

Justice Committee

Abusive Behaviour and Sexual Harm (Scotland) Bill

Written submission from Action on Elder Abuse Scotland

Action on Elder Abuse (AEA) is a UK-wide charity which works to protect and prevent the abuse of vulnerable older people. We provide the UK's only specialist confidential helpline for victims of abuse (handling around 25,000 calls per year). We also provide a range of information materials for the public and practitioners, deliver training, seminars and conferences for practitioners, actively work to raise awareness of elder abuse, and influence and inform policy in this area. We therefore have extensive experience that is not available from any other agency.

Given the significant proportion of older people in the UK (17% of people in Britain are aged 65 and over – more than the number of people aged under 18¹), and the range of factors which make older people particularly dependent on others, domestic abuse is clearly a significant concern among our older population. It is estimated that around 8.6% of the older population in the UK are abused each year, amounting to around 50 older people experiencing abuse every hour². A significant proportion of victims of elder abuse are women, experiencing abuse from close family members that would be within the current definitions of domestic abuse and violence.

Section 1: Domestic abuse aggravator

1. AEA Scotland strongly supports this proposal as an effective means of strengthening the existing justice framework and recognising the true impact of domestic violence upon victims.

2. There is often confusion between 'domestic violence in old age' and 'elder abuse', which can result in victims of abuse "falling between the cracks of the elder abuse and domestic violence systems"³. This can often lead to domestic violence among older people, particularly older women, being treated differently or ignored at a criminal justice level as the focus is primarily on health and social care. Research in Scotland on older women and domestic violence found that this confusion often led to perpetrators being excused of responsibility, and criminal justice responses being seen as inappropriate⁴. We therefore welcome a new statutory aggravation for domestic abuse offences as a means of firmly recognising the criminal nature of many forms of elder abuse, but would recommend that further direction is provided to juries on the specific nature of abuse among older people to ensure an appropriate criminal justice response (see our comments in paragraph 12).

¹ Mid-2013 Population Estimates, Office for National Statistics (2014)

² 'UK Study of Neglect and Abuse of Older People: Prevalence Survey Report', Department of Health & Comic Relief, 2007; Secondary analysis 2013

³ The San Francisco Consortium for Elder Abuse Prevention Institute on Ageing (1996), *Older Battered Women: Integrating Ageing and Domestic Violence Services*.

⁴ M. Scott, L. McKie, S. Morton, E. Seddon & F. Wosoff (2004) *Older Women and domestic violence in Scotland: '... and for 39 years I got on with it'*. Produced for Health in Scotland by the Centre for Research on Families and Relationships (Edinburgh: Health Scotland)

3. Psychological harm and abuse is a particular problem for many older victims of abuse (accounting for 31% of calls to our UK-wide elder abuse helpline). A new aggravator for domestic abuse offences will therefore better reflect victims' experiences of long-term abusive behaviour. This is particularly significant for many older people who may have experienced years of psychological abuse and may not report isolated instances due to a fear it may not be taken seriously by the courts, or may not themselves believe that a criminal offence has taken place.

4. In this context it is important to acknowledge the impact that psychological intimidation and abuse, coercion and undue influence, can have on someone's ability to make free and independent choices, to recognise themselves as victims, and to be able to seek and work with agencies that have the potential to provide them with support and protection. This can often require an intervention approach that is long term and supportive.

5. While we support the creation of a new aggravator, we would suggest that it should not be restricted to partners and ex-partners. This is vital for older people, as many are particularly reliant on support and care from other family members (e.g. children/in-laws, nieces, nephews, etc), friends, and neighbours. The UK elder abuse prevalence study found that while 35% of reported cases of elder abuse involve a spouse or partner, 33% of perpetrators were other family members, and 20% were neighbours and acquaintances⁵.

6. We would therefore recommend that domestic abuse aggravations should apply to partners, ex-partners, other family members and others with whom the adult has a meaningful relationship and an expectation of trust (e.g. a friend or regularly interacting neighbour). Careful consideration would inevitably need to be given to definitions and guidance around this to ensure that different types of abuse or prosecuted in the correct way. It may useful to draw upon AEA's definition of elder abuse to help inform a definition of domestic abuse for all age groups:

"A single or repeated act or lack of appropriate action occurring within any relationship where there is an expectation of trust, which causes harm or distress to an older person".

Section 5: Non-harassment orders (NHOs)

7. We welcome proposals to grant NHOs against individuals who have not been convicted of a criminal offence, and to inform the court about previous instances in relation to the same victim. This will make it much easier for support and protection to be put in place at an earlier stage, as well as making it easier for victims to speak up about harassment.

8. However, we would recommend that this proposal should take into account the processes covered by the Adult Support and Protection Act in relation to banning orders to ensure that both orders work to the most effective benefit for the victim. Adult support and protection will also need to be taken into account when

⁵ UK study of abuse and neglect of older people, 2007 (these are the latest national stats available)

considering to how to support the needs of the perpetrator if they breach the non-harassment order.

Section 6: Jury directions relating to sexual offences

9. We welcome proposals for jury direction as a means of helping jurors understand the complex nature of sexual harm and abuse, and victim's varying responses to it. Although judicial independence and impartiality are vital principles of the Scottish legal system, it is a fact of our modern world that members of juries are likely to be influenced by recent high profile cases involving victims who have reported abuse many years after the alleged event.

10. AEA Scotland would recommend that any such statutory jury directions should include information (where relevant) to help jurors understand that, just because a victim is an older person, their claim of sexual abuse can be likely. This will be vital in helping to overcome widespread perceptions that older people cannot be victims of sexual abuse, primarily as a result of notions that older people are not sexually attractive or active, or that sexual violence is an act of passion. "This age group is viewed as asexual and ignored as possible victims of sexual assault"⁶. Sexual abuse does indeed take place within our older population (around 11% of calls to our helpline are about sexual abuse, with the 2007 Prevalence Study suggesting 42,000 older people are sexually abused each year), and should be taken seriously in all incidences, regardless of the time taken to report it.

11. Lack of resistance to sexual abuse is also likely to be a particular problem among older people, especially those who are frail or infirm, or have a disability or medical condition and may lack the physical strength to resist), or those with Alzheimer's or dementia (or a mental health problem) who may be unable to comprehend what is happening or what they are being asked to do. It may also be the case that long-term psychological abuse has had an effect on their confidence or ability to confront their attacker.

12. AEA Scotland would also recommend that there should be specific jury directions relating to domestic violence among older people more generally. As noted in paragraph 2, there is often confusion between 'elder abuse' and 'domestic violence among older people', which can affect the way it is responded to. There are also misconceptions around the nature, extent and disclosure of abuse among older people, especially older women. For example:

- generational differences often result in older people being less likely to identify themselves as being abused (or have different understandings of what constitutes abuse), which impacts on the way in which they deal with it. Many research studies have found that older women may regard abusive behaviours as 'normal' and acceptable;⁷
- older women may be particularly likely to feel ashamed or embarrassed at experiencing abuse from their partners, or may feel shame that they have put

⁶ 'Genital injuries in post-menopausal women after sexual assault', Poulos & Sheridan, *Journal of Elder Abuse and Neglect*, 20 (4)

⁷ Phillips, L. (2000) "Domestic Violence & Ageing Women", *Geriatric Nursing*, Vol. 21, No. 4, pp.188-195

up with it for so long;⁸. Older women may also find it more difficult to disclose abuse than younger women, as they may have grown up in a time where people were expected to keep quiet about family problems.

- older people from ethnic minority communities may be less likely to speak English than younger people from ethnic minority communities, and may have been denied access to learning English or seeking support;
- even if it is reported, abuse among older people is often not treated as seriously by professionals compared to abuse among younger people. Research has found that professionals may accept ageist stereotypes and find it hard to believe that older people can experience domestic abuse⁹; and that even if abuse is known about by professional staff it is often not acted upon;¹⁰
- older people are more likely to experience loneliness and social isolation (see the Equal Opportunities Committee's 2015 report), and may be less likely to report abuse due to the fear of the perpetrator leaving them, or the effect on wider family relationships (e.g. being denied access to grandchildren, family members and friends);
- fear of the consequences: older people may choose not to disclose abuse as they may be afraid of appearing in court, leaving their homes, losing financial independence or decision-making capacity, or being placed in care homes.

13. AEA Scotland therefore recommends that guidance regarding these issues are provided to juries where appropriate, and we would be pleased to provide further guidance to support this proposal should it be adopted.

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 17 November 2015

⁸ Macdonald, L (2000) *Out of the Shadows: Christianity and violence against women in Scotland* (Edinburgh: Centre for Theology and Public Issues, University of Edinburgh)

⁹ Blood, I. (2004) 'Older Women and Domestic Violence' (London: Help the Aged)

¹⁰ Scott, M. et al (2004)