The Domestic Abuse Act 2021 England and Wales: implications for nurses

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ABSTRACT

As the COVID-19 pandemic enveloped the globe there was a parallel increase in the incidence of domestic abuse (DA). This has been ascribed to the restrictions in movement and growing tensions during lockdown periods. The Domestic Abuse Act covering England and Wales was about to be passed prior to the COVID-19 outbreak, but progress halted as attention focused on managing infection control and treatment nationally. The unfolding DA 'shadow pandemic' led to pressure groups lobbying for specific changes to the Act which, in its revised form, became law in April 2021. This article sets out the changes in definition, statutory response and prevention of DA and relates these to nursing practice. Health education and promotion theory is considered and linked to nursing practice with those who are both victims/survivors and perpetrators of DA.

Key words: Domestic abuse ■ COVID-19 ■ Safeguarding ■ Health education ■ Health promotion ■ Trauma-informed care

The year ending March 2021 saw an increase of 6% in crimes related to domestic abuse (DA) in the UK. This represented 18% of all offences recorded in that year (Office for National Statistics (ONS), 2021). Estimates from the Crime Survey for England and Wales in the year ending March 2020 indicate that 5.5% of adults aged 16–74 years (2.3 million) had experienced DA in the previous 12 months (ONS, 2021).

This is supported by data from anti-violence against women and girls organisations, which reported 50% more calls to the national DA helpline in the first month of lockdown, reaching 80% by the end of June 2020 (House of Commons Home Affairs Committee, 2020), with callers to Respect's Men's Advice Line in the UK describing new and escalating physical violence and violent threat from partners or family members (Westmarland et al, 2021). In the USA, Walsh et al (2022) reported new or more frequent intimate partner violence (IPV) and victimisation for individuals who self-classify as gay, bisexual, or men who have sex with men. DA is under-reported for reasons such as fear of repercussions, or not being believed or taken seriously (Evans and Feder, 2016). Occurrence was further under-reported during lockdowns due to lack of freedom to contact those outside the home (Ivandic et al, 2020).

Evidence from countries that first imposed virus-containment measures prompted an international UN Women (2020)campaign to raise awareness of the 'shadow pandemic', as DA followed the migration of the pandemic and consequent restrictions (Mlambo-Ngcuka, 2020). International organisations have long-standing commitments to reducing DA. However, recognition of DA, and therefore policy and law to prevent and respond to it, varies across the globe. Seemungal (2022) examines the varied picture of DA globally, exploring to what extent DA is recognised, national policy and law, and how individual countries were prepared and able to assist those who experienced DA during the pandemic.

The growing picture from before, during and after the pandemic highlights a prevalence of DA globally and nationally. It is predicted that the impact of COVID-19 on DA will be lasting, as perpetrators intensify coercive control and abuse, seeking to re-exert a control they see weakening as 'normality' returns (Women's Aid, 2021). It is likely that nurses, due to the range of settings in which they work, will encounter both adult and child victims/survivors of DA. Disclosure is also more likely to occur in healthcare settings as these are viewed as trusted environments (Battaglia et al, 2003).

Pregnancy, and having a newborn, are specific times when DA from partners can start or worsen (Cook and Bewley, 2008). Midwives and health visitors, who have close contact with the mother and child, are well placed to identify and respond to the identification or disclosure of DA (Bradbury-Jones et al, 2013). Other settings where identification of DA is more likely are the emergency department (McGarry and Nairn, 2015), and school nursing (Stafford, 2019). In addition, some nurses may themselves be experiencing DA (Ellis, 1999).

This article sets out the specific changes in definition, statutory response and prevention of DA in England and Wales, arising from the Domestic Abuse Act 2021, and relates these to nursing practice. This responds to nurses' duty to practise effectively (Nursing and Midwifery Council, 2020) and also to research suggesting that nurses often feel ill-informed on

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the legalities and process of detecting, managing, and reporting DA (Kirk and Bezzant, 2020).

The Domestic Abuse Act 2021 England and Wales

The Domestic Abuse Act 2021 England and Wales received Royal Assent on 29 April 2021. Most, but not all, of the provisions in the Act are in force, with the remainder due to become law by spring 2023. The original Bill was drafted prior to the pandemic, but delayed due to parliamentary focus on managing the national response to COVID-19. Evidence emerging from the pandemic led to changes, which are highlighted in this article. The Act has seven parts:

- Part 1 offers a legal definition of DA
- Part 2 sets out the new role of Domestic Abuse Commissioner
- Part 3, due to come into force in 2023, introduces a single protective order enabling police, criminal, family and civil courts to evict and restrain DA perpetrators, with breach designated a criminal offence
- Part 4 relates to the responsibility of local authorities to provide support and refuge to DA victims
- Part 5 sets out provisions to reduce the trauma of the criminal process for those pursuing legal proceedings in relation to DA
- Part 6 extends the extraterritorial jurisdiction of criminal courts for criminal offences associated with DA and creates new offences relating to acts often perpetrated by abusers
- Part 7 prohibits charging to provide medical evidence, extends 'polygraph conditions' to DA offenders released on licence, and places the Domestic Violence Disclosure Scheme (or 'Clare's Law') on a statutory footing.

Each part is further discussed below and related to nursing practice.

Part 1

Before the Act DA did not have a legal definition in England and Wales, although working definitions were in use. Part 1 sets out the following:

(1) This section defines 'domestic abuse' for the purposes of this Act.

(2) Behaviour of a person ('A') towards another person ('B') is 'domestic abuse' if
(a) A and B are each aged 16 or over and are personally connected to each other, and
(b) the behaviour is abusive.

(3) Behaviour is 'abusive' if it consists of any of the following–
(a) physical or sexual abuse;
violent or threatening behaviour;
controlling or coercive behaviour, economic abuse (see subsection(4));
psychological, emotional or other abuse;
and it does not matter whether the behaviour consists of a single incident or a course of conduct.

(4) 'Economic abuse' means any behaviour that has a substantial adverse effect on B's ability to–
(a) acquire, use or maintain money or other property, or
(b) obtain goods or services.

(5) For the purposes of this Act A's behaviour may be behaviour 'towards' B despite the fact that it consists of conduct directed at another person (for example, B's child).

Domestic Abuse Act 2021

The clear delineation in age when defining DA ensures accuracy of recording and data analysis. DA as a legal concept applies to those aged 16 years or older; those aged below 16 are recorded as victims of child abuse, through witnessing or experiencing the effects of DA. This is a clear call to child safeguarding services when children are present in a DA situation. Although IPV does occur between minors (Bekaert and Appleton, 2021) the age specification aims to distinguish DA from child abuse in legal terms, while acknowledging the impact of DA on others within the household. This should strengthen the powers of nurses with safeguarding responsibilities – such as school nurses and health visitors - to mobilise the child safeguarding process accordingly.

Recognising children who witness DA as victims/survivors adds weight to practitioners' call for support, such as mental health input. It is noteworthy, too, for nurses working with adults with disabilities that this definition includes the abuse of disabled people by their carers, whether paid or voluntary. This links to legislation relating to safeguarding adults, set out in the Care Act 2014.

Part 2

Part 2 establishes a Domestic Abuse Commissioner as a statutory office holder, giving the issue of DA greater prominence in parliament. The commissioner has statutory powers to hold both the government and agencies to account regarding DA. The commissioner oversees a strategic plan, formed by an expert panel drawn from agencies, including Women's Aid, SafeLives, Respect, the police, housing and children's services. There is now a direct link via this panel between those who experience DA and those who inform legislation and policy in parliament. There is provision on the panel for a healthcare representative, acknowledging the role of the healthcare sector in empowering the abused/survivors.

The nurse should act as legislative advocate in relation to patient safety and care quality within their public health role (Lockhart, 2017). The commissioner is a route by which nurses can lobby for change and share good practice in relation to DA. This complements the role of the Law Commission, which conducts research and consultation, to make systematic recommendations for parliamentary consideration.

Parts 3 and 4

Parts 3 and 4 simplify and speed up legislative action to protect the victim/survivor of DA. Part 3 creates Domestic Abuse Protection Notices (DAPNs) and Domestic Abuse Protection Orders (DAPOs), replacing and strengthening the current regime of Domestic Violence Prevention Orders, and consolidating the various protective orders that can be made in civil, family and criminal jurisdictions with a single order.

The police, often first responders to an incident, can issue DAPNs and then swiftly seek a DAPO – essentially an eviction

and/or non-molestation order – through the magistrates' court. The new order can be made without limit of time, and a breach of the order is an offence punishable by 5 years' imprisonment. Previously, there was no single order accessible across the criminal, family and civil courts, which created confusion and problems with enforcement. The new order gives clarity, immediate and long-term protection, and credibility to the criminal nature of DA.

Part 4 requires local authorities to provide support and refuge to DA victims/survivors, including children, making them a priority for social housing. This legal obligation to provide housing protects victims/survivors and their children immediately after disclosure or incident, because they are no longer forced into returning to an abusive situation for want of alternative accommodation (Murray et al, 2015). Abuse can escalate in the immediate aftermath of disclosure (Heron and Eisma, 2021). It is a crucial moment for legal and practical support. This rationalisation and sensitisation of the system gives victims/survivors confidence to disclose, and practitioners the confidence to report and act, knowing that there is immediate and effective protective legislative action that can be taken, and that refuge will be provided.

Part 5

Part 5 seeks to reduce the trauma of the criminal process for those pursuing legal proceedings in relation to DA. This section recognises the vulnerability of witnesses in court, the trauma of the court process, and of facing the perpetrator. Witnesses are afforded special measures such as video-link or screens for cross-examination, although pre-recorded interviews are not yet permitted.

This is akin to special measures currently afforded to complainants in sexual offence trials with vulnerable witnesses under the Youth Justice and Criminal Evidence Act 1999. It also grants vulnerable parties in family and civil proceedings similar protections to those in criminal courts. For example, lay cross-examination is now prohibited in the civil and family courts. If either party is not legally represented, the court can instruct an advocate under public funds to conduct the cross-examination.

These added protections during the court proceedings take a trauma-informed approach. Individual historic trauma is recognised, and the Act mitigates re-traumatisation through the retelling of events, public and/or hostile cross-examination, and by the person alleged to have caused trauma. Trauma-informed care is a lens with which nurses are familiar. It is a patient-centred approach, attuned to the individual's distinct experience, and recognises the cumulative effect of trauma, and how this negatively impacts a person's health and wellbeing (Bekaert and SmithBattle, 2016; Fleishman et al, 2019).

Part 6

Part 6 extends the extraterritorial jurisdiction of criminal courts to murder, manslaughter, assault offences, harassment, rape, sexual assault, and controlling and coercive behaviour. This already applies in respect of child sexual abuse. UK citizens, and those habitually resident in the UK, who commit these offences abroad are now liable to prosecution in the UK courts.

This section also enshrines the common-law principle that consent to serious harm for sexual gratification is not a defence, responding to growing evidence regarding non-fatal strangulation (NFS). This was an addition to the Act following consultation and parliamentary debate during the pandemic. NFS can be a significant feature of coercion and control, and common in relationships where there is IPV (Edwards and Douglas, 2021). It often leaves no visible external injury (Sorenson et al, 2014), and is recognised as a gateway crime to fatal strangulation (Glass et al, 2008). Nurses should be particularly aware of this because NFS is significantly under-reported by victims/survivors, requiring the use of careful open questions to elicit disclosure. Part 6 also amends the Criminal Justice and Courts Act 2015 to make it an offence not only to disclose private sexual photographs and films without consent and to cause distress (so-called 'revenge porn' offences), but also to threaten to do so.

These areas support nurses in their discussions with victims/survivors regarding the legal definitions of specific coercive acts or threats, particularly where the victim/survivor may see the boundaries of consent as blurred.

Part 7

Part 7 of the Act tackles a range of areas that reduce barriers for victims/survivors seeking legal support, tightens control on those who are convicted of DA when released from prison on licence, and makes statutory provision for preventive action through 'Clare's Law' (see below).

An addition to Part 7 made during the pandemic is a prohibition on NHS medical professionals from charging for the provision of evidence of DA. The costs involved in obtaining such evidence have been a barrier to many victims/survivors pursuing proceedings in the civil and family court (Nott, 2022a). This enshrines the duty of care of health practitioners (Young, 2009).

'Polygraph conditions' applicable to certain sexual offenders on licence from prison are extended to DA offenders released on licence, and they are required to adhere to their licence conditions for the duration of their sentence. Polygraph sessions establish whether an offender is complying with their licence conditions, and can be used to provide evidence of breach, justifying a recall to prison.

Finally, the Act provides a statutory framework for the provision guidance surrounding the Domestic Violence Disclosure Scheme (or 'Clare's Law'). Under this scheme, an individual has a right to ask police to check whether a current or ex-partner has a violent or abusive past, and the police must consider whether to provide the requested information. In tandem, where police receive information about a violent or abusive individual that might impact on the safety of their current or ex-partner, they have a duty to act proactively and make relevant disclosures to those at risk of harm.

Discussion

The Domestic Abuse Act 2021 (England and Wales) facilitates nurses' health promotion and public health role with victims/survivors and perpetrators of DA. The Ottowa Charter (World

Health Organization, 1986) stresses the importance of building healthy public policy, creating supportive environments, strengthening community actions, reorienting healthcare services, as well as developing personal skills. Much of nursing operates in the health education realm – supporting individuals in healthy behaviours. However, the nurse's health promotion role also considers the social determinants of health with the family, specific groups and community, and policy and law (Whitehead, 2018). Two theoretical models help illustrate the nurse's role in health promotion. Bronfenbrenner's (1986) ecological model clarifies the person in context, and Beattie's (1991) health promotion model sets out the four broad areas of health education and health promotion activity across these contextual layers.

Bronfenbrenner's (1986) integrative model has four distinct 'system' levels: the microsystem, mesosystem, exosystem and macrosystem. Each layer has an influence on an individual's health and wellbeing. Support at each of these levels is needed to optimise personal and public health.

- The microsystem is the interactional system experienced by an individual. In relation to DA this would be the two individuals involved, ie the parent-child relationship
- The mesosystem is the system of linkages between an individual's microsystems; for example, the relationship between mother and child/ren, father and child/ren, previous or subsequent partners
- The exosystem refers to those settings that affect an individual's microsystems, for example their social network, local health and social care organisations and workplace. This would include a wider network, such as friends, parents, local groups etc
- The macrosystem is the cultural, political and ideological factors that shape and influence the microsystems. This includes aspects such as intergenerational acceptance of violence, moving DA into the legal realm through legislative action, and encouraging a cultural shift towards the unacceptability of gender based violence.

There is also a fifth aspect to this model – the chronosystem – that reflects the interaction of these four layers over time. This links to the effects of cumulative trauma, and the importance of trauma-informed care.

Beattie's (1991) health promotion model sets out four aspects to health promotion activity: personal counselling, and health persuasion, which represent health education; and community action and legislation, representing health promotion (Whitehead, 2018). Similar to Bronfenbrenner's (1986) model, support in all four areas optimises personal and public health.

These theories articulate a move from a solely biomedical individualised model of health towards a wider socio-ecological population model through supporting action 'upstream' in law, policy and community practice alongside individual counselling and therapeutic intervention (Bekaert and SmithBattle, 2016). The Domestic Abuse Act 2021 (England and Wales) has tightened the legal framework for responding to the identification of DA, which gives practitioners legal weight to underpin safeguarding and forensic assessment, and support for those experiencing DA.

KEY POINTS

- Domestic abuse (DA) increased during the COVID-19 pandemic and is likely to further escalate, with perpetrator 'power' being challenged as freedom of movement returns
- The Domestic Abuse Act 2021 (England and Wales) sets out the legal definition of DA and specifics of statutory response and prevention
- Knowledge of legislative changes empowers nurses to practise effectively with victims/survivors and also with perpetrators of DA
- An examination of the theory of health education and promotion in relation to nursing practice and DA illuminates the ways in which nurses can practise effectively in this area

With regard to Bronfenbrenner and Beattie, the Act sits within the macrosystem and legislative action respectively. The Act gives a clear, legal starting point regarding thresholds for action, plans, roles and responsibilities across the multidisciplinary team.

This article has set out the specific changes in definition, statutory response and prevention of DA arising from the Domestic Abuse Act 2021 (England and Wales), and located this in public health and health promotion theory and nursing practice. The legislation facilitates supporting process and therapeutic input for both victims/survivors and perpetrators of DA.

In line with the theory, however, legislation needs to be accompanied by a wider supporting non-legislative framework. This might include funding for training (ongoing funded training for healthcare staff on the health-related consequences of DA is essential to ensure law is embedded in action), provision of specialist co-located DA services, sustainable funding for child and adult support, funded support for perpetrators, a long-term public health campaign to challenge public attitudes to DA, and representation from mental health services on the DA commissioner's advisory panel, as detailed in a letter to the health secretary from an expert group (Marshall et al, 2021).

Conclusion

DA was endemic before the pandemic – the increase as a result of the pandemic raised awareness of this public health challenge. The DA Bill produced pre-pandemic was delayed. During this time, however, several changes were made through lobbying from specific pressure groups and might be said to have 'sharpened its teeth' (Nott, 2022b).

Nurses are likely to have contact with those who have experienced DA due to its prevalence and also the range of settings in which they work. Integrating this new knowledge is vital to nurses' health promotion and health education activities with victims/survivors and perpetrators of DA. **BJN**

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CPD reflective questions

- Consider how each section of the Domestic Abuse Act 2021 might relate to your specific practice area. How might this influence or change your interaction with, and assessment of, individuals and families?
- How might this influence your communication and work with the wider interdisciplinary team in relation to supporting victims/survivors and perpetrators of DA?
- Does your area of work have a list of organisations, local and national, that support victims/survivors of DA? Consider compiling this list and sharing this within your team, as appropriate