

SCRA response to the Scottish Government's consultation

Background

The Children's Hearings System is Scotland's distinct system of child protection and youth justice. Among its fundamental principles are:

- whether concerns relate to their welfare or behaviour, the needs of children or young people in trouble should be met through a single holistic and integrated system
- a preventative approach, involving early identification and diagnosis of problems, is essential
- the welfare of the child remains at the centre of all decision making and the child's best interests are paramount throughout
- the child's engagement and participation is crucial to good decision making

SCRA operates the Reporter service which sits at the heart of the system. SCRA employs Children's Reporters who are located throughout Scotland, working in close partnership with panel members and other professionals such as social work, education, the police, the health service and the courts system.

SCRA's vision is that vulnerable children and young people in Scotland are safe, protected and offered positive futures. We will seek to achieve this by adhering to the following key values:

- The voice of the child must be heard
- Our hopes and dreams for the children of Scotland are what unite us
- Children and young people's experiences and opinions guide us
- We are approachable and open
- We bring the best of the past with us into the future to meet new challenges.

Response

SCRA welcomes the opportunity to comment on the Scottish Government's proposal for a criminal offence of domestic abuse.

The Children's Hearings System plays a critical role in protecting children who experience and are affected by domestic abuse. SCRA is currently working with Scottish Women's Aid to deliver specialist training for Reporters on the issue, in order to ensure that practice and decision making is informed by the most up to date understanding of the issues.

The Children's Hearings (Scotland) Act 2011 introduced for the first time a specific ground related to domestic abuse. This has allowed SCRA to report on the numbers of children referred to the Reporter on this ground. In 2015/16, 2,742 children were referred to the Reporter because of concerns that they had

been exposed to domestic abuse. Children were more likely to be referred on this ground in their first year of life than at any other age and 22.3% of those referred were aged between birth and two years. This data highlights the vulnerability of children to experiencing this kind of abuse.

We are therefore supportive of the Scottish Government's intent to create a specific domestic abuse offence. Please see below for detailed comments on the questions posed in the consultation paper.

Q1

We agree with the wide scope of offence and that physical and psychological abuse can all be part of the dynamic. However, we believe there is a need to incorporate other forms of abuse, for instance financial abuse.

Q2

It would be helpful to understand more about the thinking behind requiring a reasonable person to think that the victim would suffer harm, rather than just that a reasonable person would suffer harm. On the face of it this still seems to potentially require information about the victim to form part of the evidential picture.

We also question whether there would be a negative impact of allowing the domestic abuse offence to be founded on a single instance of conduct rather than requiring a course of behaviour. Behaviour which is abusive is a high test and unlikely to catch "ordinary" behaviour.

The current proposed approach risks being unable to prosecute behaviour which is part of domestic abuse where it is not possible to prove another "incident" beyond all reasonable doubt. There is thus less of an opportunity to work towards ending all violence against women and children. If the purpose of the legislation is to send a message to perpetrators, and increase the safety of women and children against all forms of violence, the offence needs to be as wide as possible.

Q3

As noted above, we consider that the definition of abuse ought to include physical, sexual, psychological, emotional or financial abuse. All of these things can take place in domestic abuse and it is important not to restrict the scope of thinking about what is going on within the home.

Q4

Whilst acknowledging that there is a particular dynamic to domestic abuse that is often about power and control within a relationship, nevertheless it has to be acknowledged that (a) domestic abuse is part of the continuum of gender based violence that women and girls experience and (b) children are directly affected by living with domestic abuse. It also constitutes a form of abuse by the perpetrator against the child and children can often be targets within the context of domestic abuse. Notions of 'witnessing' don't fully describe the variety of ways in which children experience domestic abuse – for example, children can be directly physically involved, trying to protect the victim, or they can be used as part of the domestic abuse itself.

Some of this behaviour will be prosecuted as separate child abuse but like the lower level but pervasive and equally harmful behaviour against adult women, some of it may not be recognised as a crime, or as part of the wider pattern of abuse.

While we can understand the wish not to confuse the issue, we do therefore think there is a risk of missing an opportunity here to target wider gender based violence and reduce abuse of children. We suggest there may be merit in considering two distinct offences: abusive behaviour towards a partner; and abusive behaviour towards a family member in the context of domestic abuse. The latter could be achieved by having a new section 2 (so an entirely separate offence) but it would only be an offence if it was also related to abusive behaviour towards a partner or ex-partner.

Q5



We question whether a defence is necessary or appropriate. We note that the English legislation includes a statutory defence, but it is significant that the offence there is “controlling or coercive” behaviour. That could encompass a wide range of behaviour, whereas the Scottish draft offence only relates to “abusive” behaviour, which a reasonable person would believe was likely to cause harm, and where the perpetrator intends or is reckless as to the likely harm. It is hard to envisage a circumstance where such behaviour could ever be reasonable, and provision of a defence might give the wrong impression that it could ever be considered such.

Q6 and Q7

We have no specific comment on these issues.

Q8

Finally, we note that the draft offence does not define “intimate personal relationship”. However, in light of research that increasingly shows the extent to which young people experience domestic abuse, we seek some reassurance from the Government that the term is intended to cover adolescent romantic relationships which may not yet involve sexual activity.

Drafting suggestions

Based on the above comments, we offer the following suggestions around drafting. We would be happy to discuss any of these comments with Scottish Government colleagues going forward.

s.(1)(a) Delete “a course of”

s.(1)(b) Just “suffer harm” as opposed to “suffer physical or psychological harm” or widen it to “suffer physical, sexual, psychological, emotional or financial harm”

s.(1)(c) Delete “physical or psychological” as above

s.2 Start with “abusive behaviour” is any behaviour which involves physical, sexual, psychological, emotional or financial abuse of another person.

s.2(1) After “includes”, insert “but is not restricted to”

s.2(2) Include “exploiting B’s resources and capacities for personal gain, depriving B of their ability to be independent, and to escape from a relationship”

s.3 Include a definition of “harm” – “includes physical, sexual, psychological, emotional or financial harm.

Delete s.3(3)(a)

Include a new section covering abusive behaviour towards other family members where this is linked to domestic abuse of a partner, or ex-partner.

