

Aberlour's response to the Scottish Parliament's Justice Committee call for written evidence seeking views on the Domestic Abuse (Scotland) Bill.

Introduction

As Scotland's largest, solely Scottish Children's charity, Aberlour supports the introduction of any legislation which is designed to provide greater protection to children, as well as further embed children's rights within Scotland's legal framework. The Domestic Abuse (Scotland) Bill represents a positive step towards recognising and understanding the impact of domestic abuse on children specifically, and acknowledging that the effects of domestic abuse on children are different from other forms of child abuse.

Working in over 40 locations across Scotland, we provide services which support vulnerable children, young people and families across a range of settings. The children, young people and families we support experience vulnerability and multiple challenges on a daily basis as a result of being in care, having complex additional support needs and disabilities, facing issues around dependency, experiencing inequality or having experienced domestic abuse. We see the impact of domestic abuse on families from the north of Glasgow every day through the work of our Bridges Partnership service, which is delivered in partnership with Shelter Scotland and Glasgow Housing Association, supporting mothers and children who have experienced domestic abuse, by providing both therapeutic emotional support and practical housing support.

Do you agree with the proposal in the Bill to create a new offence of abusive behaviour towards a person's partner or ex-partner covering both physical violence and non-physical abuse?

We agree with the proposal in the Bill to create this new offence. As we highlighted in our submission to the consultation paper on this Bill, we believe that the criminal law should be strengthened and reformed to recognise the very particular issues that accompany domestic abuse, and specifically the impact of non-physical abusive behaviours such as coercive control. We also support the introduction of an offence aggravator in relation to children.

In particular, we support the creation of this new offence in order to address behaviours directed at mothers and their children which often extend post-relationship abuse. It is common for women we support to continue to be impacted by non-physical abuse and controlling behaviour resulting from entitlements of the abusive partner regarding contact with children who are the product of a relationship. In our experience, more than 10% of the families whom we support in our Bridges Partnership service encounter issues around child contact as a result of continuing abusive behaviour, even though the relationship may have ended. In such circumstances, it is often the case that an abusive partner uses child contact as a means of continuing their abusive and controlling

behaviour. The impact in such circumstances for the mother and child is to continue to be exposed to this abusive behaviour, even when steps have been taken to remove themselves from the abusive relationship.

Do you consider that the proposed offence is needed to address a gap in the existing law which currently makes it difficult to prosecute some forms of domestic abuse?

In our experience, it is difficult to evidence coercive control or the impact of controlling behaviour. We also find that women who access our service often do not identify this particular type of non-physical abuse and coercive and controlling behaviour as abuse in and of itself. Therefore, an offence which both articulates and applies legal recognition of such behaviour as abusive, can support women in such circumstances to understand and recognise this behaviour as abuse.

Do you have any views on the definition of the offence, such as the requirement for a course of behaviour, the definition of abusive behaviour, or the defence that the behaviour was reasonable in all the circumstances?

We believe that in defining "**a course of behaviour**" consideration needs to be given to the intent and impact of that behaviour, rather than solely focusing on the duration or frequency of the behaviour. We see the potential for difficulties with the current definition that identifies a course of behaviour as behaviour which has happened "**on at least two occasions**". Under-reporting on the full course or extent of domestic abuse may impact on what evidence is available to prosecute against this, and therefore understanding and acknowledging both the intent and impact of any abusive behaviour is as necessary as determining the frequency of the abuse.

We feel that the definition of behaviours outlined within the Bill, whilst not exhaustive, is comprehensive and recognises the wide range of behaviours which both contribute to and constitute domestic abuse. We see no gap in understanding within the Bill of what behaviours amount to both physical and non-physical abuse.

We recognise that in some circumstances one partner in a relationship may have more decision-making responsibilities than the other for valid reasons due to protective factors, such as one partner being affected by a debilitating condition or illness. However, we believe that some examples cited within the Bill, which propose behaviour that is reasonable, could create circumstances that enable an abusive partner to continue or escalate controlling behaviours. Such examples include, one partner withholding money due to the other partner having dependency issues around alcohol or drugs. In our experience, substance misuse can often be caused or exacerbated by domestic abuse itself. Seemingly protective behaviours in some contexts could, in fact, be recognised as abusive behaviour in another context.

The offence is restricted to abuse between partners and ex-partners. Do you agree with this approach? For example, during the Scottish Government's consultation on a draft offence, concerns were raised that it did not properly reflect the impact of domestic abuse on children. The Scottish Government has sought to address this concern in the Bill, primarily by providing that the offence will be aggravated where it involves a child. Do you have any views on this aspect of the Bill?

We agree that the definition of domestic abuse within the Bill should be restricted to abuse between partners and ex-partners. However, we believe the offence should recognise that children living in a household where there is domestic abuse are also victims of that abuse. Domestic abuse which impacts upon children is a children's rights issue, and therefore the impact and effects of domestic abuse on children must be recognised in this offence.

We believe that the recognition of the impact of domestic abuse within the Bill does represent progress in relation to the current understanding within the criminal justice system of what the effects of such abusive behaviours are on children. Such progress brings the criminal justice system closer to the recognition and understanding of the impact and effects of domestic abuse on children within the wider policy context in Scotland. Nonetheless, we believe there is still a gap in how the criminal justice system understands children's rights in the context of domestic abuse, and where children are seen equally as victims in circumstances where they have experienced or been exposed to domestic abuse, as well as being understood equally to be the victims of abusive behaviours such as coercive control. However, we understand the difficulty in fully incorporating such an offence against children specifically within this Bill, and recognise that further legislative developments, such as an offence of domestic abuse against children, will be needed to address this gap in the future.

Furthermore, we believe consideration must be given to the wording of the offence aggravator in relation to children within section 4 of the Bill. Currently, the Bill states that the offence is aggravated where ***"a child sees, hears, or is present during an incident"***, however we have concerns that this will limit the experience of domestic abuse to children who can express or identify they could see, hear or were present during the abuse. This presents a difficulty in recognising or establishing that younger children, infants, babies, or children who have limited capacity for communication due to a physical or learning disability, may have experienced domestic abuse. This wording of the offence aggravator also fails to take account of, or recognise, the ongoing impact and effects on children of domestic abuse, where they may not have seen, heard or been present during any one incident, but can suffer the negative effects of that abuse due to the impact on the mother's wellbeing.

Do you have any views on factors which might impact on the reporting, investigation and prosecution of the offence?

We believe there are a number of factors which may impact on the reporting, investigation and prosecution of this offence. In our experience, some women feel they have no option other than to engage with the perpetrator, on some level, in order to keep themselves and their children safe. The consequence of such circumstances can be that the victim is viewed as maintaining contact and be seen to be engaging with the perpetrator, which could undermine any attempt to prosecute against this offence.

As highlighted previously, women who are the victims of coercive or controlling behaviour do not always recognise this behaviour as abuse in and of itself, which could have the effect of under-reporting of incidents of such abusive behaviours. To address this, we believe there is an opportunity, through the implementation of the Scottish Government's Equally Safe strategy, to

ensure a wider approach to engaging with schools and communities in order to promote a societal understanding of what constitutes coercive and controlling behaviour, and why such behaviors are abusive. The provision of domestic abuse awareness training to all front-line health and social care staff and professionals would further support a wider understanding of behaviours which are abusive, specifically amongst those who may be likely to encounter or identify victims of domestic abuse during the course of their work. Such an approach would ensure a better understanding of what constitutes abusive behaviour amongst the wider population, and consequently increase the likelihood of such abuse being reported.

Additional factors which may impact upon the investigation or prosecution of the offence aggravator in relation to children in the Bill, include difficulties there may be in establishing or evidencing that a child saw, heard or was present during an incident. As previously discussed, this could present particular issues where the child(ren) in question is an infant or baby, or is unable to communicate or express themselves effectively as the result of a disability.

The Bill makes a number of reforms to criminal procedure, evidence and sentencing. For example, it would prohibit the accused in a domestic abuse case from personally conducting the defence. Do you agree with this prohibition?

Yes, we agree with this prohibition. As outlined within the Bill's policy memorandum, we believe this will prevent a victim potentially being exposed to further controlling behaviour where there may be an opportunity for a perpetrator to take statements or cross-examine the victim, where they are due to appear as a witness in any prosecution. This prohibition already exists where an accused is prosecuted in cases of sexual offences, and such a prohibition in relation to this offence would equally recognise victims of domestic abuse as vulnerable witnesses.

The Bill would also require the court in a domestic abuse case to consider making a non-harassment order. What are your views on this approach?

We believe a court should have to consider making a non-harassment order in domestic abuse cases. However, we note concern that the Bill provides that a non-harassment order "**may be imposed as an alternative...to some other disposal in the case (e.g. imprisonment or a Community Payback Order)**". We feel that a non-harassment order should not be imposed as an alternative to imprisonment or a Community Payback Order, but should instead always supplement such a disposal. As previously outlined, the experience of a significant number of women we support continue to be victims of coercive and controlling behaviours, as a result of the perpetrator's child contact entitlements. Where there is evidence that child contact may be exploited by a perpetrator to that end, the imposition – and the wording – of a non-harassment order must be given due consideration by the court.

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