

The proposed definition of domestic abuse is helpful. However, I suggest that the Government should take this opportunity to take the approach set out in this consultation to address in legislative form a very closely related area where there is a legislative lacuna leading to gaps in protection. These are situations in which adults may have capacity to make relevant decisions for purposes of the Mental Capacity Act 2005 ('MCA 2005') but are in some way vulnerable to coercion or duress on the part of third parties. The vulnerability of the adult may stem from disability (which will engage the obligations of the UK to take steps, including legislative steps, to protect them from exploitation, violence or abuse under Article 16 of the Convention on the Rights of Persons with Disabilities), or from other factors, including, potentially, the effects of aging.

A recent example of the problems caused by the gaps in the law here can be found in the serious case review concerning Sexual Exploitation of Children and Adults with Needs for Care and Support in Newcastle-upon-Tyne

(<https://www.nscb.org.uk/sites/default/files/Final%20JSCR%20Report%20160218%20PW.pdf>). As the author noted, "*it was clear that adults at risk were being targeted, groomed and exploited and that perpetrators targeted vulnerability and undermined ability to make choices. But the circumstances that justify or require intervention by a state agency are not well defined.*"

Similar issues arise in relation to the financial exploitation of individuals with learning disabilities – sometimes called 'mate crime,' or the abuse or exploitation of older persons, frequently by those who have gained their trust through manipulation.

In all of these cases, the linking thread is that individual is being abused (in the way defined in the proposed definition of domestic abuse) but it cannot be said that they are or have been intimate partners or family members. Moreover, especially where the individual is said to have capacity for purposes of the MCA 2005, it is all too often said that the individual is choosing to live in the particular situation or have contact with the relevant individuals, even if the reality is that their 'choice' is constrained in materially the same way as a victim of domestic abuse.

In all of these cases, finally, behaviour of exactly the nature described in the proposed statutory definition of domestic abuse is taking place, with the same adverse consequences for the victim.

Legislation has been passed in other jurisdictions seeking to provide clear principles for and statutory routes to protection for such adults – examples being the Scottish Adult Support and Protection Act 2007 and, very recently, the Singaporean Vulnerable Adults Act.

In this jurisdiction, the Law Commission decided in 2017 not to take forward a project on 'vulnerable adults' that had been proposed by stakeholders, including me (see <http://www.mentalcapacitylawandpolicy.org.uk/wp-content/uploads/2018/04/Briefing-on-gaps-in-the-protection-of-vulnerable-adults.pdf>), on the basis that there was not a sufficient commitment from Government to take forward law reform in this area.

This legislative opportunity has now arisen, and I strongly urge the Government to take this opportunity to legislate not just for a new definition of domestic abuse, but also what might be called "proximity abuse." The definition could either be included within or kept separate from the definition of domestic abuse, but would encompass the following elements:

*Any incident or pattern of incidents of controlling, coercive, threatening behaviour, violence or abuse between those aged 16 or over who are in close physical or emotional proximity.*

*"Emotional proximity" includes situations where the victim believes through the actions of the perpetrator that they have a relationship of intimacy or friendship.*

*"Physical proximity" includes situations where the victim and the perpetrator live in the same premises, whether or not they are intimate partners or family members, and whether or not the perpetrator is*

*paying rent to the victim or otherwise contributing financially to the maintenance of the living arrangements.*

“Emotional proximity” would capture both the situations identified in the Newcastle-upon-Tyne SCR and also situations of ‘mate crime.’

“Physical proximity” would capture in particular, those situations where a person is subject to exploitation by a lodger: for a vivid example (and of the barriers to effective protection) see the multiple judgments in the case of *LB Redbridge v G* in 2014 (the key judgment being summarised here: [http://www.39essex.com/cop\\_cases/lb-redbridge-v-g-c-and-f/](http://www.39essex.com/cop_cases/lb-redbridge-v-g-c-and-f/)).

Importantly, the same remedies as proposed in the balance of the consultation could then apply to those subject to proximity abuse as they would to those subject to domestic abuse: in particular, a proximity abuse protection order.

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24 May 2018