

Justice Committee

Abusive Behaviour and Sexual Harm (Scotland) Bill

Written submission from Stop It Now! Scotland

We have considered the draft Abusive Behaviour and Sexual Harm (Scotland) Bill and offer the following comments:

- Stop it Now! Scotland is the national programme for the prevention of child sexual abuse. We provide services for individuals concerned about their sexual thinking and behaviour towards children and young people in order to prevent child sexual abuse and sexual exploitation before it happens in the first place or to prevent it from re-occurring. Our clients range from age 16 upwards and are mainly men. We also undertake Primary prevention work through the provision of a Prevention Toolkit aimed at enabling individuals and communities in Scotland to identify risk of sexual offending and prevent child sexual abuse.
- Stop it Now! Scotland broadly welcomes the Bill and we consider it to be an important step forward in the protection of adults and children in Scotland. Our comments below relate to concerns about the possible net widening impact of aspects of the legislation and the potential for certain aspects of the bill to compromise human rights. Although we have not inserted any suggestions for changes to the wording of the Bill we would recommend that serious consideration be given to the matters contributing to our concern so that necessary clarification is either included in the Bill itself or are dealt with through supplementary guidance and scrupulous monitoring of the enforcement and application of the legislation. However we would also welcome a wider debate in relation to the points outlined below.

Part : Section 2: Disclosing, or threatening to disclose, and intimate photograph or film.

1. We recognise the importance of providing a legal recourse in situations where individuals experience harm as a result of non-consensual sharing/disclosure of private, intimate images. We also recognise the need to tackle the intentions of those who make such disclosure as a way of perpetrating fear, intimidation, or psychological harm on someone (such as a partner or previous partner) as an act of “revenge”.

2. However we remain highly concerned about the possible disproportionate impact this legislation may have on children and young people (as well as vulnerable adults). People under the age of 18 are amongst the most digitally literate in our society. For some time we have been concerned about the constellation of behaviours (relatively commonplace among young people) known as ‘sexting’ with a recent literature review on the subject suggesting that between 7 and 27% of young people may have been involved with the production, disclosure or receipt of sexually explicit images including nude or semi-nude photographs. (Cooper, Quayle, Jonsson & Svedin, 2015). It is not uncommon for young people to either self-generate and

share such images either through social media or the internet. From a developmental point of view we can expect many young people (teenagers) to act recklessly and impulsively (this is normative behaviour) especially online or through the use of social media and communication devices. This may inadvertently cause distress and harm to others by disclosing sexual images of them without their consent or knowledge. A small proportion of young people may also *intentionally* set out to cause distress to others by sharing sexual(ised) images of that person without their consent or knowledge (sexual bullying). We are concerned that a whole tranche of behaviours (however problematic) in young people which are either transitory or affected by developmental capacity and issues (in adolescence) will now be caught up in criminal justice processes and criminalisation (including potentially Sex Offender Registration) with negative lifelong consequences for the young person concerned and for their family. We do not mitigate behaviours which cause distress or harm to others – quite the contrary – but legislation and its application/enforcement must be *proportionate* and we would ask Parliament to seriously re-consider the effects that this legislation will have on the lives of young people who may infringe it.

3. Similarly we are concerned about this section in relation to vulnerable adults whose residual cognitive impairments and transient mental conditions (e.g. mental illness) might compromise decision-making in similar ways to children and adolescents.

4. In our view the proposed legislation, in attempting to provide remedy for some situations, actually potentially creates further problems.

5. It is our view that existing legislation and law enforcement policies and practices are already cumbersome and disproportionate in dealing with the challenges of sexually problematic/offending behaviour through the internet and social media and this section of the Bill potentially contributes to further complicating and exacerbating this in relation to young people and vulnerable adults in particular.

6. Young people will increasingly (through the Named Person Scheme) have more adults in their lives who will be required to share information about such situations with statutory services when they are brought to their attention. A situation involving a 14 year girl old talking to a teacher about her ex-boyfriend sharing a sexual image (unsolicited) with peers is a qualitatively different one from (for example) an adult woman reporting an ex-partner who has shared a sexual image of her with others without her consent. The resultant distress may be comparable but the control which a young person is able to exercise over the outcome of the situation will be very different in the context of GIRFEC. We believe that there are many situations where young people are victimised and exploited by their peers in relation to online behaviour and appropriate but proportionate sanctions are necessary. Nonetheless, we have concerns about the potential for increased criminalisation of young people as an (we assume unintentional) consequence of the proposed legislation and even the possibility that young people potentially involved in sexually exploitative situations may resist coming forward for fear they themselves may be prosecuted.

7. We believe that closer scrutiny needs to be given to the wording of the legislation to remedy these concerns and to ensure that there is proportionality as well as maintaining a need to ensure that there is no deleterious effect on young people – particularly in a context where the boundaries between reckless behaviour, sexual expression and online activity are increasingly blurred for young people. We also think that there should be improved

- specific guidance for schools in Scotland in relation to new technologies and ‘sexting’ including with reference to advice for young people who get into trouble online (Lucy Faithfull Foundation: 2015)
- clear direction for Police Scotland about dealing with people under age 18 year olds in respect of such offending behaviours and;
- the piloting of alternatives to criminalisation for adolescents, particularly in school and community settings e.g. psychoeducational and restorative approaches that can be accessed by professionals in such situations.

Part 2, Chapters 3 and 4, ss9 – 35 (Sexual Harm Prevention Orders and Sexual Risk Orders)

We note in particular the potential for human rights infringements through the use of Sexual Risk Orders. This potential already exists with RSHOs; although underused since their introduction, we are aware of an apparent higher uptake of RSHOs by Police Scotland over the last period including their use with under 18 year olds. These orders place significant restrictions on human liberties for extensive periods and do not require an individual to have been convicted of a relevant offence. Sufficient checks and balances need to be in place to ensure that such orders are not misused.

We would suggest that a reasonable measure would be for the Scottish Government to annually publish data on Sexual Risk and Sexual Harm Prevention Orders – how many orders are issued (broken down by police area in Scotland), how many are breached and what the outcomes of breach proceedings are. This should be sufficient to allow a degree of external scrutiny of how these orders are being used in Scotland.

Martin Henry
National Manager
16 November 2015