

Justice Committee

Abusive Behaviour and Sexual Harm (Scotland) Bill

Written submission from East and Midlothian Public Protection Committee

General Comments

Overall we are supportive of the measures noted in the Bill and welcome the opportunity to submit views at this early stage.

Specific Comments

Section 1 – Abusive behaviour towards a partner or ex-partner

In our experience the Criminal Justice System often presents a number of challenges for victims to get a successful outcome. An aggravated offence illustrates the seriousness with which abusive behaviour is regarded, and makes a clear statement of the intention to impose tougher sentencing.

Section 2 of the Bill - Disclosure of an intimate photograph or film

We support the introduction of a new criminal offence to address the sharing of private intimate images or film without permission from the subject of those images. Anecdotally, we are aware that this is a growing phenomenon which has a significant impact on the wellbeing of the victim.

It is vital that the offence be open to any media which an abuser can use to humiliate and control: Not only photographs and film but also sound files, emails, texts and photo-shopped or composite images. The scale and possibilities of new technology can allow abusers a mechanism for harassment, blackmail and control so it is vital that the Bill address the crime committed and not specifically the medium used.

In clause 2 (1) (B) the requirement for this offence notes; “by doing so, A intends to cause B fear, alarm or distress or A is reckless as to whether B will be caused fear, alarm or distress,”

We would suggest some potential revision to this as it is likely to prove difficult to evidence the ‘intent’ to cause fear, alarm or distress or that an action was reckless. We would also highlight that use of ‘fear, alarm or distress’ is a narrow description of the potential impact of such an offence. We are also concerned that this clause puts the onus of the victim to prove that they have not consented to the sharing of an image or film.

We wish to highlight that we are supportive of any measures which would support victims with the removal of non-consensual shared images.

Section 6 - Jury directions relating to sexual offences

As outlined paragraph 99 of the UN Special Rapporteur's report on violence against women, its causes and consequences in the UK¹.

“The victims of sexual violence interviewed expressed reservations about using the criminal justice system, owing to the lack of a responsive and supportive environment, which adds to their trauma and re-victimization, and the low levels of prosecution and convictions. Interviewees reported how victim-blaming, assumptions made based on the clothing worn by victims, the number of previous sexual partners or whether there had been prior consensual sexual contact with the perpetrator, all negatively influence the way women are treated when reporting sexual violence.”

Any steps taken to dispel myths held around sexual offending is welcomed. Allowing judges to be able to provide juries with guidance around issues such as delayed disclosures and lack of physical resistance against an attacker should assist in tackling common misconceptions. We would defer to the expertise of legally qualified professionals to comment on how this could be best implemented.

East Lothian and Midlothian Public Protection Committee
16 November 2015

¹ <http://www.ohchr.org/EN/Issues/Women/SRWomen/Pages/CountryVisits.aspx>