



Equally Safe

Reforming the Criminal Law to Address Domestic Abuse and Sexual Offences

June 2015

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

Throughout the referendum campaign and the establishment of the Smith Commission, the SWC has consulted with women throughout Scotland on the issue of violence against women and girls (VAWG). This response outlines key issues for women with regards to the proposals set forward in 'Equally Safe – Reforming the Criminal Law to Address Domestic Abuse and Sexual Offences'.

Purpose of the Consultation

On 25 June 2014, the Scottish Government published Equally Safe: Scotland's Strategy for Preventing and Eradicating Violence Against Women and Girls. The strategy was co-produced with COSLA and sets out the Scottish Government's ambition to create a strong and flourishing Scotland where all individuals are equally safe and respected and where women and girls live free from abuse and the attitudes that help to perpetuate it. Equally Safe identified four key priorities to achieve this aim

This consultation is concerned specifically with issues relating to the aspects of the current criminal law and criminal procedure, which apply both to female and male victims and perpetrators of sexual offences and domestic abuse. However, it is clear that the specific policies contained within this consultation relate to issues of criminal law and procedure concerning sexual offences and domestic abuse. Women and, to a lesser extent children, are much more likely to be victims of these crimes. Consideration of the criminal law and criminal procedure in discussion with stakeholders has raised five specific issues

- The question of whether the current criminal law reflects the true experience of victims of long-term domestic abuse, including coercive control, and whether a specific domestic abuse offence would improve the ability of people to access justice through effective prosecution of domestic abuse;
- The need for a specific new criminal offence to address the sharing of private intimate images without permission from the subject of the images (often referred to as ‘revenge porn’);
- The need for jury directions in sexual offence cases to provide guidance on how juries should consider:
 - o The fact that a significant period of time elapsed between the time the offence occurred and the reporting of the offence to the police
 - o the absence of the use of physical force by the alleged attacker or the absence of use of physical resistance on the part of the alleged victim;
- Changes to the disposals available to a court where a person is found unfit to stand trial due to a mental or physical condition but an examination of facts finds that they did commit acts constituting an offence; and
- Extension to the extra-territorial effect of the law concerning sexual offences against children to include offences committed elsewhere in the United Kingdom.



1. Does the existing criminal law provide the police and prosecutors with sufficient powers to investigate and prosecute perpetrators of domestic abuse? Yes / No (if No, please specify how the existing law should be strengthened)

Yes No

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.”

2. One of the ways in which it has been proposed the law could be strengthened is through the creation of a specific criminal offence concerning domestic abuse. Do you agree that this would improve the way the justice system responds to domestic abuse?

Yes No

The Scottish Government’s commitment to tackling and eliminating VAWG is clear; however this is not adequately reflected in the justice system’s approach to prosecuting those who perpetuate these crimes. The SWC therefore wholeheartedly supports the creation of a specific criminal offence of domestic abuse. This would provide fewer opportunities for loopholes and would ensure that the aspects of domestic abuse not currently punishable through the courts – such as emotional abuse and financial control – would be taken into consideration.

3. What behaviours which are not currently criminalised should be included within the scope of a specific offence?

There are two key interlinked aspects of domestic abuse which are not criminalised under existing legislation – the requirement for a course of conduct and abuse relating to emotional and financial control.

At present, offences relating to domestic abuse are considered separately, therefore anything which takes place outwith an assault or a breach of the peace, for example, are not taken into account by the courts. There is no recognition that coercion and control can be the most significant characteristics of domestic abuse. This effectively means that women experiencing abuse are only able to seek redress for part of what they have gone through.

“My ex-partner was eventually charged with a breach of the peace for the abuse he carried out against me, which I was relieved about. However, the judge couldn’t take into account the fact he had chosen my clothes every day for the previous three months, or that I wasn’t allowed to take my own bank card anywhere.”

It is vital that these behaviours are included within the scope of a specific offence. In order for this to be useful in the prosecution of cases of domestic abuse, women must be afforded support from services, the police and the courts in order to effectively document what they have been through. This must be done sensitively, so as to ensure that victims are not further traumatised.

4. Should any specific offence of ‘domestic abuse’ be restricted to people who are partners or ex-partners, or should it cover other familial relationships?

The SWC believe that all familial relationships should be covered in a specific domestic abuse offence. Women in different communities throughout Scotland have spoken about the abuse they face in the home from parents, siblings and children. It would be extremely remiss to create strong legislation which does not extend to all instances of domestic abuse.

“My neighbour’s son keeps hold of her money and only allows her to spend a certain amount a week on her shopping. She’s confided in me about this and I don’t know what to do to help her.”

6. Do you think that there should be a statutory aggravation that a criminal offence was committed against a background of domestic abuse being perpetrated by the accused? Yes/No if no, please give reasons for your answer

Yes X No

The inclusion of a statutory aggravation in the new Human Trafficking and Exploitation (Scotland) Bill is an extremely welcome measure. It shows that the Scottish Government is committed to ensuring that instances of VAWG are tackled appropriately.

Such a measure in relation to domestic abuse would send the message that those who perpetuate such crimes will be adequately punished. It is vital that a statutory aggravation is also included with regards to domestic abuse.

7. If you think that there should be a statutory aggravation of this kind, do you think this should be in addition to, or instead of, a specific statutory offence of ‘domestic abuse’? Give reasons

The key priority needs to be the establishment of a specific offence of domestic abuse. It is therefore the opinion of the SWC that the statutory aggravation of this kind should be in addition to the offence. If it were put in place instead of a specific offence, there is a danger that the gaps which currently exist would continue.

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

8. Do you agree that it should be a specific criminal offence to share private, intimate images of another person without their consent? If no, give reasons

Yes No

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. As part of its commitment to eliminating VAWG, the Scottish Government must ensure that this is considered an offence.

The SWC recently held '*A False Sense of Perfection*', an event on the sexualisation of young women. 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 on the day.

"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."

As part of the event, young women attended a workshop which looked at video and image sharing, and the impact this can have. They were given the start of a story which each person had to complete. It began with a young woman who was in a 6 month relationship with a young man. The young woman sent a topless picture to her boyfriend who then showed it to one of his friends when they had split up. The story was then left open for the rest of the room to finish, drawing on their own experiences and those of their peers. They discussed how the image spread, the backlash faced by the young woman as a result, and the story concluded with the girl who had taken the picture killing herself as a result of extreme bullying.

"If 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 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 by laws relating to the distribution of child pornography, very little 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.

It is extremely important that 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.

9. Do you agree with the proposal that the offence should be restricted to images?

Yes No

The proposal should also include the distribution of videos and voice recordings. The most important aspect of the offence should be the personal and private nature of the information shared, as opposed to the format it comes in.

10. Should the types of images that should be covered by the offence should be based on the definition of a 'private act' contained at section 10 of the Sexual Offences (Scotland) Act 2009? Or do you think a definition which defines an image as 'private and intimate' if the person featured in the image and the person sharing the image understand it to be such would be more appropriate?

The types of images covered should be based on the definition of a 'private act', as contained at s.10 of the Sexual Offences (Scotland) Act 2009. There is a potential danger if the definition is framed solely as the image being "*private and intimate if the person featured in the image and the person sharing the image understand it to be such*". Those who do the sharing could potentially argue they believed the information they were distributing was suitable for the public domain.

There is, however, scope for combining both definitions in order to cover images which are private but non-sexual, such as a Muslim woman without her headscarf. This would ensure that all images which could be considered private and personal are covered by legislation. It is vital that all victims of such image sharing are able to seek redress through the justice system.

12. Do you agree that it should be an offence to threaten to share private, intimate images of another person without their consent?

Yes No

The threat of intimate, often sexual, images being put into the public domain is equally as distressing to women as the act of sharing such images itself. Such a threat is an example of controlling behaviour which has a detrimental impact on the subject of the images, who will suffer extreme stress and anxiety as a result. This should also be made an offence.

“The idea that my friends and family, my boss, and people I don’t even know could see naked pictures of me makes me sick to my stomach. It’s getting to the point where I’m obsessed. I constantly check his social media profiles, as well as my own, to make sure there’s no reference to me. The worst thing is I know he knows I’m looking at his pages and I know the thrill he gets out of it. I can’t sleep at night because of the stress.”

16. Do you agree that there should be statutory jury directions which require the trial judge to make the jury aware that there may be good reasons why a victim of a sexual offence may not report that offence until some time after it has been committed and that this does not, in and of itself, indicate that the allegation is more likely to be false?

Yes X No

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 would welcome the use of statutory jury directions relating to the length of time it has taken a victim to report the crime. 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.

18. Do you agree that there should be statutory jury directions which require the trial judge to make the jury aware that there may be good reasons why a victim of a sexual offence may not physically resist their attacker and that this does not indicate that it is false?

Yes No

The reasons set out in the SWC response to question 16 also apply here. It is extremely important that juries are made aware of 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.”

20. Do you agree that non-harassment orders should be available to the court where the court is satisfied, following an examination of facts, that a person did carry out the acts constituting the offence with which they were charged?

Yes No

The introduction of non-harassment orders (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. It therefore stands to reason that if the court is satisfied that a person carries out the acts constituting the offence with which they were charged, their victim should be afforded the protection provided by a NHO. This would ensure a victim-centred approach to tackling domestic abuse, and would 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.

22. Do you agree that the provisions concerning extra-territorial effect of Scots law on sexual offences against children should be amended to enable Scottish courts to prosecute offences committed in other jurisdictions within the United Kingdom?

Yes No

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.

23. Do you consider that any of the reforms proposed in this paper will have a particular impact - positive or negative - on a particular equality group (e.g. gender, race, disability, sexual orientation)

Yes No

Each of the proposed offences and protections are instances of VAWG, which is a cause and a consequence of persistent gender inequality. It therefore stands to reason that the proposals will have an impact on women. The creation of a single offence of domestic abuse has the potential to afford access to justice to many more victims than at present. The creation of an offence relating to so-called revenge porn will do the same. The proposals set out in this consultation 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.

For further information, please contact
Lorna Kettles, SWC Research Advisor
Email – lorna.kettles@scottishwomensconvention.org
Telephone – 0141 339 4797

www.scottishwomensconvention.org