

**Justice Committee****Abusive Behaviour and Sexual Harm (Scotland) Bill****Supplementary written submission from the Scottish Human Rights Commission**

During last week's evidence session before the Justice Committee on the Abusive Behaviour and Sexual Harm (Scotland) Bill, I offered to look specifically at section 5 of the Bill. Having done this, SHRC's comments on Sexual Risk Orders and Sexual Harm Prevention Orders regarding the importance of proportionality and the need to conduct assessments on a case-by-case basis apply equally to Non-Harassment Orders. The concept of proportionality can be split into four main parts: whether the objective of the measure is important enough to justify an interference; whether the measure is rationally connected to the aim; whether a less intrusive measure could have been used; and whether the infringement is disproportionate to the likely benefit of taking the measure.

The specific issue raised at the evidence session was related to the fact that the Bill provides for Non-Harassment Orders to be made in criminal cases where a person has been found unfit to stand trial however, after an examination of the facts, the court has determined that they did commit the offence. The making of such an order, provided the requirements of legality, furtherance of a legitimate aim and proportionality are met, is not in and of itself precluded by human rights law. The real issue is perhaps more practical, in that where a person has not been able to stand trial originally, there is every possibility that they will not be able to be tried for a breach of the Non-Harassment Order. It is therefore more a policy consideration on how useful the orders would be set against that practical reality.

We hope that is helpful. Please do not hesitate to contact us if you require further assistance.

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3 December 2015