Introduction

Families Need Fathers Scotland is grateful for the opportunity to contribute to the deliberations of the Justice Committee on the Domestic Abuse (Scotland) Bill. We base our submission on the insights that we have gathered since 2009 from the enquiries we receive by telephone and email and from the experiences shared by the individuals who have attended our monthly support group meetings in Edinburgh, Glasgow, Stirling, Paisley and Aberdeen.

The majority of those who contact us are non-resident fathers but a significant proportion of our requests for help and information come from mothers, new partners, aunts/uncles and grandparents. The number of contacts has grown steadily and has exceeded 3,500 in the current year from just under 900 individuals.

We also engage positively with the range of professionals who get involved when parents can’t find their way to an arrangement for sharing the parenting of their children after separation.

The Domestic Abuse (Scotland) Bill

Questions 1 and 2: From the perspective of the individuals who ask for our help FNF Scotland gives a qualified welcome to 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 qualification in respect of the overall aim of the Bill is that it is apparent from the experience in England and Wales that implementation of Section 76 of the Serious Crime Act 2015 (which introduced the concept of coercive control into their criminal law) has fallen short of the expectations held out for it.

The second qualification, perhaps paradoxically, is also part of our welcome.

The legislation in England and Wales effectively excludes non-resident parents - fathers or mothers - who feel that the denial of contact with their children or the continuing frustration and undermining of their relationship with their children is a form of coercive control. The Domestic Abuse (Scotland) Bill does not appear to have that exclusion and therefore we welcome it for “addressing a gap in the existing law which currently makes it difficult to prosecute some forms of domestic abuse”.

Our preference is for a broader overhaul of family law in Scotland that will give equality of recognition in public policy to the role both parents can play in the lives of their children. Scotland needs to move on from the prevailing acceptance of the adversarial approach in which parents ‘win time’ with their children from each other.
Until then, however, we believe the Domestic Abuse (Scotland) Bill may be of use to a substantial number of the parents who ask for our help.

We are focussing on the issues that affect non-resident parents because that is where we have first-hand knowledge and insight. That should not be taken as indifference to others whose experience of coercive control is covered by the Bill.

**How might a criminal offence of coercive control help non-resident parents?**

We encounter a spectrum of coercive control from the constructed ambush to the persistent and pervasive controlling of the life of the non-resident parent. In terms of the Policy Memorandum accompanying the Bill we see at first hand examples of isolating an individual from friends, family and wider society; psychological control and manipulation; threats and creation of a climate of fear, including threats about children.

We note the statistics section paras 166 – 169 of the Policy Memorandum. We would point out the catch 22 in the police statistics. If they don’t recognise as a crime the kind of coercive control we are discussing they cannot record it. Similarly the crime survey does not explicitly include control of one parent’s relationship with his/her children as an example of coercive control.

**The ambush**

We are aware of occasions in which an incident has been engineered at the “handover” of children in order to bring in police.

In terms of Question 3 we believe that where an incident has been created with the aim of placing a non-resident parent at risk of arrest this should constitute an offence without requirement for a course of behaviour.

These incidents happen and at present the victims feel they are left abused and unprotected at the time they need it. An acquittal at trial months later doesn’t undo the damage or rebuild faith in Scottish justice.

At a more attritional level scores of non-resident fathers (and mothers) have told us they have turned up to collect their children for agreed or court-ordered contact time to be told on the doorstep, “They’re not coming and there’s nothing you can do about it.” It is not always expressed so delicately.

Some have gone to the police and have been told, even when they can show a court order, “There’s nothing we can do. It’s a civil matter.”

This Bill would at least allow the police to record an offence.

Unfortunately, other non-resident parents in that situation end up in an argument on the doorstep. They are likely to be emotionally vulnerable at that point because they are anxious and excited about seeing their children. They are in an extremely exposed position and if the police are called they will end up in the cells for the weekend that they should have spent with their children.
We feel it is a scar on the reputation of Scotland as an enlightened society that many children find themselves watching their father being led off in handcuffs by police despite being victims of what the Domestic Abuse (Scotland) Bill would now define as an example of coercive control. In terms of question 4 we agree that this ought to be considered an aggravation when they are witness to such a spectacle.

The damage caused by such conduct does not end with the incident itself. Where a non-resident parent has been detained in the cells s/he may or may not be charged and then s/he may or may not be prosecuted and then s/he may or may not be convicted. Some employers are supportive of the presumption of innocence. Other non-resident parents in this situation have lost their job.

Even if s/he is never charged the ‘incident’ will be brought up at the next child welfare hearing to impugn his/her character.

If charges are brought bail conditions will be imposed that restrict contact with the alleged victim.

Unless the criminal defence solicitor thinks to ask for specific arrangements to be made that effectively denies contact with the children for however many months it takes for a case to come to trial.

**A continuing campaign of coercive control**

The FNF Scotland caseload includes a host of examples of how disrupting the time and frustrating the quality of the relationship between the non-resident parent and his/her children is used by the parent with most care to disrupt the life, drain the resources and undermine the self-confidence of their former partner and ultimately to undermine the relationship he has with his children.

In terms of Questions 1 and 2 we believe these should also fall within the Bill’s definition of coercive control of a former partner.

These include:

- Refusing to communicate at all
- Refusing to communicate unless through (an expensive) solicitor
- Delaying decisions on arrangements such as holiday dates until the last minute
- Changing contact arrangements at the last minute without reason or explanation
- Constantly being late for agreed or court ordered contact
- Taking children away from school on holiday without notice or agreement
- Refusing to engage with the non-resident parent on key decisions such as school placements
- Instructing health providers not to engage with the non-resident parent
- Instructing schools not to engage with the non-resident parent
- Demanding “cash for contact”
- Demanding to know every detail of what the child does when with the non-resident parent in a way they would refuse to reciprocate
- Hiding a tracking or listening device in the clothes or toys of a child when the child is having contact with the other parent
- Criticising the other parent’s parenting skills
- Criticising and undermining the other parent in front of their children
- Criticising the other parent’s choices of clothes or food while the child is with them
- Demanding the right to withhold contact from a new partner
- Making unfounded allegations about a range of matters both trivial and potentially criminal to friends, neighbours, family members directly and on social media aimed at isolating and undermining the character of the non-resident parent
- Making unfounded allegations about a range of matters both trivial and potentially criminal to professionals putting the non-resident parent in the position that he is under constant pressure to prove his worth as a parent
- Complying with contact arrangements – even those set out in a court order – only when it suits them

The aim of these behaviours may or may not be to force the non-resident parent to give up and walk away from his children but they tend in that direction. We believe they constitute the kind of coercive control that will be covered by the Bill.

Non-resident parents report frequently that they are frustrated at the difficulty they encounter in having these behaviours taken seriously. Even when there is a court order or minute of agreement in place the onus of establishing a contempt of court falls on the non-resident parent who feels himself to be doubly the victim of wilful conduct. There are further delays and expense. The Bill, as we understand it, would take the pressure off the victim of such conduct and allow it to be investigated by police.

**Question 6 Sentencing**

We stated at the beginning of this submission that we accept but reluctantly that there is at present a role for the criminal law to help tackle the kind of abusive conduct of ex partners as outlined above.

In these circumstances we urge that there should be flexibility of sentencing options available to the sheriff or judge to include community disposals as alternatives to imprisonment and/or fines. The aim of sentencing should reflect the seriousness with which the court sees the offence but without inflicting further damage on the victim. We already hear from sheriffs in contempt cases that they don’t want the parent offended against to get the blame for “sending the other parent to gaol.”

In terms of Question 7 a non-harassment order may be required to help the controlling parent understand that their behaviour must change.
Summary

Our experience is that the kind of coercive control we see in which one parent controls the relationship that the other parent has with his children and causes damage both to the children and to the other parent falls within the objectives set out in paras 4 and 5 of the policy memorandum.

Explicitly including the kind of behaviour we have described should not conflict with the other intentions of the legislation but would address the sense of injustice that many non-resident parents and their extended family presently feel. It is not healthy for any system of justice to disregard such a powerful sense of unfairness.

Families Need Fathers Scotland
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