

Justice Committee

Abusive Behaviour and Sexual Harm (Scotland) Bill

Written submission from Victim Support Scotland

Victim Support Scotland (VSS) is the largest organisation in Scotland supporting people affected by crime. We provide practical help, emotional support and essential information to victims, witnesses and others affected by crime within each local authority and every Sheriff and High Court in Scotland. The service is free, confidential and is provided by volunteers. VSS welcomes the opportunity to provide our views on the Scottish Government's Abusive Behaviour and Sexual Harm (Scotland) Bill.

Section 1 – Aggravation of offence where abuse of partner or ex-partner

The law as it is currently framed is too narrowly focused on individual offences, without taking into account the background against which these offences take place. Without this context, VSS does not believe it is possible for the justice system to be able to appropriately deal with domestic abuse offences. The nature of domestic abuse is that it is on-going, repeated and cumulative; if this is not taken into consideration during investigation, prosecution and sentencing, the severity and impact of the crimes cannot be understood and dealt with appropriately.

A change to the criminal law in this field would complement the efforts of justice agencies such as Police Scotland and the Crown Office and Procurator Fiscal Service in establishing specialist forces to deal specifically with domestic abuse, ensuring that victims are given a response adequate and relevant to their experiences. As such, we welcome the introduction of a statutory aggravation for offences involving the abuse of a partner or ex-partner.

It is our view that the law should be further strengthened through the creation of a specific offence of 'coercive control', which would criminalise controlling or coercive behaviour. This would include exerting control over a partner's financial or personal affairs; preventing them from maintaining social networks and support (creating social isolation); and intimidating and instilling fear through a history of past abuse and/or subtle threats in a way that does not meet the threshold of current law¹. This new offence should be similar to that of the stalking offence (s.39 of the 2010 Act), in that it would enable prosecution of a course of conduct which consists of separate acts, some of which may not necessarily be considered criminal when looked at in isolation. Taken alongside the statutory aggravation, this would allow full recognition by the Scottish criminal justice system of the experience of victims of this kind of abusive behaviour.

¹ s.38 of the Criminal Justice and Licensing (Scotland) Act 2010

Section 2 – Disclosing, or threatening to disclose, an intimate photograph or film

Victim Support Scotland supports the creation of a specific criminal offence for disclosing, or threatening to disclose, an intimate photograph or film without the subject's consent. We believe that this would provide a clearer understanding of how such crime should be prosecuted, in addition to raising awareness amongst victims and the general public that this type of behaviour is unacceptable, and most importantly, criminal. The creation of such a specific offence would facilitate a truer reflection of victims' experiences.

VSS would welcome some clarity around consent, as specified within section 2(4). We are concerned that there is no definition of consent included in the Bill, and would look for clarity around the meaning of "consent to disclosure generally" (section 2(4)(b)). We would suggest that consent be specifically defined, with this definition based on the principle of 'free agreement', as is found within section 12 of the Sexual Offences (Scotland) Act 2009. It should be made clear that *explicit* consent is required to disclose an intimate photograph or film, and that consent needs to be freely given on each occasion for the disclosure to be legal.

Furthermore, we would suggest that "reasonable belief" within section 2(3)(b) should be defined, perhaps reflecting the wording used within section 16 of the 2009 Act: "In determining...whether a person's belief as to consent...was reasonable, regard is to be had to whether the person took any steps to ascertain whether there was consent...;and if so, to what those steps were."

In providing direction on how to interpret section 2, section 3 of the Bill defines an 'intimate situation' as one in which a person is engaging in a sexual act of a kind not ordinarily done in public, or in which their genitals, buttocks or breasts are exposed or covered only with underwear. In contrast to this restrictive definition, VSS believes that the victim's perception should be a fundamental consideration in defining what is intimate, as this is subjective and depends upon a variety of personal and cultural beliefs and characteristics.

We are disappointed that the offence does not cover all intimate or private media files including, for example, emails, texts, letters and sound files. Although we recognise that harassment through such means can be prosecuted through existing legislation, the intention behind the behaviour and the impact on the victim is comparable to that of the sharing of images and film. Information sent through other media can be as private or intimate as an image, and cause humiliation, embarrassment or distress to the victim in the same way. We would welcome consideration from the Committee on whether the Bill can be amended to ensure that this offence covers other types of media also.

Section 5 – Making of non-harassment orders in criminal cases

VSS warmly welcomes this section of the Bill as this would remove the burden from the victim in applying for the same order through civil means, and provide them with more immediate protection.

Section 6 – Jury directions relating to sexual offences

We also welcome this section of the Bill, as we believe that statutory jury directions are required in sexual offence cases to negate the impact of common misconceptions held by the public in relation to the nature of sexual violence and victims' responses to this. It is our view that the statutory jury directions as provided by this section can be used alongside expert witnesses to tackle these ill-founded perceptions, and to ensure that our juries are provided with the factual evidence they need to make well-informed decisions.

Sections 7 and 8 – Sexual acts elsewhere in the United Kingdom

As well as assisting in the prosecution of those who either incite to commit or commit a sexual offence where the abuse has taken place in other jurisdictions within the UK, sections 7 and 8 of the Bill would enable prosecution on a single indictment, which would avoid forcing the child to go through the trauma of two trials.

Victim Support Scotland has had experience of cases in which it has been challenging or impossible to prosecute an accused for a specific offence because the child victim has been unable to specify where the abuse took place. This situation only serves to compound the impact of the crime and criminal justice processes on the victim and their family. We therefore support the introduction of sections 7 and 8 of this Bill.

Victim Support Scotland
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