Justice Committee

Domestic Abuse (Scotland) Bill

Written submission from Community Safety Glasgow

Community Safety Glasgow (CSG) works in partnership with a broad range of other agencies and services including Glasgow City Council and all other organisations within the Council family, Police Scotland, Scottish Fire and Rescue Service, NHS Greater Glasgow and Clyde, as well as a wide range of third sector organisations across the City.

CSG has four strategic priorities which shape service delivery and correlate to the priorities of Glasgow City Council and Police Scotland and has a wide range of services which are designed to help deliver the aim of creating a safer, cleaner, better Glasgow.

Under the strategic priority of Supporting Victims of Gender Based Violence, CSG recognises that GBV is a significant community safety issue, affecting people from a wide range of diverse backgrounds. CSG has a number of services operating under this priority including TARA, Trafficking Awareness Raising Alliance, who support women trafficked for sexual exploitation and Routes Out, who support women to exit prostitution.

ASSIST, CSG’s independent Domestic Abuse Advocacy service, operates across twelve local authority areas and is co-located with Police Scotland in Dumbarton, East Kilbride, Kilmarnock and Renfrew as well as in CSG’s headquarters in Glasgow. ASSIST supports women, children and men to reduce the risk and improve the safety of all victims of domestic abuse. Reports are provided on a daily basis to COPFS and a significant amount of partnership working across both the statutory and voluntary sector is undertaken.

This response is structured around the Justice Committee’s questions as follows:

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?_

Community Safety Glasgow welcomes the publication of this bill. It is a significant step forward to ensuring that the full damage suffered by victims of domestic abuse as a result of coercive control by an intimate partner is recognised by the criminal justice system.

Domestic Abuse is a serious issue that blights the lives of all who experience it. Like all forms of violence against women, it is both a cause and consequence of women’s inequality.

It is an attack on the human rights of an individual and it is important that Scotland ensures that domestic abuse of its citizens will not be tolerated. It is essential that all aspects of domestic abuse are covered by this bill.
Although physical abuse is covered by other crimes, the context within which a domestic assault occurs is crucial to an understanding of how the process of domestic abuse impacts on victims.

Every victim talks about the devastating impact of emotional and psychological abuse. Every victim says physical bruises heal but the emotional ones have a greater impact.

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?

The fact that domestic abuse occurs between two people who have or have had an intimate relationship, brings with it particular difficulties, both for the criminal justice system and for the parties involved.

Domestic abuse is not an isolated incident, but a complex pattern of capricious behaviour that escalates over time. It is difficult to comprehend that the person you have chosen to have a close relationship with is harming you and due to the very nature of that abuse, it is not unusual for it to occur over a period of time.

Although there are some opportunities under the current legal framework to prosecute a course of behaviour, such as in a stalking situation, there is still a gap where emotional and psychological abuse is not addressed and is therefore invisible. Victims tell us that there is no point in telling the police what is happening to them as there’s ‘nothing the police can do’, so there is still a gap that requires attention.

For many victims the absence of physical violence from their current or former partner prevents them from naming and identifying their experience as domestic abuse. All those who suffer domestic abuse, will report experiences of emotional, psychological, financial and sexual abuse to a greater or lesser extent.

A lot of the domestic abuse currently not considered criminal behaviour generates real harm and has a profound and lasting impact on those who experience it. In her book, ‘Trauma and Recovery’, Professor Judith Herman considers the impact of psychological abuse and the control of victims’ lives as being akin to a hostage situation (Herman 1992).

It is not unusual for victims to develop Complex PTSD and to require specialist help to allow them to recover and reconnect with society. In a study by Golding (1999), two-thirds of victims developed complex PTSD. SafeLives (2015) found nearly one in four victims had attempted suicide while 13% reported self-harming behaviours.

Professor Evan Stark in his book Coercive Control describes domestic abuse as a liberty crime and an abuse of human rights and cites ‘brain washing’ mind games, which are deliberate and intended to reduce the capacity of victims to function on a day to day basis.
Clients of ASSIST regularly say to workers that they feel that the justice system does not fully recognise what has happened to them and therefore does not hold perpetrators fully accountable. Victims say that they feel disempowered, that they are unable to speak about the full extent of what has happened to them as the charges don’t reflect the depth of their experiences. Victims and perpetrators know that a lot of abuse is not illegal, so views like, ‘he flies underneath the radar’ are commonplace. Even when some behaviour can be included in the current law, for example, threatening or abusive behaviour under Section 38 of the Criminal Justice and Licensing (Scotland) Act 2010, the charge still isn’t adequate to capture the complexity of the victim’s experience. It is important to stress though that most victims are not looking for retribution, but to ensure no-one else experiences what they have had to.

As a society, we have issued statements, changed processes and run campaigns all designed to persuade people that the right support exists if only they would report the domestic abuse, however the absence of such a large part of victim experience being criminalised means that we underplay what is happening to them, contribute to mixed messages within society and unintentionally aid the actions of the perpetrator.

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?**

Domestic abuse cannot be reduced to one incident. It is a pattern of behaviour and therefore we support the new offence including the requirement for a course of behaviour to be demonstrated. This is important as it will ensure the totality of a victim’s experience is captured in order to bridge the gap not covered by existing offences and crimes. The inclusion of the condition that a reasonable person would consider such behaviour is likely to cause harm is helpful and to distinguish between what would generally be considered to be normal behaviour and domestic abuse. It is important to understand that there is a difference between arguments or disagreements that people in an intimate relationship may have under normal circumstances and behaviours that involve domestic abuse.

It is imperative that the impact and consequences of all types of abusive behaviour including non-violent domestic abuse is recognised and therefore the framework requires to be flexible enough to adapt to the different experiences of victims, yet at the same time, not criminalise what would be considered the ups and downs of a non-abusive domestic relationship nor indeed be used by perpetrators to further abuse their partners or ex-partners.

The current proposal which cites issues of dependence, subordination and isolation; controlling, regulating and monitoring activities; depriving or restricting freedom of action or frightening, humiliating, degrading or punishing someone makes this distinction and is very helpful. Experience from England and Wales, where they introduced an act with a similar aim but not a similar approach illustrates that setting a definitive set of criteria has proved not to be helpful in prosecution, so therefore section 2.2 (b) where domestic abuse would be demonstrated by one of more of the actions listed is a good way forward.
Extreme care will be required when considering the defence of whether someone’s behaviour is reasonable. For example, vulnerable victims can experience domestic abuse from their partner, who is also the person responsible for their care. These situations can be complex and present particular challenges that will require investigators and prosecutors to have a good knowledge of the nature of domestic abuse. Some actions may well be reasonable, whilst others may not and the criminal justice system must be adept at identifying both and ensure that the most vulnerable receive appropriate protection. Those who perpetrate domestic abuse sometimes target those who could be considered vulnerable to ensure their actions are less likely to be identified.

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?

The offence should be limited to partners and ex-partners in line with the definition of domestic abuse in Scotland, which is recognised as a gendered act and rooted in women’s inequality. This definition also recognises the profound impact on anyone, whether male or female if they are a victim of DA. It is important that this understanding of and gendered definition of Violence Against Women as identified in the Scottish Government’s Violence Against Women and Girls Strategy, Equally Safe remains Scotland’s approach. This approach does not exclude male victims, but reflects the causes and consequences of domestic abuse in our society.

The introduction of an aggravator in relation to a child is welcome; however, limiting it to when ‘a child sees or hears, or is present’ brings with it the danger that as a society we are accepting that the impact on children of living with domestic abuse is only in these circumstances. Living in a household where there is domestic abuse causes harm to children. Children are often used by the perpetrator as a weapon with which to abuse the non-abusing parent and even when there is no relationship between the adults apart from being a parent to the children, the perpetrator’s access to children is still used on many occasions as a way of continuing the abuse to the adult victim.

However, the perpetrator’s actions impact on children who are victims in their own right. Living with a parent who is abusive can result in significant damage to a child or young person. The elements of this bill in relation to children do not go far enough in recognising this victimisation of children and this issue needs addressed, if not in this bill, then by another route. The bill could however, be improved by the insertion of a similar provision in terms of the ‘recklessness’ of the perpetrator as to whether a child sees, hears or is present’ is inserted here.

5. **Do you have any views on factors which might impact on the reporting, investigation and prosecution of the offence?**
Appropriate training must be given to all those within the criminal justice system who have a part to play in implementing this new offence, whether as investigators, prosecutors, report-writers or sentencers. This offence should not seen as less important than other charges, but as an important development of the law.

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?**

As previously stated, the fact that domestic abuse occurs between two people who have or have had an intimate relationship, brings with it particular difficulties and therefore allowing victims to be questioned by the perpetrator is inherently wrong and interferes with the quest to establish best evidence.

This should also include obtaining precognition statements and the provisions in the bill outlining this are therefore welcome. This approach should be applicable to all courts wherever cases of domestic abuse are heard. The exclusion of the JP court does not make sense unless of course that court will categorically not hear any domestic abuse cases.

The provisions allowing for expert witness testimony will be helpful in helping the court understand the complexities of domestic abuse. Common misconceptions abound around the issue of domestic abuse and it is important that the court is able to explore any issues that arise. This could be particularly helpful in terms of establishing ‘reasonableness’.

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?**

This is crucial aspect of the bill. Society has a responsibility to ensure that victims are protected from further offences and victims should not be expected to pay for their own protection from criminal behaviour. It is common for abusers to refuse to ‘let the victim go’ and providing protection by way of a non-harassment order where warranted, will provide a deterrent ensure that these cases do not return to court unless there is wilful disobedience. It is to be hoped that when this bill is passed and protection is available that it will prove a deterrent from further behaviour.

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