

Justice Committee

Abusive Behaviour and Sexual Harm (Scotland) Bill

Written submission from Rape Crisis Scotland

Rape Crisis Scotland welcomes the opportunity to provide evidence on aspects of the Abusive Behaviour and Sexual Harm (Scotland) Bill.

Domestic Abuse Aggravation

1 Rape Crisis Scotland supports the provisions in the bill which introduce an aggravation for domestic abuse. This will place individual crimes more clearly within the context of domestic abuse, and will allow the Court to take account of this context in sentencing.

Disclosure of an intimate photograph or film

2. The sharing, or threat to share, private images can cause significant harm and distress. Rape Crisis Scotland runs a sexual violence prevention project which works with young people in schools across Scotland. Young people tell us about the pressure they can come under to share intimate images of themselves. Creating a specific offence will send a clear message that sharing images without consent is a crime and has significant consequences.

3. The sharing, or threat of sharing, intimate images which are not sexual in nature can cause just as much distress or alarm as the sharing or threat of sharing an image of a sexual nature and we welcome the inclusion of this in the bill. Threats to share images of this nature are often used following the ending of a relationship, or as a way of coercing someone to do something they do not wish to do. It is important that the offence captures this, and makes it clear that threats of this nature constitute a criminal offence. As well as improving the protection offered in these circumstances, the creation of this offence could have a positive educative impact, particularly in prevention work with young people.

4. This offence should be amended to cover other media such as sound files.

Non harassment Orders

5. A recent case has highlighted that there is gap in protection for victims in these circumstances. It is not reasonable to expect a victim to have to instigate civil proceedings in these circumstances to obtain a non-harassment order, when a court has found that the offence has been committed.

Jury Directions

6. There are long standing concerns about the role jury attitudes can play in decision making in rape trials. Scottish Government research (2010) found that 23% of people thought a woman can be at least partly responsible if she is drunk at the time of the attack; 17% thought a woman bore some responsibility if she wore revealing clothing; 15% said there should be some burden of responsibility if a

woman is flirting and 8% thought rape could be a woman's fault if she is known to have had many sexual partners. Jury members are drawn from the Scottish public and statistically at least some of them are likely to hold these kinds of attitudes.

7. Reactions to rape can be counter intuitive, for example, not telling someone about what has happened for hours, days, weeks, months or even years. It is unlikely that jury members will be aware that delayed disclosure is a common reaction to experiencing trauma. Currently, the Crown have the option of introducing expert evidence to assist in explaining to juries the reasons why survivors may not disclose straight away, however we consider that there is also merit in introducing a clear direction from the judge in all relevant cases on this issue. We consider that this is factual information which will assist juries in assessing the truth.

8. Jury members may hold their own views about what they would do if they were attacked, in relation to fighting back, and may judge a complainer's behaviour in light of this. It is unreasonable to expect jury members to know that freezing and being unable to fight back is a very common reaction to a trauma such as rape. If the justice system is about a search for truth, then we need to make sure that jury members are equipped with factual information they may need to help them come to the right decision, and that this decision making is not marred by erroneous preconceptions about behaviour. In this context, we welcome the introduction of judicial directions, to ensure that where appropriate, jury members have access to appropriate and relevant information.

9. Consideration could helpfully be given to extending jury directions to cover other specific issues such as the different emotional reactions victimisation may elicit, both in the immediate aftermath of an attack and also when giving evidence during a trial. Many people assume that someone will be visibly distressed immediately following an attack, but in reality shock can be displayed in many different ways and someone may appear calm or have an entirely flat affect, which might not correspond with notions jury members may hold about how someone is likely to react to trauma. Similarly, we are concerned that a disconnect can exist between the level of distress jury members may expect a rape complainer to show during her evidence giving, and the coping strategies complainers may use to get them through the experience of giving evidence. For example, many complainers tell us prior to a trial that they are determined not to cry as they do not want to give the accused the satisfaction of seeing how upset they are.

10. Research conducted by Professor Louise Ellison of the University of Leeds and Professor Vanessa Munro of the University of Leicester found that the introduction of judicial directions of the nature outlined in this bill were likely to increase prospects for justice. Providing jury members with factual information on areas where public understanding of reactions to rape appears to be limited should assist in ensuring that verdicts in sexual offence are based on the evidence presented, rather than being influenced by incorrect assumptions about how rape victims will react.

Sandy Brindley
National Coordinator, Rape Crisis Scotland
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