

Justice Committee

Abusive Behaviour and Sexual Harm (Scotland) Bill

Written submission from the Highland Violence Against Women Partnership

Please find the response by the Highland Violence Against Women Partnership (VAWP), outlined below. Statutory members in the partnership addressing Violence Against Women in Highland are NHS Highland, The Highland Council, the Crown Office and Procurator Fiscal Service and the Police. These members work in collaboration with a number of voluntary organisations on this issue, including Caithness & Sutherland Women's Aid, Lochaber Women's Aid, Inverness Women's Aid, Ross-shire Women's Aid, Victim Support Highland and Rape & Sexual Abuse Service Highland.

1 Introduction

The Highland VAWP welcomes the opportunity to provide evidence on the Abusive Behaviour and Sexual Harm (Scotland) Bill. We also note and support the commitment of the Scottish Government to work to develop a specific offence to deal with those who commit psychological abuse and coercive and controlling behaviour within their relationships.

2 Part one – Abusive Behaviour

2.1 Aggravation of an offence where abuse of partner or ex-partner

We support the introduction of an aggravation to an offence where it includes the abuse of a partner or ex-partner for a number of reasons:

- Provides a clear message to society about the seriousness of domestic abuse
- Recognises the impact that psychological abuse can have and places it on a par with the impact of physical violence
- Enables more interventions with perpetrators to take place as offences are recognised as having a domestic abuse element and appropriate assessments can be done and recommendations made by Criminal Justice Social Work in advance of sentencing

2.2 Disclosing, or threatening to disclose, an intimate photograph or film

We welcome the creation of this new offence to tackle so called 'revenge porn'. With new technology has come new ways to further abuse and blackmail and we believe that this offence may serve to prevent potential perpetrators from sharing images. We also understand that the creation of this offence is welcomed by those who have had experience of having intimate images and films shared.

2.3 Non-harassment Order

We recognise that there may be cases where the court is sufficiently concerned about an offender's behaviour, but the person is not able to stand trial, that a victim may be further protected by the court obtaining a non-harassment order on their behalf. We believe that this measure serves to further protect those at risk of abuse and harassment.

3 Part two – Sexual Harm

3.1 Jury directions relating to sexual offences

We strongly support this development whereby Sheriffs will be able to explain to juries why those affected by sexual violence do not immediately report their experiences to the police or to others. Those working with survivors already recognise the many reasons why people may not come forward straight away, but repeated surveys of the public show that these reasons are not always understood by the majority of society. For the same reasons, we support that Sheriffs can also explain that for rape to take place, there does not require to be the presence of physical force by the perpetrator or physical resistance by the victim. The concept of 'real rape' is well documented by researchers and this amendment recognises that this stereotype is damaging to survivors and can compromise achieving the ends of justice.

3.2 Sexual Acts Elsewhere in the UK

We welcome this proposed legislative change whereby those who have carried out sexual offences elsewhere in the UK can be brought to trial in Scotland. We believe that this closes the unintended loophole whereby individuals can currently be brought to trial for offences out with the UK but not where the offences take place within UK countries other than Scotland. We also support the measure in this Bill that where an offender has a history of sexual violence in multiple countries that this evidence can be brought to one trial, rather than having multiple trials in multiple countries.

3.3 Sexual Harm Prevention Orders

We welcome the introduction of the Sexual Harm Prevention Order to replace the current Sexual Offences Prevention Order and the Foreign Travel Order. We understand that this change means that with a SHPO there will be an automatic prohibition on foreign travel, essentially amalgamating the current two orders. This will save time and energy as only a single order will need to be sought.

4 Other Comments

Whilst we support the measures proposed in the Bill to tackle Sexual Harm, we would also call for the implementation of the Scottish Law Commission recommendations to allow bad character and similar fact evidence to be admissible in court, e.g. evidence of other forms of Violence Against Women, such as domestic abuse related offences. We believe that in sexual violence cases this is particularly relevant.

Also, we call for automatic legal provision to be made for all survivors of rape and sexual assault where it is likely that their privacy is at stake. This would include if their sexual history and/or medical records were to be used by the defence.

5 Conclusion

We believe that all measures included in the Abusive Behaviour and Sexual Harm (Scotland) Bill, if implemented, will serve to further protect the people of Scotland from domestic abuse and sexual violence. We also appreciate that the Scottish Government has listened to the experiences of survivors when developing this Bill and it recognises the issues there are in prosecuting those who are perpetrators of domestic abuse or sexual violence. We hope that the changes will make a positive

difference to survivors going through the criminal justice process and we ask that our additional comments be considered to ensure this.

Gillian Gunn
Violence Against Women Development & Training Manager
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