

Scottish Women's Convention response to:

The Scottish Parliament Justice Committee Call for Evidence on the Domestic Abuse (Scotland) Bill

April 2017

The Consultation

The Scottish Parliament's Justice Committee is seeking views on the Domestic Abuse (Scotland) Bill.

The Bill was introduced in the Scottish Parliament on 17 March 2017. The Bill creates a new offence of abusive behaviour towards a person's partner or ex-partner. It also includes associated reforms to criminal procedure, evidence and sentencing.

The Scottish Women's Convention (SWC)

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 a variety of Parliamentary, Governmental and organisational consultation papers at both a Scottish and UK level.

The Scottish Women's Convention engages with women using numerous communication channels including Roadshow events, Thematic Conferences and regional contact groups. This submission provides the views of women and reflects their opinions and experiences in a number of key areas relevant to the issues around the creation of a specific offence of domestic abuse.

Question 1:

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?

The SWC is in agreement with regards to redefining the offence of abusive behaviour to cover both physical and non-physical abuse. The Scottish Government's commitment to eliminate Violence Against Women and Girls (VAWG), whilst commendable, is not at present adequately reflected in legislation. Implementing a definition that illustrates the many forms abuse can take highlights the Scottish Government's continuing commitment in emphasising a zero tolerance approach to VAWG. More convictions and harsher sentences would make clear to those who commit these offences that they will not "get off lightly". Many perpetrators defend their actions as part of a pattern of coercive and manipulative behaviour, claiming that the abuse inflicted was unintentional or necessary.

At present, offences relating to domestic abuse are considered separately. Any potential offence which takes place outwith an assault or breach of the peace, for example, is 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 this ordeal 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.”

Despite the work of many women’s organisations throughout Scotland, public perceptions of the nature of domestic abuse are still severely limited, especially in rural areas where “small town mentalities” often play a large role. It is hoped that in changing the law to reflect the sheer scope of abuse, this will go some way to raising public awareness.

Where cases regarding the new definition of non-physical abuse are brought forward, juries should be made aware of the significant emotional impact that non-physical abuse has on women throughout Scotland. Grounds for conviction should still be sought despite an absence of physical indicators.

Question 2:

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?

YES

Whilst the number of women coming forward to report domestic abuse has increased, this is not matched in terms of prosecution rates. Amending the current law to include the differing forms of abusive behaviour is vital in order to ensure that women know they are being recognised and protected by the law. Women must be afforded support from services, the police and the courts in order to be able to effectively document what they have been through.

At present, many perpetrators can often be overlooked due to current legislation. The ways in which abuse can be carried out against women is vast. Many do not even realise that what they are suffering should be termed as abuse and as a result do not seek help.

Women have reported that they often feel the law is not on their side when it comes to reporting their partner’s behaviour. It is vital that the wide range of actions that form domestic abuse are included within the offence. Not only will this ensure a victim-centred approach, but also it will make clear to perpetrators that abusive behaviour will not be tolerated in any form.

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

Specifications within the proposed offence such as “recklessness as to course of behaviour” and provisions for alternative grounds for conviction are welcomed in order to ensure women feel the law is on their side. A Bill which also includes financial and emotional abuse is a positive step forward. Encouraging more women to understand that what they are suffering at the hands of their partners does not have to be purely physically abusive behaviour to be wrong is welcomed. This will ensure that an effective strategy supporting

the victim is embedded within the Scottish Government's approach and women will in turn gain confidence from this.

Question 3

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?

Whilst the Bill itself is welcomed by women, there are a number of issues that have been raised concerning the exact nature of the offence of domestic abuse.

The SWC commends inclusion within the definition of the offence of securing a conviction based on the likelihood of intention to inflict abuse, rather than on grounds of purely physical harm caused. This is a positive measure that goes some way to provide a cohesive strategic framework for tackling the different forms of domestic abuse that may occur. Jurors, however, should be made to understand the severity of this intent. Many women whose partners could be convicted on this alone are often found to have suffered ongoing mentally abusive behaviour, without physical harm. It is therefore imperative that this is treated just as severely.

Given that domestic abuse can happen over a course of time, the SWC supports the requirement for a course of behaviour which amounts to two or more occasions. The inclusion within the Bill of "Alternative available for conviction" allows for a single incident to be treated. However, as many women pointed out, it is more than likely that after investigation under these acts a course of behaviour will appear.

"It's important for women to be able to provide context in cases of domestic abuse. Just because it's an accused's first time in court doesn't mean the abuse hasn't gone on for a long time."

Many women noted that actions carried out by perpetrators may be seen as "loving" to family and friends. They are, however, often coercive, controlling and evidence of serious domestic abuse. Inclusion of a "reasonable person" test within the definition of the offence raises a number of concerns not only in securing a criminal conviction, but also in reporting of the crime. Many women have voiced concerns over difficulties in securing convictions based on non-physical abuse under current legislation. Adding the extra requirement may put victims under further stress, with a fear that they will not be believed in court. This does not align with the approach taken throughout the Bill to ensure victims, the majority of whom are women, are sufficiently protected.

In regards to the notion of "defence on grounds of reasonableness", it is agreeable that the accused must provide evidence for grounds of defence to be established.

Extra care must be taken, however, with this as it may be open to manipulation as to what exactly constitutes reasonable behaviour. For example, perpetrators that state controlling behaviour was in the best interest of the victim. This is especially the case for those with particular vulnerabilities such as women with disabilities or little English.

Question 4

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?

Domestic abuse is heavily gendered and restriction to partners should be emphasised to illustrate the inequality experienced in relationships as a form of violence against women. Due to the nature of a relationship between partners and ex-partners, it is agreeable that the offence specifically relates to this. The policy demonstrates the Scottish Government's commitment to ensuring that instances are tackled appropriately. Such a measure sends the message that those who perpetuate such crimes will be adequately punished.

The SWC commends the provision of a statutory aggravator enshrined within the legislation concerning involvement of a child within domestic abuse. The impact that this form of violence can have on children is wide-ranging and should be explicit grounds for securing extra punishment. Many women have remarked on the fear they have experienced that abuse may become normalised in the eyes of their children in terms of mental as well as physical abuse.

"I'm frightened to tell him that I've spent more than I was supposed to on the weekly shop. When he finds out he'll call me awful, horrible names in front of the kids and they'll think that's normal. I'm scared he will take that job away from me, because it's one of the only times in the week that I get to go out on my own."

Question 5

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

Whilst the SWC commends the wide range of behaviour that is covered as grounds for offence within the Bill, the provision of jury directions by a judge as to why the victim may have delayed reporting the abuse for a period of time would be beneficial. Many women often experience abuse for years without realising it. Given the stigma that is still attached to domestic abuse, jury directions may go some way to ensuring appropriate sentencing. This may also encourage women who would otherwise not come forward due to a fear they will be unable to secure a conviction due to delayed reporting.

"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."

Women have told the SWC that there are *"too many loopholes"*, which discourage them from reporting, or encouraging their friends and family to report instances of domestic abuse to the police. Those who have experienced violence and abuse often drop charges in cases in the mainstream courts as *"financially it's them who have to bear the brunt"*. Case processing times are different (often longer) in smaller, more outlying areas than in main towns. Furthermore, a lack of specialist female police officers and special domestic abuse courts, particularly in rural areas, may hinder women from reporting.

Many solicitors often do not fully understand the complexities of VAWG and are, therefore, not best placed to represent victims. Accessing specialists can be very difficult, particularly for those who live outwith main towns and cities. Many women are also unaware that they are free to seek alternative legal representation if they are unhappy with the advice they receive. Particular attention is often not paid to specific cultural contexts with a failure to treat every domestic abuse case as highly individualised.

“Lack of information and the length of time it can take to process a case means women often drop charges. They have to think about themselves and their children.”

Question 6

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?

Overall, reforms concerning criminal procedure are welcomed by the SWC as a positive step in dealing with domestic abuse. For the vast majority of women, having to face their abuser in court is an extremely traumatic ordeal that can even lead to them not reporting abuse. Therefore, reforms that focus on helping the victim in their ordeal may encourage more women to come forward.

“Too many vulnerable women are frightened of the legal system and do not know where to turn for help.”

Perpetrators of domestic abuse are skilled manipulators who may use their time in court as a way to further control and intimidate their victim. Given this threat of manipulation and the intimate nature of the offence of domestic abuse, the SWC wholeheartedly agrees with prohibition of the perpetrator conducting their own defence.

The SWC also welcomes provisions within the proposed legislation which allow for presentation of certain expert evidence. Standing up in court to give evidence in front of an abuser is a difficult and extremely harrowing experience for a woman to have to do. Being faced with a man who has been controlling over a number of years, while at the same time being asked a number of questions by lawyers, can make women very unwilling to disclose fully what has happened to them.

Question 7

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?

Consideration of non-harassment orders should be routine in all domestic abuse cases. In doing so, this will hopefully send the message that the justice system recognises what women have been through and is willing to hold perpetrator's accountable. Non-harassment orders should also be considered whilst perpetrators are awaiting trial in cases where the accused has pleaded not guilty. Many women speak of the fear they have felt whilst waiting on their case to go to trial. The mental abuse that can be suffered through fear of vindication for reporting their abuser can be a harrowing ordeal for many women. This should be taken seriously into account from the very start of reporting the case.

“There just isn’t enough information available for women who are looking to get protection from the courts. This discourages too many from even trying.”

At present, non-harassment orders and interdicts obtained by women to stop perpetrators being able to contact them are not always policed effectively. Frequent breaches of bail conditions are common.

It is vital that the police and the courts are given thorough training in order to be able to properly deal with both victims and perpetrators. Without this full circle approach, women will continue to be limited in access to justice and redress.

Conclusion

The SWC welcomes and fully supports the introduction of this Bill. The creation of a specific offence of abusive behaviour towards a person’s partner or ex-partner, as well as reforms to current legislation and criminal procedure, has the potential to afford not only justice to more women, but also safety and security for them and their families. This is extremely positive and demonstrates the commitment of the Scottish Government to tackle and eradicate violence against women and girls (VAWG).

For further information, please contact
Shairi Bowes, SWC Research Advisor
Email – shairi.bowes@scottishwomensconvention.org
Telephone – 0141 339 4797

www.scottishwomensconvention.org

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