

Justice Committee

Abusive Behaviour and Sexual Harm (Scotland) Bill

Written submission from the Scottish Women's Convention

Introduction

The Scottish Women's Convention (SWC) is funded to engage with women throughout Scotland in order that their views might influence public policy. The SWC uses the views of women to respond to Scottish and UK Government consultation papers.

SWC Evidence Source

The Scottish Women's Convention engages with women using numerous communication channels including Roadshow events, Thematic Conferences and regional contact groups. This submission paper provides the views of women and reflects their opinions and experiences in a number of key areas relevant to violence against women and girls (VAWG) and how these relate to the proposed legislation.

Purpose of the Consultation

The overarching objective of the Bill is to improve how the justice system responds to abusive behaviour, including domestic abuse and sexual harm. It also aims to help improve public safety by ensuring that perpetrators are appropriately held to account for their conduct.

Part 1 of the Bill relates to abusive behaviour. It includes provision for a new specific 'domestic abuse' aggravator, as well as a specific offence concerning the non-consensual sharing of private, intimate images (revenge porn). It makes provision to allow the courts to make a Non Harassment Order (NHO) in cases where the court is satisfied that a person did harass another person but a conviction does not take place due to the mental or physical condition of the person.

Part 2 relates to sexual harm. It makes provision to require juries in sexual offence cases to be given specific directions about how to consider the evidence. This part also ensures that sexual offences against children committed in England and Wales by Scottish residents are capable of being prosecuted in Scotland and reforms the system of civil orders available to protect communities from sexual offences.

Section 1

This section enables offences involving the abuse of a partner, or ex-partner, to be treated as aggravated offences. This means the convicted person may be liable to a tougher sentence.

The work undertaken by the justice system and various agencies in tackling domestic abuse, such as Police Scotland and the Crown Office and Procurator Fiscal Service (COPFS), is undoubtedly welcomed. Despite this, there are still too many loopholes within the law which mean those who perpetrate domestic abuse are not punished in the way they should be. Victims, the majority of whom are women, are denied access to justice as a result. Domestic abuse is a highly gendered issue and violence against women and girls (VAWG) overall is both a cause and a consequence of the significant gender inequalities which exist in society.

Recent developments in the law, such as the introduction of the Domestic Abuse (Scotland) Act 2011, have improved access. The civil protections they offer are, however, still not incentive enough for more women to seek the assistance of the law. Women have told the SWC that there are *“too many loopholes”*, which discourages them from reporting, or encouraging their friends and family to report instances of domestic abuse to the police.

“Going to the police, telling your story over and over again, and then having to go to court really takes its toll. It almost feels like there’s no point for the sake of him getting a suspended sentence or 30 days in prison. He’ll be back at my door either way.”

The SWC therefore welcomes the introduction of a statutory aggravator. This demonstrates the commitment of the Scottish Government to ensuring that instances of VAWG are tackled appropriately. Such a measure in relation to domestic abuse sends the message that those who perpetuate such crimes will be adequately punished.

“This issue is so important. The only way to ensure women have access to justice, support and most importantly safety, is by putting laws in place which punish the men who abuse.”

Section 2

The increase of so-called ‘revenge porn’ is having a significant impact on women. The use of various forms of technology and social media, particularly amongst young people, means that images can be anonymously shared to many in a very short space of time. The introduction of a specific offence of disclosing, or threatening to disclose, an intimate photograph or film, under section 2 of the Abusive Behaviour and Sexual Harm Bill, further demonstrates a clear commitment on the part of the Scottish Government to eliminating VAWG.

The SWC recently held a Young Women’s event, which looked at the influences, pressures and experiences of young women. One of the workshops focused on the issue of sexualisation and social media. The rise in the use of social media and the damage this can do, particularly in terms of the sharing of images and videos amongst young people, was one of the key topics of discussion.

“It’s difficult to have a private life and do something innocent such as taking a picture

when people play their lives out through social media. Sadly, you can't trust that other people will use the picture in the way you intended to."

The SWC has consulted with young women on the sharing of intimate and explicit images, as well as the impact this can have. Discussions have taken place around how quickly an image can spread and the backlash often faced by the women who find themselves in these situations.

"When this happens to girls we get called 'sluts' and 'whores' and it's our fault, even though all we did was let someone we trusted take a picture in what we thought was a safe environment. There are absolutely no repercussions for the guys who think it's all 'lads banter'."

The SWC has also consulted directly with women who have spoken of the impact revenge porn has had on them.

"My ex posted topless pictures of me a website, along with details of my Twitter and Facebook accounts, the town I live in (which is a small town) and where I work. I have never been so embarrassed in my whole life. I could have lost my job, but thankfully my employers were extremely understanding. That didn't stop the whispers and rumours going round the office though. People would stop my parents in the street and talk to them about it. It got to the stage where I didn't even want to leave the house. Meanwhile he was walking about completely scot free because there was nothing the police could really do about it."

While images of women under 18 are covered under laws relating to the distribution of child pornography, there is very little that can be done for women over the age of 18. The SWC therefore wholeheartedly supports the creation of a specific criminal offence to protect the women who, at present, have no recourse to justice if private images are shared without their consent.

The introduction of this offence cannot, however, be the only measure taken. It is also extremely important that the services which provide advice and support to victims of revenge porn are provided with adequate funding, especially given the rise in this form of VAWG. It is also vital that the police and the courts are given thorough training in order to be able to properly deal with both victims and perpetrators.

Section 5

This would amend the current law to allow NHOs, in some circumstances, to be granted against individuals who have not been convicted of misconduct towards another person.

The introduction of NHOs, and the criminal offence related to their breach, brought about by the Domestic Abuse (Scotland) Act 2011 has been extremely important in affording civil protection to victims of domestic abuse. If a person stands trial and is found to have committed the offence/s with which they are charged, then an NHO is

available. If a court is satisfied that a person carries out acts constituting an offence, however they are not convicted due to, for example, being unable to stand trial because of health issues, then their victim should still be afforded the protection provided by a NHO.

This would ensure a victim-centred approach to tackling domestic abuse. It would also send a clear message to perpetrators that they will face consequences even where they are not convicted of the offence. The fact that they have been found to have carried out an offence by the courts should be enough to secure protection for the victim.

Section 6

This section would require a judge to give particular directions to the jury in sexual offences cases about whether to draw inferences from particular evidence being led or not.

Despite the positive steps taken by the Scottish Government to ensure that the elimination of VAWG is a key priority for policy makers, the police and the courts, ingrained attitudes about sexual offences remain.

“It always comes back to being the fault of the woman. Either our skirts are too short, we’ve had too much to drink, we were ‘asking for it’. The burden is always on women not to be sexually assaulted.”

The SWC welcomes the use of statutory jury directions. Women, who make up the vast majority of victims, do not report sexual offences for a number of reasons. They are concerned that they will be forced to disclose personal information about their sexual history, clothing choices and even the type of TV programme they watch to a room full of strangers. It can take time for women to summon the courage to even leave the house, let alone report a sexual offence to the police. If the sexual offence has occurred against a backdrop of sustained abuse, it may be difficult for victims to recall exact timeframes and dates. It can also be extremely traumatic for those in the witness stand to relive their ordeal.

One of the overarching reasons, which take into consideration all of these factors, is the fear of being disbelieved. It is, therefore, extremely important that juries are made aware of the reasons for a delay in reporting the crime, as well as the reasons why a sexual offence victim may not physically resist their attacker.

“When it occurs on an almost weekly basis, it’s a lot easier just to let it happen than to fight. He’s bigger than me, he’s stronger than me and if I try to hit, scratch or kick I’ll get the same back. It doesn’t mean I accept what’s he’s doing because I don’t fight against him.”

Sections 7 and 8

These would enable the Scottish Courts to prosecute sexual offences against children or young people committed by a Scots-domiciled person elsewhere in the UK.

The grooming and often consequential trafficking of women and girls is a very serious issue, and one which the SWC has undertaken a significant amount of work on over the last few years. Through roundtable discussions and thematic conferences, women have spoken about this form of VAWG, and the lasting damaging impact it has on its victims. Vulnerable young women in particular are being groomed by older men, and are often moved throughout the UK for the purposes of sexual exploitation.

“These girls, who more often than not live in a cycle of poverty and deprivation, in chaotic households, are being promised the world by men who offer them money, gifts and the promise of a better life. When people talk about grooming and trafficking and issues like that, you think of women being brought into the UK, not realising that young Scottish women are being taken all over the country.”

As the law stands, if an offence is committed against a child (i.e. a person under the age of 18) in England, Ireland or Wales, then the Scottish courts cannot prosecute the perpetrator. If the extra-territorial effect of Scots law on sexual offences against children were amended, it would ensure that those who exploit young people, young women in particular, for sexual purposes, will not escape justice if they do so in another part of the UK. This amendment would also be extremely useful in terms of prosecuting a Scottish national who perpetuates multiple sexual offences against children throughout the UK. It sends a clear message that such behaviour will not be tolerated, regardless of where it occurs, by the Scottish courts.

Conclusion

Each of the proposed offences and protections are instances of VAWG, which is a cause and a consequence of persistent gender inequality. The creation of a statutory aggravator has the potential to afford access to justice to many more victims than at present. The creation of an offence relating to the distribution or threat of disclosure of intimate images will do the same. The proposals set out in this Bill send a clear message that the Scottish Government is committed to the elimination of VAWG and it is hoped that, as a result of these legislative and policy measures, this will be achieved.

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