

JUSTICE COMMITTEE

VULNERABLE WITNESSES (CRIMINAL EVIDENCE) (SCOTLAND) BILL

SUBMISSION FROM ACTION ON ELDER ABUSE SCOTLAND

Action on Elder Abuse (AEA) is a UK-wide charity which works to protect and prevent the abuse of vulnerable older people. We provide the UK's only specialist confidential helpline for victims of abuse, as well as a range of information materials for the public and practitioners. We also deliver training, seminars and conferences for practitioners, actively work to raise awareness of elder abuse, and influence and inform policy in this area. We therefore have extensive experience that is not available from any other agency.

Extending the measures to other vulnerable witnesses

Action on Elder Abuse (AEA) Scotland fully supports proposals to extend the provisions in the Bill to other vulnerable witnesses. Our experience is that many older victims of crime are extremely reluctant to speak up due to fear of the consequences and fear of going through the court process. We also know that many older people are reluctant to report crimes as they believe it is unlikely that the perpetrator will be prosecuted – why put yourself through such a stressful process if you believe it's unlikely there will be a prosecution?

Action on Elder Abuse carried out research in England¹ in 2016 which found that very few cases of elder abuse are reported to the police. Of those which were, very few actually reached court, and of those that did, too many resulted in suspended sentences, community service and fines.

We therefore urge that comprehensive support is provided for all older people experiencing this form of abuse to encourage them to speak up, have confidence in the judicial process, and cope with the emotional trauma of the process.

Unique dynamics of elder abuse / impact upon speaking up

Elder abuse can take many forms, including physical, psychological, financial, sexual and neglect. In the vast majority of cases, it is perpetrated by family members in the older person's own homes, although it is also common to hear of elder abuse in care or other institutional settings.

It is important to recognise the unique dynamics of elder abuse when considering the criminal justice context and process. While there are many reasons why an adult may be vulnerable, older age can often make someone particularly vulnerable to

¹ The Police and COPFS in Scotland were unable to provide comparable data, although we believe the trends are similar in Scotland

harm, abuse or exploitation, which can often have an impact on their likelihood to speak up (including testifying in court). This might include:

- physical frailty, which can often make older people appear to be an ‘easy target’ for those wishing to harm, abuse or exploit them, as well as making it harder to protect themselves. Frailty or other health conditions can also make older people dependent on others, making it difficult to report if the perpetrator of the criminal behaviour is the person they are dependent on;
- cognitive difficulties, including dementia, can also make older people ‘easy targets’ for criminal behaviour, as well as impacting their ability to recall what has happened and/or provide a testimony afterwards. This can also lead to fear that they won’t be believed, making them less likely to speak up;
- fear of consequences (e.g. a fear of being forced into a care home/sheltered housing, fear of how the perpetrator might react, the perpetrator and/or their family no longer visiting, worries that family/social work think they can’t cope, etc);
- we know that loneliness and social isolation are a significant problem for many older people (as evidenced in the recent Scottish Parliament Inquiry²), making them particularly vulnerable to harm and abuse, as well as making them less likely to report it. We know that many victims of elder abuse would never report what has happened due to huge fears of the perpetrator (and/or the perpetrator’s family) no longer visiting;
- in the vast majority of elder abuse cases, the perpetrator is a family member, and the abuse is most likely to take place in the older person’s own home. It can be very difficult for an older person to report or give evidence about a family member who has been harming or abusing them due to embarrassment, love for their family member, dependency, or fear of the consequences.

Overcoming barriers to older people giving evidence to courts

We believe that it is vital that the criminal justice framework works effectively with the Adult Support and Protection framework to ensure that vulnerable older adults are able to access the support and/or protection they require throughout and beyond any criminal proceedings.

As noted above, many older people find it extremely difficult to speak up about elder abuse, especially when the perpetrator is a family member. Regardless of how much

² <http://www.parliament.scot/parliamentarybusiness/CurrentCommittees/93385.aspx>

support is available to older witnesses during criminal proceedings, it may be very unlikely that some older people will speak up in the first place if they do not have the support and protection they need to alleviate the fears and concerns noted above.

It's also vital that appropriate and tailored support is available throughout the court process, which could include:

- giving evidence in advance of court proceedings, either as the first stage in the process or to replace the need for attending court altogether;
- meeting the older person's physical, communication, cognitive, and other needs throughout the process;
- allowing more time throughout to process information and respond to questions;
- allow the older person to visit the court room in advance to familiarise themselves with the room and its facilities;
- consider the timings of court appearances to make it convenient for older people who may be more tired during certain times of the day, and ensure appropriate rest breaks;
- we've heard of examples of America, where court-appointed volunteers are provided to help older people locate the court room, complete paperwork, read court materials, accompany and support them during court appearances, and refer them to support agencies if necessary.

Defining vulnerable adults

We believe that careful consideration needs to be given to the way in which 'vulnerable' is defined to determine which witnesses are able to access special measures. It may be useful to use the definition of an adult at risk (i.e. the '3-point test'), which is broad enough to include older people who have mental capacity but may experience physical frailty, as well as those with mental/cognitive difficulties. However, we would urge that courts have the discretion to use a degree of flexibility to ensure that all older people who may benefit from special procedures are able to access them.

Other comments

We would recommend that consideration is given to jury direction in cases involving elder abuse, as is the case with sexual offence cases in Scotland. Given the complicated dynamics of elder abuse, which is often not fully understood by the public, this could an important means of ensuring that misconceptions are alleviated, jury members are aware of the reasons why older victims may not speak up, and that consideration is given to their support needs.