

Justice Committee

Domestic Abuse (Scotland) Bill

Written submission from Barnardo's Scotland

Key points:

- Perpetrators of domestic abuse should be held accountable for the harm their behaviours do to children as well as the non-abusing parent/mothers.
- The addition of an aggravator in relation to children is a welcome step, but consideration should be given to how this can effectively capture the full range of harm experienced by children.
- Non-harassment orders should be available to children and their mothers as simultaneous victims of domestic abuse.

Introduction

Barnardo's is the UK's largest children's charity; Barnardo's Scotland works with more than 26,500 children and young people in over 130 specialised community-based services. We provide specialist domestic abuse services but also recognise that children and families across all our services may be adversely affected by domestic abuse.

We warmly welcome the Domestic Abuse (Scotland) Bill. The proposed offence of domestic abuse is needed to hold perpetrators to account for the totality of harm done to women and children through the range of abuse that perpetrators may enact through domestic abuse, for example psychological, emotional, physical, financial and sexual abuse. The proposed new offence is an important development, recognising and criminalising the patterns of coercive and controlling behaviour that perpetrators carry out (and not only single incidents that may be prosecuted under existing legislation), and thereby more closely reflecting the often long term, cumulative harm experienced by women and children.

Our primary concern is to ensure that the Bill effectively recognise that perpetrators of domestic abuse harm children as well as the non-abusing parent/mother. We have therefore focused on this issue in our evidence.

Simultaneous abuse of women and children

We believe it is crucial that the proposed offence of domestic abuse recognises the harm that perpetrators of domestic abuse do to children as well as their mothers. Children are harmed in a variety of ways through domestic abuse - for example a perpetrator may restrict a women's access to money, including money for the child, which harms a child by preventing them from participating in school or social activities.

Currently, children can become invisible in the responses to domestic abuse. This is problematic in that the perpetrator is not being held to account for their abusive choices in relation to the child as well as the adult. This is an injustice to children in that we do not recognise their experiences of domestic abuse. This may compromise our ability to protect against domestic abuse more widely, where for example the harm a perpetrator of domestic abuse is doing to a child is not recognised in considering contact. Finally, this detracts from our societal understanding of domestic abuse as simultaneous abuse of women and children.

We understand domestic abuse through a gendered analysis to be abusive behaviour of a partner or ex-partner, overwhelmingly perpetrated by men against women, which harms women and children. For the avoidance of doubt, we are not suggesting that all abuse of children, e.g. psychological abuse of children that takes place outwith the context of domestic abuse, should be covered by a domestic abuse offence.

Aggravation in relation to a child

We strongly welcome the inclusion of an aggravator in relation to a child in the Bill. This is an important step toward recognising the harm done to children in domestic abuse. Where the aggravation is proven it must be recorded as such, offering some sense of formal acknowledgment to the child of their experiences. The requirements for recording and explaining how the aggravation was taken into account also provide benefits in terms of transparency – the potential for greater understanding of when and how the harm done to children has been recognised in the criminal process. The inclusion of an aggravator, and also the explicit inclusion of a child at 2(2)(b) as a person at whom behaviour may be directed, are important developments in making children visible in the proposed domestic abuse offence.

We have concerns that the aggravator as currently drafted does not reflect the full experience of harm done to children through domestic abuse. Children have described their experience of domestic abuse as living in a climate of fear; a child may never have witnessed a particular incident of a perpetrator threatening their mother, but they still experience, and are harmed by, the coercive control of their environment. For example, a perpetrator's coercively controlling behaviour may limit the time that the non-abusing parent is able to interact with the child – if the perpetrator requires the Mother to adhere to a strict timetable this may prevent her playing with her child or helping her child with homework. The child, and the relationship between the child and the Mother, may be harmed by how the perpetrator's behaviour limits their interaction, but it is not clear to us that the aggravator as currently drafted would necessarily be applicable to such harm.

We have particular concerns that the drafting of 4(2)(b), "a child sees, hears, or is present during", sends a message that a child expressly requires to witness domestic abuse in order to be harmed by that abuse. We welcome the recognition from Scottish Government in the Policy Memorandum (paragraph 102) "that children who grow up in an environment where their parent or carer is being abused are harmed". We also note the body of research evidence linking children living with domestic abuse with a wide range of negative outcomes (see e.g. Humphreys and Houghton, 2008). We would encourage the Committee to fully explore the proposed

aggravator, the situations that it will and will not cover and the possibilities for amendments to more closely capture children's experiences of harm in the context of domestic abuse.

Recognising children as victims of domestic abuse

An ongoing concern, which is not entirely addressed by the aggravator, is that children be recognised explicitly as victims of the domestic abuse offence as well as the non-abusing parent. As noted above, this is specifically in relation to the harm caused to a child through domestic abuse, and not about any separate questions of psychological harm caused to children outwith that domestic abuse context. We understand that there may be future opportunities in developments around child protection for considering the possibility of such a parallel domestic abuse offence, and we look forward to engaging in that process. We would emphasise that the purpose of such an offence is to hold the perpetrator of domestic abuse to account for the harm caused to children, and not to criminalise a victim of domestic abuse for perceived failure to protect her child from the perpetrator of the abuse.

Applicability of non-harassment orders to children

One specific concern about the invisibility of children in domestic abuse is that they are excluded from forms of protection, for example non-harassment orders granted following criminal conviction. We are aware that it has not always been possible to apply the protection of a non-harassment order to a child harmed by domestic abuse because they are not recognised as a victim of offences in the context of domestic abuse. This may enable the perpetrator to continue to harm not only the child but also the adult (because they may still be able to make use of the child in their coercive control behaviours). We believe that the protections of non-harassment orders should be available to children and their mothers as simultaneous victims of domestic abuse. One potential way to improve on the current situation would be to provide that where the proposed aggravator is proven the child would be understood to also be a victim of the offence and as such able to be protected through a non-harassment order.

We look forward to engaging further with the Committee on the above issues.

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