblings.³⁴ Refuge would urge the Government to abandon its gender-neutral definition of domestic violence in favour of a new approach to tackling the issue of male violence against women – in both definition and legislation.

³⁴ For a useful discussion of the problems with the current non-statutory definition of domestic violence please see 'Time for a rethink – why the current government definition of domestic violence is a problem', by Liz Kelly and Nicole Westmarland: <http://www.troubleandstrife.org/2014/04/time-for-a-rethink-why-the-current-government-definition-of-domestic-violence-is-a-problem/>