

## **Crime & Policing Bill:**

### **Clause 104 and the criminalisation of domestic abuse victim-survivors**

#### **A response to Baroness Levitt's statement regarding the safeguarding of domestic violence victim-survivors in abduction/retention cases.**

*On 15 December 2025, Baroness Levitt responded to peers' concerns regarding the impact of Clause 104 with assurances that the combination of an evidentiary test, a public interest test, and the need to gain consent from the Director of Public Prosecutions, will ensure that victims of domestic abuse will be safeguarded. The Baroness also provided a rationale for the Clause itself and urged its acceptance.*

*However, the sector-wide view remains unequivocal: Clause 104 will result in the criminalisation of victims of domestic abuse and gender-based violence who constitute the overwhelming majority of those who retain their children abroad.*

*Our response in relation to each of the points in Baroness Levitt's statement to the House is laid out below. It is based on current statistical evidence, mothers' testimonies, discussions with legal and domestic abuse experts, and with Ministry of Justice officers who are advising peers and MPs on this aspect of the Bill.*

#### **1. Risk to victim-survivors of domestic abuse**

There is clear evidence demonstrating that criminalisation of retention would have harmful impacts on children and domestic abuse victims, and evidence of gender-bias and legal abuse in the current implementation of section 1 of the Child Abduction Act. We note, for example, that the four parents sentenced in 2024-5 under section 1 of the Act were all mothers, and that since 2018, 33 mothers received prison sentences as opposed to 19 fathers. This is clear evidence of the legislation's gendered impact.

The additional evidence we have, including from the mothers and children we support, suggests that the vast majority of the mothers caught up in abduction and retention proceedings will be domestic abuse victims. One such mother was recently extradited from Northern Cyprus on abduction charges and is now in a UK prison awaiting sentencing; her young son is in foster care.

#### **2. 'Gap in provision' rationale**

At our last meeting with the Ministry of Justice team, we had the opportunity to discuss the Law Commission's 'gap in provision' argument for change. Given that there is no record of the reason why the originators of the Child Abduction Act decided not to criminalise retention, we suggest that this was not an oversight but was based on the understanding the two acts differ in terms of intent and impact on the child. If this reasonable assumption is correct, Clause 104 does not close a gap but instead subverts the original intention of the Act. Retention usually follows a permitted trip where the parent realises that returning would expose themselves and the child to harm. Most mothers who retain their children only disclose abuse after reaching a safe environment, typically in their home country with support from family and professionals. Criminalising retention thus penalises the

very act of seeking protection. (We would also argue that criminalisation of abductions has the same effect in cases involving domestic abuse - it is equally inappropriate in both situations).

### 3. Deterrent effect

We understand that the Government intends Clause 104 'to act as a deterrent from children being taken abroad in the first place'. However, this does not make sense in the context of retentions. The majority of retaining parents don't know they are breaking any law. Those that do know are doing it as a last resort. What would actually prevent abductions and retentions is to have a well-functioning and, in cases of domestic abuse, an emergency relocation system. Parents could then use this to apply to move legally with their children, knowing that they would have a fair chance of gaining the court's permission.

### 4. Inadequacy of the EIA

The Ministry of Justice team have informed us that they intend to update the EIA to include statistics relating to child abduction and retention within the Hague Abduction Convention since the cases will be the same as those considered under the Child Abduction Act. We are, of course, pleased that this information will be included in the future, but remain very concerned that the advice to MPs and peers was, and continues to be, based on a partial, and gender-blind data-base which entirely obscures the prevalence and significance of domestic abuse in abduction and retention cases. It is not acceptable that legislation which risks criminalising protective mothers, and potentially separating them from their child, should be passed without appropriate and well-informed scrutiny.

### 5. Law Commission report and the definition of domestic abuse

It was suggested at the Dispatch Box that it is premature to consider the tabled amendment to add a domestic abuse defence to section 2 of the Child Abduction Act before the Law Commission review is complete. We understand that was on the basis that the review could have implications for both the definition of domestic abuse and its use as a defence in criminal contexts. However, the Law Commission's review does not include a consideration of abduction and will not be complete until 2028. It should be possible to utilise the current definition of domestic abuse contained in the Domestic Abuse Act 2021 together with Section 3 which recognises children as victims of domestic abuse in their own right; subsequent amendments could be incorporated if the definition changes.

Finally, we would point out that this change runs counter to the spirit of the new 'Freedom from violence and abuse' action plan which states that the government will 'examine the misuse of civil courts to continue patterns of abuse and explore whether further safeguards, guidance, or procedural changes could strengthen the court's response to this form of abuse. (p34)'

**Victim-survivor mothers, whose only crime is to attempt to keep themselves and their children safe, are surely entitled to the same level of protection from legal abuse in the criminal courts.**