



Close the Gap submission to the Department of Business, Energy and Industrial Strategy review of employment rights for survivors of domestic abuse

September 2020

1. Introduction

Close the Gap is Scotland's expert policy advocacy organisation working to advance women's labour market equality. For two decades, we have been working with policymakers, employers and unions to influence and enable action that will address the causes of women's inequality in the workplace. Domestic abuse is a form of violence against women (VAW), and a violation of women's and children's human rights. Domestic abuse, and other forms of VAW, are a cause and consequence of gender inequality, and in order to end domestic abuse, action is required to tackle all aspects of gender equality in society, including the workplace. Employers therefore have a key role to play in both supporting employees who are victim-survivors but also enabling workplace cultures that challenge, gender inequality, domestic abuse and other forms of VAW.

Women are not a homogenous group, and their experiences of domestic abuse vary according to their multiple identities. Disabled women are twice as likely to experience domestic abuse, particularly when the abuser is also their carer, than non-disabled women¹. Black and minority ethnic women face additional barriers to accessing race-sensitive support, and they may be unwilling to seek

¹ Breiding, M.J., Armour, B.S. (2015) "The association between disability and intimate partner violence in the United States", *Annals of Epidemiology*; 25(6): 455-457, doi:10.1016/j.annepidem.2015.03.017

help from statutory agencies because of fear of racism² or that their culture will be judged. Older women are less likely to report their experiences of domestic abuse³. Trans women are particularly vulnerable to transphobic emotional abuse, and can be reluctant to access support services or contact the police for fear they may face prejudice or that they may not be understood⁴. Legislative and policy responses to domestic abuse should therefore recognise the distinct experiences of different groups of women.

The Scottish context

Scotland's national strategy to prevent and eradicate violence against women and girls, Equally Safe, has a strong focus on primary prevention and includes a range of commitments to prevent VAW⁵. To support implementation of the Equally Safe strategy in Scotland, Close the Gap is piloting an employer accreditation programme, Equally Safe at Work⁶, which enables employers to develop improved gender and VAW-sensitive employment practice, with a particular focus on domestic abuse. Close the Gap has also developed an online self-assessment tool for SME employers, Think Business, Think Equality⁷, which allows employers to assess their employment practice around domestic abuse, and provides them with a bespoke action plan which identifies the steps they can take to support victim-survivors in the workforce.

Close the Gap therefore has a range of expertise on domestic abuse and work, and in particular enabling change in employment practice around domestic abuse. We welcome the opportunity to share our expertise and learning with the Department for Business, Energy & Industrial Strategy.

The Domestic Abuse (Scotland) Act 2018 was introduced to make all domestic abuse towards a partner or ex-partner whether psychological or physical, a criminal offence. We strongly welcomed this Act as it criminalises coercive

² TUC (2016) *Still just a bit of banter? Sexual harassment in the workplace*, available at: <https://www.tuc.org.uk/sites/default/files/SexualHarassmentreport2016.pdf>, last accessed 9 September 2020

³ Business in the Community (2018) *Domestic abuse: a toolkit for employers*

⁴ Scottish Trans Alliance and LGBT Youth Scotland (2010) *Out of Sight, Out of Mind? Transgender people's experiences of domestic abuse*, available at: <https://lgbtdomesticabuse.org.uk/media/1462/out-of-sight.pdf>, last accessed 9 September 2020

⁵ Scottish Government (2018) *Equally Safe: Scotland's strategy to prevent and eradicate violence against women and girls*, available at: <https://www.gov.scot/publications/equally-safe-scotlands-strategy-prevent-eradicate-violence-against-women-girls/>, last accessed 9 September 2020

⁶ See www.equallysafeatwork.scot

⁷ See <https://www.thinkbusinessthinkequality.org.uk/toolkit/9-domestic-abuse/>

control, a form of abuse that pervades many women's experiences of domestic abuse.

2. Answers to questions

a) What practical circumstances arise in relation to domestic abuse and work?

Domestic abuse presents significant challenges for victim-survivors, their colleagues and their employer. The majority of women experiencing domestic abuse are also targeted at work, and it can prevent women coming to work, performing well, and in some cases staying in their job. Perpetrators of domestic abuse use a range of tactics to disrupt women's employment, including:

- Using workplace resources such as phone and email to threaten, harass or abuse them;
- Sending abusive and threatening phone calls, text messages or emails to their personal phone while at work;
- Preventing them from going to work by locking them in, or by hiding their keys or purse;
- Controlling their finances to prevent them from paying transport costs or tampering with their car to prevent them from going to work;
- Following them into their workplace or waiting outside for them;
- Isolating them from their colleagues by not allowing them to attend social events;
- Verbal harassment, assault or threats of assault when women leave to go to work;
- Destroying personal documents which may prevent them from applying for jobs;
- Preventing them from attending development or training courses;
- Sabotaging their work clothes;
- Offering to provide childcare and not turning up;
- Threatening to take the children if they go to work;
- For non-English speakers, preventing them from learning English which would enable them to work; and
- Discouraging them from applying for promotion or positions where they would become the primary earner in the household.

Domestic abuse can create considerable barriers which prevent women coming to work and sustaining employment, with long-term consequences for their economic independence, women's and children's poverty, and the gender pay gap⁸.

The impact on colleagues

Domestic abuse also affects the colleagues of victim-survivors, for example:

- Having to fill in for absent colleagues, or colleagues who are under-performing;
- Decreased productivity or being distracted from their own work;
- Increased stress or anxiety from being followed to or from work, or being subject to questioning by the perpetrator about the victim-survivor's contact details or location;
- Trying to protect the victim-survivor from unwanted phone calls or visits;
- Feeling helpless and unsure about how to intervene to support a colleague;
- Unknowingly assisting the perpetrator to locate their partner or by covering up for the perpetrator at work;
- Experiencing a negative impact on their own mental and emotional health, especially if they may also be experiencing abuse themselves; and
- Increased absence and/or turnover, which in turn can have a detrimental effect on their job retention, and wider career.

The impact on business

Domestic abuse can prevent women from doing their jobs effectively. This can be because of stress, trauma or physical injuries that can make it difficult to do their work as normal. The effects of domestic abuse are often visible in increased and sporadic absenteeism, along with needing to take time off to seek help from specialist support agencies, and/or attend doctor's appointments or access legal support. Some women also leave their job as a

⁸ Close the Gap (2017) *Response to Scottish Government consultation on the Equally Safe at Work delivery plan*, available at: https://www.closesthegap.org.uk/content/resources/1498750312_Response-to-the-consultation-on-the-Equally-Safe-draft-delivery-plan.pdf

result of domestic abuse; this may be because they are unsure how to disclose to their line managers, they are unaware of the support that exists in the workplace, or they did not receive the necessary support when they did disclose. This represents a significant loss of female talent to business, with many organisations missing out on the skills and experience of key people.

Research published by the Home Office identified that domestic abuse is estimated to cost the UK economy over £66 billion per year, which includes an estimated £14 billion lost due to decreased productivity, administrative difficulties from unplanned time off, lost wages and sick pay⁹. There is therefore a sound business case for employers to take action on domestic abuse.

b) What support can be offered in the workplace for victims of domestic abuse?

There is a wide range of support that employers can provide to victim-survivors of domestic abuse.

Domestic abuse policy

Developing a domestic abuse policy is a key step in developing domestic abuse-sensitive employment practice. The policy should be gender-sensitive, in that it should recognise that domestic abuse is mainly perpetrated by men against women, and that domestic abuse is a cause and consequence of gender inequality. The policy should describe what domestic abuse is; set out the employer's role in supporting victim-survivors; clarify the roles and responsibilities of line managers, HR and employees; underscore the importance of protecting confidentiality; describe how to manage disclosures effectively; set out how to support staff; detail how to manage perpetrators; and build understanding how domestic abuse relates to other employment policies such as flexible working and absence management.

⁹ Home Office (2019) *The economic and social costs of domestic abuse*, available at: <https://www.gov.uk/government/publications/the-economic-and-social-costs-of-domestic-abuse>, last accessed 7 September 2020

Building capacity in line managers

Persistent stigma around domestic abuse means that many women do not disclose their experience, and this is particularly the case for women at work because of the harmful notion that domestic abuse is a private matter that should remain in the home. Commonly, line managers become aware of a situation through identifying increased absences, a change in behaviour or a change in performance. Victim-survivors often report that they wish that someone had asked them about it. It is therefore important that line managers are able to recognise the signs of domestic abuse, and are able to initiate a conversation with an employee they think may be affected. Building capacity in line managers is critical to developing domestic abuse-sensitive employment practice, and in particular developing an understanding of domestic abuse, and how it affects women and their employment; the business case for taking action on domestic abuse; recognising the signs of domestic abuse; responding to disclosures; and putting in place support mechanisms.

Risk assessment and safety planning

Once a disclosure has been made, it is good practice undertake a workplace risk assessment to identify and mitigate any potential risk to the victim-survivor and, in some cases, their colleagues. Safety planning is a key support mechanism and may include a plan on how they will travel to and from work, including different routes to work, different start and finish times, and using a different entrance and exit of the workplace; what action should be taken if there are concerns they are unsafe; what to do if they do not arrive at work; establishing code words to safely disclose information in an otherwise unsafe situation. It is important that risk assessments and safety plans are developed jointly with the victim-survivor, as they are best placed to understand the risks and what actions would be most helpful in mitigating these.

Developing domestic abuse-sensitive policies and practice

Domestic abuse affects women's ability to do their job in a range of ways, and it is important that this is recognised not only in a domestic abuse policy but also in other employment policies. Developing domestic abuse-sensitive

policies means that the impact of domestic abuse is acknowledged in other areas. For instance:

- **Flexible working:** Enabling a victim-survivor to work flexibly in a way which supports her to better manage the risk of domestic abuse by a current or ex-partner means that they will be more likely to be able to do their job well.
- **Absence management:** A common effect of domestic abuse is the increased short-term absences that victim-survivors are forced to take. Some businesses use absence management software, which often incorporates the “Bradford Factor” formula that is designed to detect patterns in absences, and triggers when someone has shorter, more frequent absences. The Bradford Factor unintentionally flags victim-survivors, as a pattern of short, frequent absences that can be a sign of domestic abuse. A domestic abuse sensitive absence management policy should recognise this.
- **Health and safety:** Domestic abuse poses a significant risk to the health, safety and wellbeing, and in some cases the lives of women, and this should be recognised in workplace health and safety provisions.
- **Internet and email use:** This is particularly important where the victim-survivor and the perpetrator are employed by the same organisation. Perpetrators routinely use workplace resources such as email and the wider internet to abuse, threaten or harass women. A policy should also recognise the importance of protecting the privacy and safety of the victim-survivor by not making public their email address which could be accessed by the perpetrator.

Signposting to specialist support services

Victim-survivors should be signposted to specialist support services such as their local Women’s Aid which have decades of experience of supporting women and children affected by domestic abuse. This should be set out in an organisation’s domestic abuse policy, be understood by line managers, and information on specialist support services should also be available in other accessible places, for example, the staff intranet, women’s toilets, staff rooms and kitchens.

Paid special leave

It is good practice for employers to provide ten days of paid special leave, also sometimes called domestic abuse leave. The ability to take time off work without facing disciplinary action or losing out on pay is crucial for victim-survivors who are trying to leave an abusive relationship. Reasons staff would use domestic abuse leave may include taking time off to attend doctor or solicitor appointments or appointments to change bank accounts, making arrangements to move schools, moving to a new house or for necessary involvement in police investigations. It is important to note that paid leave in itself is not sufficient to support victim-survivors at work. More important is building capacity in the workforce, particularly line managers, to better understand the impact of domestic abuse, to respond effectively to disclosures, and to offer a range of practical support to victim-survivors to enable them to do their job.

Close the Gap's Think Business, Think Equality guidance for employers on domestic abuse¹⁰ sets out the actions that employers can take to better support victim-survivors in the workplace.

c) What is possible with the existing (employment) framework?

It is possible for the support mechanisms described in the previous section can be implemented within the current context. However, this does not mean that it routinely happens; it is highly unusual to see domestic abuse-sensitive employment practice. A small minority of employers have a domestic abuse policy but such policies often lack the key features of good practice. Furthermore, it is even rarer to see capacity built in line managers and the wider workplace to challenge the stigma around domestic abuse, address gender inequality, and effectively support victim-survivors. More importantly, domestic abuse is generally not seen as a workplace issue. Evidence gathered through Close the Gap's Equally Safe at Work programme found that many women who had experienced domestic abuse did not believe it would be appropriate to speak to their line manager as it was perceived to only relate to their life outside of work, and they did not think that their employer would be able to support them. In spite of this, women also reported the impact domestic abuse had on their ability to come work and to do their job.

The ongoing and systemic inequality women experience in the labour market, evidenced by the persistent gender pay gap¹¹, clearly shows that most employers have failed to put in place action that will address the gendered inequalities women face at work. The impact of domestic abuse on women's employment is an integral dimension to this.

Evidence from the Government Equalities Office and Close the Gap shows that most employers are unlikely to take action to advance gender equality at work unless legal required¹². While there is an increased focus on the gender pay gap as a problem, albeit with little substantive action from employers¹³, domestic abuse is largely invisible as a workplace issue. The existing regulatory framework is therefore not working for women, which not only negatively affects individual victim-survivors but also businesses who are missing out on skilled female talent.

d) What does current best practice look like?

As set out in section b) above, there are a range of best practice actions employers can take to better support victim-survivors of domestic abuse. Close the Gap has developed an online self-assessment tool for SME employers to enable them to develop gender and domestic abuse-sensitive employment practice¹⁴. The Think Business, Think Equality tool allows employers to self-assess their practice around domestic abuse, and provides a bespoke action plan to identify the changes they can make to improve their employment practice and better support victim-survivors. It also provides information, advice and guidance; case studies; links to resources; and a best practice

¹¹ Close the Gap (2020) *Gender pay gap statistics*, available at:

<https://www.closesthegap.org.uk/content/resources/Working-Paper-21-Gender-Pay-Gap-statistics-2019.pdf>

¹² IFF Research (2015) *Gender pay data*, Government Equalities Office; Close the Gap (2018) *A Road to Change? An assessment of Scottish employer reporting of the UK gender pay gap regulations*, available at:

<https://www.closesthegap.org.uk/content/resources/The-Road-to-Change.pdf>; and Close the Gap (2013) *Missing Out on the Benefits: Summary of research on the reporting of the gender pay gap in Scotland*, available at: <http://www.closesthegap.org.uk/content/resources/Missingoutonthebenefits-CTG.pdf>

¹³ Close the Gap (2018) *A Road to Change? An assessment of Scottish employer reporting of the UK gender pay gap regulations*, available at: <https://www.closesthegap.org.uk/content/resources/The-Road-to-Change.pdf>; and Close the Gap (2013)

¹⁴ See the Think Business, Think Equality resource on domestic abuse at:

<https://www.thinkbusinessstinequality.org.uk/toolkit/9-domestic-abuse/> Think Business, Think Equality also contains a range of other resources which also align with the causes of the gender pay gap including flexible working, pay and reward, workplace culture, job segregation, progression and promotion, and pregnancy and maternity, available at: <https://www.thinkbusinessstinequality.org.uk/toolkit/9-domestic-abuse/>

checklist. We also recently published guidance for employers on supporting employees affected by domestic abuse during Covid-19¹⁵.

Close the Gap has also been piloting an employer accreditation programme in Scotland's local government. Equally Safe at Work¹⁶ enables employers to improve their employment practice around VAW and gender equality.

Domestic abuse is an endemic form of VAW, and many women who experience domestic abuse will also be affected by other forms of VAW such as rape and sexual assault, and stalking. During the pilot period, which commenced in 2019, seven Scottish councils have been working towards bronze accreditation by carrying out a range of activity around domestic abuse including:

- Demonstrating leadership on domestic abuse and other forms of VAW, and on advancing gender equality at work;
- Developing domestic abuse-sensitive employment policies;
- Developing data gathering systems on employee disclosures of domestic abuse, and other forms of VAW;
- Gathering quantitative and qualitative data on employee experiences of, and attitudes to, domestic abuse, VAW and gender equality at work;
- Building capacity in line managers on domestic abuse and other forms of VAW;
- Disseminating guidance to line managers on handling disclosures, and managing perpetrators;
- Delivering awareness raising campaigns on VAW, including highlighting the prevalence of domestic abuse in local areas; and
- Making provisions for paid special leave for victim-survivors of domestic abuse.

¹⁵ Close the Gap (2020) *Domestic abuse and Covid-19*, available at: <https://www.thinkbusinessthinkequality.org.uk/files/tbtecovid19.pdf>

¹⁶ See <https://www.equallysafeatwork.scot/>

e) What is the potential to do more?

Domestic abuse has a profound effect on women's working lives, often affecting their ability to do their job effectively and work to their potential. In some cases, domestic abuse forces women to leave their jobs which has long-lasting consequences for their economic independence, their likelihood of living in poverty, their careers, and ultimately their pensions. It is extremely rare for employers to recognise the significance of domestic abuse on women's employment. Our answer to question b) sets out the actions that employers can take to improve their employment practice on domestic abuse. There is also significant potential to better protect victim-survivors in employment law.

Flexible working

Flexible working is a critical support measure to ensure the safety of victim-survivors at work. However, despite a legal right to request flexible working, there remains a lack of flexibility across the labour market. Ambitions to make work more flexible through extending the right to request to all employees in 2014 have not been realised as data shows that this has made little change to the availability of flexible working for women¹⁷. Research by Close the Gap found that there were slight increases in the use of homeworking and flexitime but these are forms of flexible working more likely to be used by managers and employees of larger organisations, groups in which men are over-represented. There has also been a reduction in the use of term-time and jobsharing which are overwhelmingly used by women¹⁸. There remains a cultural presumption against flexible working in many workplaces, which significantly disbenefits women. Research by the TUC found that one in three flexible working requests are refused¹⁹. These findings have stark implications for women's, and therefore victim-survivors', access to flexible working.

Although Covid-19 has necessitated more flexible working, in particular homeworking, it is not clear that this will result in a sustainable change in

¹⁷ Close the Gap (2019) *Flexible Working for All? The impact of the right to request flexible working in Scotland*, available at: <https://www.closesthegap.org.uk/content/resources/Flexible-Working-for-All.pdf>, last accessed 9 September 2020

¹⁸ Ibid.

¹⁹ TUC (2019) "People in working-class jobs most likely to miss out on flexible working arrangements", available at: <https://www.tuc.org.uk/news/one-three-flexible-working-requests-turned-down-tuc-poll-reveals>, last accessed 9 September 2020

workplace culture. Victim-survivors have specific needs; for instance, lockdown and the move to homeworking has magnified many women's experiences of domestic abuse. Coercive control is likely to intensify during periods of lockdown, without regular interaction with other people, as perpetrators further restrict their partners' freedoms, including their ability to work, and threaten their safety²⁰. Restricted access to specialist support services has also affected victim-survivors at a time when some need the support most²¹.

Close the Gap calls for a legal right to flexible working for victim-survivors, with no minimum service qualification period. It is important that employers are responsive to the needs of the victim-survivor, as the types of flexibility may need to be adapted as her situation changes.

Special leave for victim-survivors of domestic abuse

Evidence shows that one in five victim-survivors have to take time off work because of domestic abuse²². The ability to take time off work without facing disciplinary action or losing out on pay is crucial for victim-survivors who are trying to leave an abusive relationship. Close the Gap is aware that a very small number of employers in Scotland provide for a period of special leave for domestic abuse victim-survivors, including some councils participating in our Equally Safe at Work employer accreditation programme pilot. Implementing this provision is also integrated into the accreditation framework. **Close the Gap therefore calls for a legal right to ten days of paid leave for domestic abuse survivors.** It is critical that the leave is paid at the usual rate of pay to ensure that there is no financial barrier to uptake, particularly at a time when victim-survivors may be likely to be affected by financial abuse by their perpetrator.

It is important to note that, in order for the provision of flexible working and paid leave to be most effective for victim-survivors of domestic abuse,

²⁰ Close the Gap (2020) *Domestic Abuse and Covid-19: Guidance for employers*, available at: <https://www.thinkbusinessthinkequality.org.uk/files/tbteccovid19.pdf>, last accessed 9 September 2020

²¹ Scottish Women's Aid (2020) *Crisis and Resilience: The impact of a global pandemic on domestic abuse survivors and services in Scotland*, available at: <https://womensaid.scot/wp-content/uploads/2020/09/SWA-COVID-Report.pdf>, last accessed 9 September 2020

²² TUC (2017) *Domestic Violence and the Workplace*, available at: https://www.tuc.org.uk/sites/default/files/Domestic_Violence_And_The_Workplace_0.pdf, last accessed 9 September 2020

employers must also take steps to build capacity in line managers to effectively respond to disclosures, and also provide the range of other support mechanisms set out in b).