

Justice Committee

Abusive Behaviour and Sexual Harm (Scotland) Bill

Written submission from Barnardo's Scotland

Summary

Barnardo's Scotland warmly welcomes the Bill and would like to draw the Committee's attention to the following:

- We support the introduction of an abusive behavior aggravator but also welcome the Scottish Government's commitment to consult further on a coercive control/domestic abuse offence to complement a statutory aggravation.
- We would suggest that the Committee should consider if intimate audio and written communications need also to come under the proposed intimate images offence.
- We welcome and strongly support the introduction of jury directions in sexual offence cases.
- Barnardo's Scotland has called for measures which would allow the Scottish courts to prosecute sexual offences that take place elsewhere in the UK, and welcome the provision in the Bill.
- We have also highlighted the need for re-examination of the current Civil Preventative Orders which have currently received used to tackle child sexual abuse, in Scotland, and therefore strongly support the new Orders introduced within the Bill.

Introduction

Barnardo's Scotland supports more than 26,500 children, young people and their families every year through over 122 community-based services across Scotland. The vast majority of our staff and services in Scotland have, at some point, encountered domestic abuse as an issue affecting the children and families that we work with.

In 2011, Barnardo's Scotland petitioned Scottish Parliament on the issue of child sexual exploitation (CSE) and as a result the Petition's Committee held an Inquiry into CSE. Issues were raised in the course of that Inquiry with regard to the little use of civil preventative orders as a tool to tackle CSE and the need to re-examine the Protection of Children and Prevention of Sexual Offences (Scotland) Act 2005, and around the extra-territorial nature of sexual offences, which the Lord Advocate highlighted as a problem for COPFS, in prosecuting some sexual offences.

Barnardo's Scotland therefore warmly welcomes this Bill and its intention to tackle domestic abuse and sexual offences more effectively. We are supportive of all of the provisions in the Bill, but would like to draw some issues to the attention of the Committee for consideration.

Section 1 Aggravation of offence where abuse is of a partner or ex-partner

We welcome the introduction of an abusive behaviour aggravator. We believe that the test of only requiring a single source of evidence to establish domestic abuse as a factor in any offence should make a statutory aggravation a useful tool in ensuring that courts are able to take into account the full range of harmful behaviours that constitute domestic abuse. Whilst providing a useful tool, however, the aggravation is not a substantive offence in itself, and so we would urge the Scottish Government to proceed with its planned consultation on the exact wording of a 'coercive control' offence as soon as would be possible.

In addition, we are pleased to see that involvement of children within domestic abuse context is recognised within the policy intention, in so far as, the aggravation could apply where the offence is committed against a third party (e.g. partner/ex-partner's child). In looking at the wording of the aggravation in Section 1 (3) of the Bill, however, seems to suggest that it is immaterial that the partner or ex-partner is not harmed, *only*, and does not indicate the aggravation could extend to the involvement of a third party. We would like to see the policy intent more clearly reflected in the Bill.

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

Barnardo's Scotland is supportive of the creation of this offence but would like the Committee to consider two issues. Firstly, it is our view that the offence should also include intimate written and audio communications also, in addition to intimate images. Although the Communications Act 2003 and Section 38 'threatening and abusive behaviour' Criminal Justice and Licensing (Scotland) Act 2010 offences could be utilised, we understand that the former carries a lesser penalty and can only be prosecuted under summary procedure. We would welcome further discussion on this issue as we are concerned that there may be a disparity between what would appear to be two mediums relating to the same offence, which may lead to one being viewed as more, or less, serious than the other.

Secondly, we would be concerned about any disproportionate effect that this new offence could potentially have on children (those under 18, as defined by the Children & Young People (Scotland) Act 2014). Young people are growing up in a culture where exchanging nude or semi-nude photographs is not uncommon. Young people at this age and stage of development can make poor decisions and engage in risk taking behaviour. We would wish to ensure guidance is available for both police and COPFS about the prosecution and handling of this offence with regard to children, young people. Moreover, it is critical that young people are made aware of this offence and have access to high quality, age appropriate Relationships, Sexual Health and Parenting Education (RSHPE) in schools. Children and young people need to be equipped with knowledge, skills and values to help them make informed and positive choices about forming relationships, and about what is harmful and illegal.

Section 6 Jury directions relating to sexual offences

Barnardo's Scotland is fully supportive of the provisions in the Bill to introduce jury directions relating to sexual offences. We also think it appropriate to consider the role of jury directions within sexual offence cases specifically relating to children. We are aware of the Evidence and Procedural Review undertaken by the Scottish Court Service which relates to criminal trial procedures, and the need for modernisation of the handling of cases involving children and vulnerable witnesses in Scotland. We hope that jury directions in sexual offence cases involving child witnesses will inform understanding of the particular vulnerability of children and young people who are victims of sexual abuse, and the additional trauma that children can be exposed to as witnesses in sexual offence cases.

Chapter 2 Sexual Acts Elsewhere in the United Kingdom

In the course of giving evidence to the Public Petition's Committee Inquiry into CSE in 2013, the Lord Advocate requested that legislation on grooming be attended to:

*"I would be grateful if the committee would consider one thing: if someone grooms in Scotland and abuses in France, we can prosecute, in Scotland, the abuse in France and the grooming in Scotland. However, if they groom in Scotland and abuse in England and Wales, we can prosecute only the grooming in Scotland; we cannot prosecute the abuse in England and Wales. This is an issue with which we have had difficulties in the past."*¹

Barnardo's Scotland has for some time been concerned that there may have been obstacles in the way of effective prosecution of child sexual abuse and exploitation offences. We therefore warmly welcome both sections 7 & 8.

Chapter 3 Sexual Harm Prevention Orders

The Protection of Children and Prevention of Sexual Offences (Scotland) Act 2005 introduced civil preventative orders such as Risk of Sexual Harm Orders (sections 2-8) and Sexual Offence Prevention Orders (section 17). Since their introduction these orders have been little used in Scotland. Barnardo's Scotland is supportive of the new provisions of sexual harm prevention orders, repealing the 2005 orders. In providing evidence on the use of Risk of Sexual Harm Orders to the Justice Committee last year, ACC Malcolm Graham suggested that the 2005 Orders should be amended by: *"reducing the stated two required courses of conduct to one single act of a sexual nature that would indicate the individual presents a suitable risk on the community that the order is necessary"*, and, *"increasing the scope for the individual to whom the conduct has been directed and thus requires the protection namely including young people up to the age of 18 years and also including adults deemed at risk of physical or psychological harm"*².

¹ The Scottish Parliament (2014) Official Report Public Petitions Committee, Tuesday 25 June 2013, Session 4, p. 1512.

² Police Scotland submission to Justice Committee meeting, Tuesday 07 October 2014, available at: http://www.scottish.parliament.uk/S4_JusticeCommittee/Meeting%20Papers/Papers20141007.pdf.

The Bill would appear to be addressing both of Police Scotland's requests and we support these provisions which we hope will make the orders truly preventative.

We would like to see, however, robust guidance around the use and application of the Orders so that:

a) These Orders are used in Scotland to prevent and tackle child sexual exploitation and abuse; and,

b) Orders, particularly Sexual Risk Orders, are not used inappropriately in cases where children and young people (under 18s) are perpetrators. We believe that there are other measures that could be put in place through, for example, the Children's Hearing System, which are more suitable for children and young people who present a risk to other children. In these cases, assessment of risk is complex and should be carried out by a number of professionals from across agencies. Although we raise this as a potential issue, we realise that the Sexual Harm Orders are unlikely to be applied to children; guidance in this area would suffice.

Conclusion

Barnardo's Scotland warmly welcomes the Bill. We raise some issues which we feel can adequately be addressed through guidance. We would be happy to discuss any of the issues raised above with the Committee.

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