

Justice Committee

Abusive Behaviour and Sexual Harm (Scotland) Bill

Written submission from the National Organisation for the Treatment of Abusers (NOTA)

NOTA is a charity and professional association that supports those working in the field of sexual abuse prevention. Operating throughout the UK and Republic of Ireland, NOTA comprises approximately 1200 professional members who are engaged in work to prevent and address sexual abuse and sexual offending. The Scottish Branch has around 150 members from social work, law, police, health and academia who are experienced in work with adult sexual offenders and children and young people who display harmful sexual behaviour.

NOTA first and foremost believes in the paramount principle of public protection. We support all provisions in the Bill and are not asking for any specific changes: we believe that our concerns could adequately be dealt with through supplementary guidance and monitoring processes. However we would welcome a wider debate in relation to the points outlined below.

Part 1 ss 2: Disclosing, or threatening to disclose, and intimate photograph or film.

We recognise the importance of providing a legal recourse in situations where individuals feel harmed as a result of non-consensual sharing of private, intimate images. We would however reinforce comments made by individuals and agencies at consultation stage about the possible disproportionate impact this legislation may have on children and young people (as well as vulnerable adults).

We know that those under the age of 18 are amongst the most digitally literate in society. We also know that 'sexting' is relatively commonplace with a recent literature review on the subject suggesting that between 7 and 27% of youths may have been involved with sexually suggestive images including nude or semi-nude photographs. (Cooper, Quayle, Jonsson & Svedin, 2015). We also know that impulsivity, growing independence and developing problem solving skills in adolescence can result in risk taking and poor decision making in relation to sharing of such images – 'recklessness' that is referred to in 2(1)b of the Bill is common amongst young people. We would also note that vulnerable adults – e.g. adults with residual cognitive impairments and / or transient mental health conditions such as mental illness – will often exhibit similar issues around poor decision making about online behaviour and may be disproportionately affected by this legislation.

Critically, young people have more adults in their lives who will often 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 with friends is a qualitatively different one from – say - a 25 year old woman going to the police when an ex boyfriend shares a sexual image of her with his friends. The sense of distress may be similar but the control the 14 year old has about 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 sanctions are necessary. None the less, we have concerns about the potential for increased criminalisation of young people as an indirect consequence of this legislation and even the possibility that young people involved with exploitative adults may resist coming forward for fear they themselves may be prosecuted.

We believe that to counterbalance the risk of the overuse of this legislation outlined above, the following measures would be appropriate:

- specific guidance for teaching staff and schools in Scotland in relation to new technologies and ‘sexting’;
- clear direction from Police Scotland about when it is appropriate and inappropriate to charge under 18 year olds and vulnerable adults with this measure;
- 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; and
- guidance on the use of diversion from prosecution in such cases for vulnerable adults.

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

We welcome Chapter 3 and 4 of the bill and note that it provides solutions to some of the practical issues discussed in the ACPO commissioned 2013 review by Hugh Davies of Civil Prevention Orders in England and Wales. It also brings Scotland in line with changes made to equivalent orders in England and Wales last year. NOTA strongly supports the use of civil prevention orders as part of a multi-agency public protection approach alongside other strategies such as effective assessment and interventions as well as community engagement in relation to sexual abuse prevention.

In general applications by the police for SOPOs and RSHOs have been appropriate and considered – our concern has been more about the underuse of RSHOs rather than their overuse. We note however that a risk assessment needs to be submitted as part of an application for a civil prevention order. Although police will often be able to comment on issues like likelihood and imminence of risk of sexual harm, in some situations this should be rooted in a more detailed assessment of risk than can be provided by the police and which will need to be completed by an experienced assessor with a relevant qualification / accreditation. In particular we note potential issues in relation to use of civil prevention orders with under 18 year olds where the assessment of risk is a relatively specialised area or in relation to Sexual Risk Orders (SROs) where there has been no conviction. We would be unwilling to recommend anything that limited the speed at which agencies can put into place a legal framework for public protection measures, but we would ask that guidance recommend that Interim orders be considered while more detailed assessments are carried out where the individual has complex needs or there is debate about level of

risk. We believe that this measure could provide relevant protections for the rights of individuals under 18, and those with learning disabilities and / or mental health issues when civil prevention orders are applied for.

Finally, we note in particular the potential for human rights abuses through the use of Sexual Risk Orders. This potential already exists with RSHOs; although underused since their introduction, anecdotally NOTA members are aware of what seems to be a higher uptake of RSHOs by Police Scotland over the last 18 months including their use with under 18 year olds. In short 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. We would argue that this is defensible: data from victimisation studies and from statistics on successful prosecutions further to complaints made to the police in relation to sexual offences would suggest that the majority of individuals who sexually abuse children and / or adults are never convicted in court. However 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 the Scottish Government annually publishing 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 are. This should be sufficient to allow a degree of external scrutiny of how these orders are being used in Scotland. We would welcome a wider debate about how we measure effectiveness in the use of civil prevention orders.

We would be happy to be involved in further discussions, and provide further evidence, in relation to the Bill as is appropriate.

Stuart Allardyce
Chair of NOTA Scotland
16 November 2015