

**Submission to the Justice Committee
Legislative Scrutiny of the Courts and Tribunals Bill – Clause 104
Submission from The Katie Trust**



Submitted by:

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Introduction

The Katie Trust is a trauma-informed justice reform organisation supporting families affected by domestic abuse, suspicious deaths, and safeguarding failures across the UK and Ireland.

Our work sits at the intersection of safeguarding, coercive control, and systemic response. We support individuals navigating family court proceedings, criminal investigations, and cross-jurisdictional legal processes following serious harm.

We do not approach this issue from an academic standpoint. Our position is grounded in direct engagement with lived experience — particularly where systems have failed to identify, respond to, or prevent harm.

This submission addresses Clause 104 and its implications for cases involving domestic abuse and the international movement of children.

The Katie Trust does not minimise the seriousness of international child abduction or the distress caused in such cases. However, it is critical that any legal framework distinguishes between unlawful removal and protective action taken in response to domestic abuse and safeguarding failures.¹

Clause 104 – Practitioner Concerns

Recognition of Abuse in Legal Decision-Making

A central concern is not simply the drafting of Clause 104, but the assumption that abuse is consistently recognised and appropriately weighted within legal decision-making.

From a practitioner perspective, this assumption does not reflect reality.

Across our work, we routinely encounter patterns in which:

- Coercive control is reframed as mutual conflict²
- Psychological and emotional abuse are minimised or dismissed³
- Protective actions are interpreted as obstruction
- Credibility is assessed through personal conduct rather than risk

This creates an environment in which the protective parent must not only respond to harm, but also overcome systemic misinterpretation of that harm.

¹ Hague Convention on the Civil Aspects of International Child Abduction.

² Domestic Abuse Act 2021.

³ Women's Aid, *The Domestic Abuse Report* (latest edition)

Impact on Protective Parents Seeking Safety

Clause 104 engages directly with cases where a parent removes a child across international borders.

In practice, decisions to leave are rarely impulsive. They are typically the culmination of sustained harm, escalation, and a perceived lack of protection within existing systems.

The concern is that narrowing the circumstances in which domestic abuse can be relied upon as a defence may:

- Reduce the ability of a parent to act protectively in response to risk
- Increase the likelihood of return orders where safeguarding concerns remain unresolved
- Shift the focus from context of harm to technical breach of removal

This reframing risks stripping away the very context necessary to understand why protective action was taken.

Illustrative Case Insight (Anonymised)

We are aware of cases in which a parent with a documented history of physical, psychological, and emotional abuse — supported by photographic evidence, messages, and recordings — has nonetheless lost custody of their child following court proceedings in which that abuse was not recognised or was deprioritised.

In such cases, decision-making has instead focused on aspects of the parent's personal conduct, resulting in the transfer of custody despite ongoing concerns regarding safety.

In these circumstances, protective parents may be left with no safe option: remaining exposes both parent and child to continued harm, while leaving may result in legal sanction, forced return, or loss of custody. This is not a theoretical risk, but a recurring reality in cases involving domestic abuse.

Systemic Risk – Beyond Legal Drafting

Clause 104 does not operate in isolation. It operates within a system that is already evidencing gaps in how abuse is identified and interpreted.

From our work, these gaps include:

- Inconsistent recognition of coercive control
- Misinterpretation of trauma responses⁴
- Procedural prioritisation over safeguarding context

In that environment, restricting the ability to rely on abuse as a justification for seeking safety does not create clarity — it creates risk.

It places protective parents in an untenable position:

- Remain in, or return to, an unsafe environment

⁴ NHS, guidance on trauma and PTSD.

- Or face legal consequences for attempting to protect their child

Where abuse is not recognised at the point of separation, the consequences are not theoretical — they are real, and in some cases, fatal.

Cross-Jurisdictional Risk and Recognition of Abuse

A further concern arises in cross-jurisdictional cases where differing legal and cultural interpretations of domestic abuse may apply.

The Hague Convention on the Civil Aspects of International Child Abduction operates on an assumption of mutual trust between jurisdictions. However, in practice, recognition of coercive control, psychological abuse, and women's autonomy varies significantly between countries.

Where abuse has not been recognised or has been actively dismissed within the originating jurisdiction, reliance on return mechanisms risks placing children and protective parents back into environments where safeguarding has already failed.

In such cases, the issue is not simply procedural, but one of substantive safety.⁵

Legislative Context and Policy Consistency

Parliament has taken significant steps to strengthen the recognition of domestic abuse, including through the Domestic Abuse Act 2021. This reflects a growing understanding of coercive control, non-physical abuse, and the long-term impact on victims and children.

However, Clause 104 risks creating a policy inconsistency. Where domestic abuse is not properly recognised in practice, a parent acting to protect themselves or their child may nonetheless be treated as having acted unlawfully.

This creates a contradiction between legislative intent and operational reality, in which victims may be penalised in circumstances where abuse has not been identified or understood.⁶

Safeguarding and Risk Assessment

Safeguarding must remain the primary consideration in all cases involving children.

From a practitioner perspective, effective safeguarding requires:

- Full recognition of coercive control and non-physical abuse
- Contextual understanding of protective behaviour
- Risk assessment that precedes enforcement

Where these elements are not consistently embedded, any narrowing of legal protections increases the likelihood of unsafe outcomes.

⁵ European Convention on Human Rights, Article 2

⁶ UK Government, Domestic Abuse Act 2021 – implementation and policy discussions.

Safeguards Required

To ensure that Clause 104 does not result in unsafe outcomes, we recommend:

- Mandatory domestic abuse and child safeguarding risk assessments prior to any prosecution, return, or enforcement action
- Explicit recognition of coercive control and non-physical forms of abuse within decision-making
- Specialist training for police, prosecutors, courts, and central authorities
- Monitoring and review of cases where domestic abuse is raised

These safeguards are necessary to ensure that protective action is not mischaracterised as wrongdoing.

Closing Position

The Katie Trust urges careful reconsideration of Clause 104.

Our concern is grounded not in theoretical risk, but in observed patterns of systemic failure. Where abuse is inconsistently recognised, any restriction on protective legal defences risks compounding harm rather than preventing it.

Legal certainty must not come at the expense of safety.

We would welcome further engagement to support the development of trauma-informed, safeguarding-led approaches that reflect the realities faced by families affected by domestic abuse.

The Katie Trust