

Justice Committee

Abusive Behaviour and Sexual Harm (Scotland) Bill

Written submission from Stonewall Scotland

Section 1: Statutory Aggravation of Domestic Abuse

We note the Scottish Government intends to introduce a statutory aggravator of domestic abuse which could be applied to existing offences. We feel that this is a positive step, which will increase confidence in the justice system for LGBT people experiencing on-going physical violence within an intimate relationship, and may lead to increased reporting for people experiencing this type of abuse.

However, a statutory aggravator would currently only apply to existing offences, and not to controlling and coercive behaviour. Psychological control exists in LGBT people's experiences of domestic abuse, sometimes manifesting in ways that are specific to the LGBT community (such as withholding access to hormone medication or undermining someone's sexual orientation or gender identity). Until a specific offence of coercive and controlling behaviour is created, a statutory aggravator is unlikely to increase confidence in the criminal justice process for LGBT people experiencing domestic abuse in this way. We note the Scottish Government's intention to introduce a specific offence of coercive and controlling behaviour and we would urge the Scottish Government to make this a priority.

We remain concerned over the lack of clarity over the potential for multiple aggravating factors relating to the same offence – e.g. assault aggravated both by prejudice towards someone's transgender identity, and also aggravated by a background of domestic abuse. Clear guidance on how multiple aggravating factors would be addressed and prosecuted will be necessary.

Section 2: Non-Consensual Sharing of Private and Intimate Images

As outlined in our original consultation response, we support the proposal for a specific offence to tackle the sharing of intimate images without a person's consent.

We support the extension of the terms of the offence to include distribution of images where someone had been reckless as to whether they would cause fear, alarm or distress, which we feel will strengthen the offence and also be easier to demonstrate. We also support the inclusion of threats to distribute intimate material in the offence. Such threats can be made against LGBT people and we feel extending the terms of the offence in this way sends a very clear message about the unacceptability of this behaviour.

The images covered would make it illegal to distribute most, but not all, images that could be used to control or alarm LGBT people. Images of "sexual act[s] not normally done in public" or images "in which [someone's] genitals, buttocks or breasts are

exposed or covered only with underwear”, will cover most images which could reveal someone’s sexual behaviour (and by implication their sexual orientation) or trans identity. Whilst images of someone’s presence on a dating site or social media site, which could be used to humiliate, blackmail and threaten, given that social media and online material are publically accessible, it seems unreasonable that these could be covered within the bill. However, we would agree with LGBT Youth Scotland’s position in relation to audio communications and recordings, and ask that this be reconsidered.

Section 6 – Jury Directions

Stonewall Scotland is aware of potential issues that could lead to LGBT people not reporting a sexual offence immediately. For example, being open with the police about an offence may endanger someone’s privacy, forcing them to reveal and discuss their sexual orientation or gender identity, which many people would be reluctant to do. More than a third of LGBT people say they would feel uncomfortable being open about their sexual orientation or gender identity when dealing with the police as a victim of a crime. We believe these issues should be considered in the development of statutory guidance.

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