Justice Committee

Domestic Abuse (Scotland) Bill

Written submission from the British Psychological Society

About the Society

The British Psychological Society, incorporated by Royal Charter, is the learned and professional body for psychologists in the United Kingdom. We are a registered charity with a total membership of just over 50,000.

Under its Royal Charter, the objective of the British Psychological Society is "to promote the advancement and diffusion of the knowledge of psychology pure and applied and especially to promote the efficiency and usefulness of members by setting up a high standard of professional education and knowledge". We are committed to providing and disseminating evidence-based expertise and advice, engaging with policy and decision makers, and promoting the highest standards in learning and teaching, professional practice and research.

The British Psychological Society is an examining body granting certificates and diplomas in specialist areas of professional applied psychology.

About this Response

The response was jointly led on behalf of the Society by:
Professor Elizabeth Gilchrist CPsychol AFBPS, Division of Forensic Psychology

With contributions from:
Professor Erica Bowen CPsychol AFBPS, Division of Forensic Psychology

We hope you find our comments useful.

Professor Peter Kinderman CPsychol AFBPsS
President, British psychological Society

Dr Scott Hardie CPsychol AFBPsS
Chair, Scottish Branch

8 May 2017
## British Psychological Society response to the Scottish Government

### Domestic Abuse (Scotland) Bill

<table>
<thead>
<tr>
<th>Question</th>
<th>Comments</th>
</tr>
</thead>
<tbody>
<tr>
<td>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?</td>
<td>The Society welcomes this and views it as a very positive step forward by the Scottish Government in seeking to add a provision in Scotland to enable a legal response to behaviour that is known to as a core feature in intimate partner abuse, and which until now has been difficult to quantify and even more difficult to prosecute.</td>
</tr>
</tbody>
</table>
3. Comments:

We note that the definition of ‘a course of action’ within the proposed legislation is consistent with other UK legislation concerning stalking and harassment (Protection from Harassment Act 1997) and view this as a positive.

However, given the documented use of manipulation and ‘gas lighting’ techniques used by an abuser to convince their partner that they are insane (Fontes, 2015) these manipulative behaviours we suggest that this range of behaviours should also be represented within law.

We also note that within the proposed legislation there is provision for the offence to be made out without impact on the victim having to have taken effect. We understand that the offence can be made out even if the ‘victim’ is resilient and does not suffer the intended harm and based on the fact that there was either an intention to control, or a recklessness as to outcome.

The defence of reasonableness needs greater definition…..and this section implied that the onus on the prosecution to prove that the behaviour was not reasonable beyond reasonable doubt (s 5 (2) (b)).

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?

4. Comments:

In relation to this point, we feel that there is a need to maintain the focus on adult intimate abuse as otherwise there is a risk that more general family related violence will detract from the clarity of definition, and that the gender imbalance in the numbers of victims affected by these types of abusive relationships could be obscured. Therefore, we welcome the focus on adult intimate partners but agree that there is a real benefit in explicitly stating that the impact on a child is a specific aggravator.

We highlight that we consider it is a positive feature of the proposed legislation that a single source of evidence is required in relation to aggravation with regard a child.

However, given the ample evidence of the negative impact of witnessing and being a direct victim of inter-parental violence (e.g. Wolfe et al, 2003), we feel that if there were potential grounds for the prosecution of child abuse offenses
then a note within this legislation specifically mentioning the possibility of additional prosecution if there are grounds for child abuse charges might be of benefit. This would provide greater recognition of the overlap between these two forms of family violence (Roark et al, in press), and would also serve to highlight the seriousness of offences against a child in this context, rather than diminishing them to an aggravating contextual factor.

| Do you have any views on factors which might impact on the reporting, investigation and prosecution of the offence? |
| 5. Comments: |
| We would recommend that training will be needed to help those involved in investigation and prosecution of the offence recognise the range of behaviours, key markers within controlling relationships, and ex-relationships. |
| One aspect of the Bill that we find as positive and see as likely to mitigate reluctance to report and challenges to the investigation and prosecution of this offence is the specific provision for the use of expert testimony. |
| We feel this provision could be strengthened. For example we feel that the role and the various points of input could be more explicitly stated: this might include a role of advising the investigating officers; providing expert input for the prosecution authorities both pre-trial and during the proceedings and providing input in relation to the impact of the behaviours on the victim, and potentially in clarifying the definition of reasonableness. We consider that this could increase the effectiveness of investigation and prosecution of the offence. |
| Training from such experts for the various professionals involved would be of value. Additionally we suggest that support for experts to work with victim support and victim advocacy in helping victims to understand the impact would be of great value. |
| We also feel that the presumption as to relationship will need to be carefully thought through and that there may be a training need in relation to how to identify legitimate challenge to the relationship status and less legitimate challenges. |
| One issue that will need to be highlighted is the fact that in terms of some stalking behaviours, and some behaviours linked to abuse by ex-partners, the evidence would suggest that it is more likely complainant feels it is not a relationship whilst the accused is continuing to believe there is one. We would highlight a concern that this could be confusing and problematic in that if an ex-partner or a potential ‘victim’ of this offence wants to challenge the relationship status, it could mean that they cannot access the protection of this proposed law. How would a lack of agreement over this be resolved? We feel that lack of agreement as to whether there has been or continues to be a relationship could |
affect reporting. We also feel that there may be a training need here, and/or further definition needs to be provided.

The definition of relationship also has a potential age bias within it as evidence shows that younger people are more likely to engage in transient, short-term relationships, or patterns of non-intimate dating that do not fit within the current relationship definition, and that physical and non-physical forms of abuse occur across this spectrum of relationship types (Bowen & Walker, 2015). Consequently, the proposed definition presents a very narrow scope of relationship configurations, which may lead to under-reporting of violence, and abuse experienced as the law would be perceived as 'not relevant'.

One further issue in relation to definitions of relationship is that we suggest there may be some unexpected challenges that may arise, and that some of these challenges could be used to portray the victim in a negative way for example using engaging in an intimate relationship in a way as to demean women.

These two points may be further barriers to reporting, and to recognizing, investigating and prosecuting the proposed offence.

**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?**

6. Comments:

We would highlight that it is extremely positive that steps have been taken in relation to minimising the potential for an abusive partner to use the legal process to continue to enact the abuse in court. The restriction on running their own defence is very important as the reality of abusive relationships is that without clear support and court enacted protection it is likely that many victims would find it extremely difficult to engage with the prosecution process. It is very important that within this legislation, the impact of the coercive control is recognised and we fully agree with this prohibition, seeing it as both necessary and proportionate.

One additional suggestion is that we might suggest that some restriction on the type of questioning might also be advised. For example we would suggest that it might be beneficial to restrict questions put on behalf of an accused in a similar way as happens in cases of allegations of sexual assault (‘rape shield’ restrictions) so that a previously abusive partner would be prevented, even via their lawyer, to ask about sexual activities, use of contraception and so on.
<table>
<thead>
<tr>
<th>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?</th>
</tr>
</thead>
</table>
| **7. Comments:**

The linking of this offence with a non-harassment order is very positive in terms of both potentially providing an additional support for victims, additional tools for those supporting victims and managing offenders to manage risk and also very positive in marking.

<table>
<thead>
<tr>
<th>References</th>
</tr>
</thead>
</table>