Justice Committee

Domestic Abuse (Scotland) Bill

Written submission from Action on Elder Abuse Scotland

Q1. A new offence of abusive behaviour towards a partner or ex-partner

We agree with the proposal to create a new offence of domestic abuse. While existing criminal law clearly correlates to physical and sexual abuse, it does not adequately reflect the full nature of psychological abuse. Psychological abuse is a particular concern among older people, accounting for 31% of all calls to our national Helpline. It is important to acknowledge the impact that psychological intimidation and abuse, coercion and undue influence can have on someone’s ability to make free and independent choices, to recognise themselves as victims, and to be able to identify and access support.

AEA Scotland believes that the creation of such an offence would:

- send a message to perpetrators and law enforcement that all forms of domestic abuse are unacceptable and will result in serious consequences;
- lead to victims being more likely to speak up;
- provide protection for adults who are not currently covered by the Adult Support and Protection (ASP) Act or the Mental Health Act.

Although we support the creation of such an offence, we would also recommend going much further by also creating a specific offence of elder abuse as an aggravated offence. This is in recognition of the fact that current legislation does not take account of the additional factors often involved in crimes against older people, including specifically targeting an older person due to their perceived vulnerability. Aggravated offences in relation to elder abuse work effectively in many other countries, and we can see no reason why the same approach cannot be implemented in Scotland. While we have an effective adult support and protection framework to identify, support and protect vulnerable people experiencing or at risk of abuse, it does nothing to address prosecution. Effective prosecution frameworks are vital as a means of creating an effective deterrent against crimes such as these.

Q2. Is the proposed offence needed to address a gap in the existing law which makes it difficult to prosecute some forms of domestic abuse?

Yes, particularly in relation to psychological abuse. We believe that it is important to recognise the impact of undue influence, intimidation and coercion in situations where someone is dependent upon the abusive perpetrator, regardless of whether that person is in a paid or has a personal relationship with the victim.

Psychological abuse can often be subtle and difficult to spot, especially long-term abuse. It can include shouting, blaming, threatening, intimidating, ignoring, humiliating and denying a person access to the things they enjoy or people they love. While any one of these actions on its own may not necessarily constitute abuse, repeated, multiple and/or long-term actions would certainly amount to significant abuse which must be addressed.
Similarly, although some types of financial abuse can be prosecuted under the offences of fraud, theft or embezzlement, AEA Scotland are concerned that the psychological aspects of financial abuse are difficult to prosecute. While the Adult Support and Protection Act gives some protection for adults at risk of harm (which includes ‘unlawful conduct which appropriates or adversely affects property, rights or other interests’), financial abuse is not specifically defined within the Act. It would therefore be useful to consider the Department of Health definition of financial abuse, which includes reference to the psychological aspects of financial abuse:

“Financial or material abuse, including theft, fraud, exploitation, pressure in connection with wills, property or inheritance or financial transactions, or the misuse or misappropriation of property, possessions or benefits.”

Q3. Definition of the offence

Given that the spectrum of domestic abuse is wide-ranging and occurs in different ways and intensities, we would suggest that any attempts to criminalise such abuse would need to be broad enough to cover the full range of abuse, while also avoiding prosecuting ordinary family frictions. This could perhaps draw upon our own definition of elder abuse, which could invariably be applied to any age group.

AEA Scotland would also suggest that neglect of vulnerable adults (perhaps using the definition in the Adult Support and Protection Act) should be made a criminal offence, in the same way as the similar offence relating to the neglect of children. Neglect would include failing to provide food, heat, clothing, appropriate medical attention (leading, for example, to pressure sores), or other things essential to physical and mental well-being.

Although the 2016 Health Act introduced new provisions to criminalise wilful neglect and ill treatment in health and social care settings, we would recommend that this should be extended to any individual who intentionally neglects a vulnerable adult for whom they have caring responsibility. Careful consideration would need to be given to the way in which such an offence was defined to ensure it does not extend to people who do not have a meaningful relationship with the adult, e.g. a short-term lodger, or a family member who does not play a key role in the person’s care, etc.

Q4. Should the offence be restricted to abuse between partners and ex-partners?

AEA Scotland recommends that domestic abuse offences should cover partners/ex-partners, other family members and others with whom the adult has a meaningful relationship within a family home environment on a regular basis (regardless of whether or not they live together), e.g. a friend or regularly interacting neighbour. Careful consideration would inevitably need to be given to definitions and guidance around this to ensure that different types of abuse are prosecuted in the correct way.

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1 ‘No Secrets’, Department of Health/Home Office, 2000
2 “A single or repeated act, or lack of appropriate action, occurring within any relationship where there is an expectation of trust, which causes harm or distress to an older person”.
Although the majority of abuse is perpetrated by family members, older people can be particularly reliant on support and care from friends and neighbours and may therefore be more likely to experience abuse from friends and neighbours compared to younger adults. Over half (51%) of elder abuse at home involves a spouse, and 49% other family members. More than half of elder victims (53%) live with their abuser.\(^3\)

**Q5. Factors which might impact upon reporting, investigation and prosecution**

We know that many older people are extremely reluctant to report harm or abuse due to fear of the consequences. While this is likely to be an issue for any victim of domestic abuse, concerns which are particularly prevalent for older people include:

- fear of loneliness if they report the perpetrator (who are most likely to be a family member). This might include their children no longer visiting (and therefore their grandchildren) or the family’s wider social network
- threats of being placed in a care home
- embarrassed to report their own children or other family members
- feeling that they are a burden and the abuse is somehow their fault
- unable to find the words to explain what is happening to them

AEA carried out extensive research into prosecution of elder abuse in 2016\(^4\). Although much of the data related to England and Wales (as comparable data is not available in Scotland), we believe that similar issues are prevalent in Scotland. We found that very few cases of elder abuse are reported to the police, and of those which are reported, the majority resulted in police cautions, community service or suspended/deferred sentences. Our research found that factors which might impact upon investigation and prosecution for older victims of abuse include:

- assumptions that dementia, memory problems or other cognitive difficulties make older people’s allegations unreliable (“She’s just confused….nothing happened”)
- an assumption that older people do not make credible witnesses
- a perception among older people that their allegation will not be treated seriously or taken further. We found that as little as 6% of victims report abuse to the police, only around 1 in 10 cases reach the attention of adult protection, and out of 18,932 crimes against older people, there were only 194 successful convictions.
- a realisation that elder abuse is not given the same public or statutory attention as child abuse.

**Q6. Reforms to criminal procedure, evidence and sentencing**

We agree with the proposal to prohibit the accused from personally conducting the defence. Given that so few older people report what has happened, and even fewer reach the prosecution stage, this is a vital measure to ensure that the accused’s coercive control over the victim does not impede their ability to speak freely.

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\(^3\) UK study of abuse and neglect of older people, 2007

**Q7. Non-harassment orders**

We believe this is vital, but would recommend that this proposal should take into account the processes covered in the Adult Support and Protection Act in relation to banning orders to ensure that both orders work to the benefit of the victim. Adult support and protection will also need to be taken into account when considering how to support the needs of the perpetrator if they breach the non-harassment order.

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