

Justice Committee

Abusive Behaviour and Sexual Harm (Scotland) Bill

Written submission from Abused Men in Scotland

Abused Men in Scotland (AMIS) is a national organisation dedicated to supporting men experiencing domestic abuse and helping mainstream services become more accessible for these men. We provide a national helpline service as well as a face-to-face support service in Edinburgh in partnership with Rowan Alba Ltd. Our vision is a safer Scotland for all.

Section 1

Aggravation of offence where abuse of partner or ex-partner

1.1 We welcome the introduction of a statutory aggravator for domestic abuse. Our underlying belief is that where a criminal offence is committed within an intimate relationship there is a fundamental breach of trust that may not necessarily be present in the commission of such an offence outwith an intimate relationship. Where an offence is reported in the context of an intimate relationship this single incident could be symptomatic of a greater pattern of abusive and controlling behaviour. Where it is established that this is the case, an aggravator will acknowledge this and better recognise the experiences of the victim.

1.2 We welcome the inclusion of third parties where an offence has been committed with the intent to cause a partner or ex-partner of the accused to suffer psychological or physical harm. In the wake of an abusive relationship informal support networks are integral to the victim's recovery. Where a friend or family member is helping a victim with their experiences of abuse they can be placing themselves in a dangerous position, at risk of harm from the perpetrator. An aggravator that extends to third parties therefore gives added recourse to justice when such third parties are targeted by an abusive (ex) partner of the victim.

1.3 While we are in favour of the aggravation as detailed in the draft Bill, we would submit that this should not be in lieu of a specific offence of domestic abuse, which we understand will be consulted on in the near future. A specific offence of domestic abuse will capture cases where there is ongoing systematic control, which can be proven in the courts. The statutory aggravator fills a significant gap where single incidents of criminal behaviour still need to be prosecuted in the same way as any other crimes would be, but acknowledgement is given to the fact that it has occurred within the context of an intimate relationship. This may also help build a better picture of a pattern of behaviour that would assist in meeting the threshold for a specific offence of domestic abuse. These two provisions, combined, provide a more fit-for-purpose justice system that can effectively respond to domestic abuse.

1.4 A statutory aggravator should also mean that court will be able to consider more appropriate disposals such as making more use of perpetrator programmes designed to address abusive behaviour.

1.5 The definition of psychological harm which includes ‘fear, alarm and distress,’ is particularly welcome. In our experience of working with male victims of domestic abuse, men more often frame the impact as causing ‘distress’ rather than ‘fear.’ This is not to say that they do not experience fear, as many do, but it accurately reflects how they describe and portray their own experiences. It is

critically important that legislation is capable to capturing the full range of impacts experienced by anyone who experiences domestic abuse so that it is fit-for-purpose and inclusive.

Section 2

Disclosing, or threatening to disclose, an intimate photograph or film

2.1 We support the introduction of a specific offence dealing with the non-consensual sharing of intimate media, or threatening to do so.

2.2 It is disappointing that written text has not been included, and that the media is restricted to either still or moving images. We would submit that the definition be extended to include written text.

2.3 Mobile phone applications that are commonly used to share intimate media, such as *Snapchat*, allow users to combine images (both moving and still) with text. An exchange between two or more persons may include intimate images with intimate text, and non-intimate images with intimate text. The current proposals set out in the Bill would allow someone to share, without consent, the non-intimate images containing intimate text. This could be just as damaging for the victim, especially if the intimate text was created in the context of an exchange of intimate mixed media between two people. This also applies to other applications that have risen in popularity over the past few years, such as dating apps. These allow for an exchange of written messages, which can often be intimate by nature. The ability to ‘screenshot’ anything on a computer or mobile device means that any written communication is vulnerable to being shared without consent and causing significant harm to the victim. Any person who might be inclined to non-consensually share intimate media would be able to exploit this loophole, rendering this legislation ineffective. These provisions must be fit-for-purpose and reflect the reality of modern-day life.

2.4 We believe that the definition of an ‘intimate situation’ as outlined in s. 3(1) of the Bill is restrictive and risks excluding scenarios that would otherwise cause serious harm to a victim. The definition should be subjective as the only way of determining the harm caused is by taking into consideration the views of the victim. This narrow definition potentially excludes situations that would be considered to be intimate, based on different cultural, religious or other personal beliefs and attitudes. As it stands, the definition is restricted to a certain set of values that do not necessarily reflect the diversity of modern Scotland.

Section 5

Making of non-harassment orders in criminal cases

3.1 AMIS welcomes the provisions for the court to grant a non-harassment order where the accused is unfit to enter a plea or has been acquitted as they were deemed not criminally responsible at the time of an offence due to a mental condition. This guarantees access to legal protection for the victim who has, notwithstanding the mental condition of the accused, still suffered harm and could be at risk of suffering future harm.

Abused Men in Scotland
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