



## **Domestic Abuse (Scotland) Bill**

### **Evidence to the Justice Committee**

#### **INTRODUCTION**

1. Victim Support Scotland (VSS) welcomes the introduction of the Domestic Abuse (Scotland) Bill. VSS is the largest charity supporting people affected by crime across Scotland through the provision of practical help, emotional support and essential information. A significant amount of work embarked on by VSS relates to Domestic Abuse. As such, we welcome the opportunity to provide evidence to the Justice Committee.

**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?**

2. VSS welcomes the proposal in **s.1 (1)** to create a new offence of abusive behaviour towards a person's partner or ex-partner. Current legislation does not adequately reflect the experience of victims and so the creation of a statutory offence of domestic abuse will increase the justice systems ability to respond to this crime.
3. VSS is supportive of **s.1 (2) (a)** that the definition of domestic abuse covers both physical and non-physical abuse. The inclusion of non-physical abuse recognises the full spectrum of domestic abuse and the complex dynamics inherent in this crime - including psychologically coercive and controlling behaviour.

**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?**

4. VSS agrees the proposed offence is needed to address a gap in existing law which currently makes it difficult to prosecute domestic abuse.

5. Domestic abuse is an unacceptable feature in the lives of far too many people in society. By its nature, it is a largely hidden crime, typically occurring in private, and remains widespread throughout Scotland. Domestic abuse also tends to involve patterns of abusive behaviour and repeat victimisation, characterised by a pattern of coercive control which often increases in frequency and severity.
6. Current legislation does not adequately address the nature of this crime and the impact it has on victims.
7. Domestic abuse can take many forms, including, but not limited to, patterns of intimidation, degradation, isolation, coercive control, psychological and/or emotional, physical, sexual, and financial abuse, harassment, stalking and cyber abuse. It is crucial for legislation to recognise the various forms which domestic abuse can take and that domestic abuse is often made up of a variety of these forms of abuse which tend to be repetitive and cumulative in nature.
8. The proposed offence is required if we wish to create meaningful legal redress for those experiencing domestic abuse.
9. The proposed offence moves beyond the focus on physical abuse to a more complex definition encompassing non-physical forms of abuse. Moreover, the new offence is necessary, to enact legislation which recognises the often cyclical, repetitive nature and complex dynamics of domestic abuse.

**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?**

10. VSS welcome the definition of the draft offence of “*domestic abuse*”.
11. VSS agrees with the requirement in **s1. 1 (a)** for a course of behaviour and in **s. 9 (4)** that this involves behaviour on at least two occasions. This reflects the reality of domestic abuse, which is often on-going, repeated and cumulative, involving a cycle of abuse occurring over time.
12. The current approach of prosecuting individual offences or the alternative approach of separating types of abuse is too narrow. The requirement for a course of behaviour allows the severity and impact of domestic abuse to be considered when seeking legal redress.

13. By allowing all types of abusive behaviour to be prosecuted together, as a course of conduct, the new legislation will greatly strengthen criminal justice in this area and allow prosecutions to occur, which would not have been possible before.
14. VSS welcomes the recognition in the Bill in section **s.2 (a)** of the psychological harm domestic abuse can cause.
15. By including psychological abuse in the definition, it enables the justice system to appropriately deal with this crime, and also recognises that some people experience only psychological harm.
16. VSS is encouraged by **s.2** regarding what constitutes abusive behaviour, as it encompasses a wide variety of behaviours which encompasses the various forms domestic abuse can take and **s.2 (3)** recognises the variety of effects domestic abuse can have on the victim.
17. VSS also supports the inclusion in **s.3** regarding evidence of impact on a victim. Notably, that the *“commission of an offence under section 1 (1) does not depend on the course of behaviour actually causing B to suffer harm of the sort mentioned in section 1 (2)”*. This is important, as it moves the focus away from the reaction of the victim, to focusing, rightly, on the behaviour and actions of the perpetrator alone.
18. This is important as there is no ‘normal’ or uniform response to experiencing domestic abuse; each victim may react differently and often may not realise the extent of the harm caused until a much later date. This approach removes the need for a particular reaction to be present in the victim in order for behaviours to be prosecuted.
19. VSS also welcomes the condition in **s 1. (2) (b)** that either **(i)** *“A intends by the course of behaviour to cause B to suffer physical or psychological harm, or (ii) A is reckless as to whether the course of behaviour causes B to suffer physical or psychological harm”*. This is welcome as it removes the requirement for the prosecution to prove the intent of the accused to cause harm. Proving intent to harm is challenging as the accused can simply argue they did not intend to cause harm. This section ensures such a proposition is not a barrier to prosecution, particularly as many offenders of domestic abuse use the pretence of the abuse being unintentional as part of their controlling behaviour.
20. No current objections to the proposed defence.

**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?**

21. VSS agrees that this offence should be restricted to abuse between partners and ex-partners.
22. Further, insertion at **s.4** in respect of “*Aggravation in relation to a child*” is welcome as it reflects properly the impact of domestic abuse on children and that the offence may be aggravated by involving a child.
23. In particular, at **s.4 (3)** we are satisfied that evidence from a single source will be sufficient to prove that the offence is so aggravated and that at **s.5 (b)**, references to a child will be those under 18 years of age. Witnessing or experiencing domestic abuse can have the effect of normalising abuse for children.
24. Additionally, the inclusion of **s.4** is welcomed, as it recognises the perpetrator may direct domestic abuse towards a child or may utilise a child in directing abusive behaviour towards the victim. The perpetrator “B” may involve a child in domestic abuse in order to cause further psychological harm to “A”. The proposed legislation recognises this in **s.4 (2) (a)** and also recognises the harmful effects on children by witnessing domestic abuse in subsection **(b)**.

**Do you have any views on factors which might impact on the reporting, investigation and prosecution of the offence?**

25. It is common for victims of domestic abuse to be reluctant to report abuse for fear of reprisal and/or when there are consequences for involved children. The stigma which continues to surround domestic abuse means victims may also fear they will not be believed or adequately supported if they come forward. It is crucial for those in this situation to have faith in the justice system and to know that they will be listened to and served by the new offence, and not failed due to a course of abusive behaviour being too difficult to prove.

26. For those of black and ethnic minority backgrounds, these fears may be further exacerbated due to cultural differences. It is crucial to understand the unique factors affecting women in these communities who experience domestic abuse – such as forced marriage and honour based abuse. It is important to recognise that there may be multiple oppressions experienced to varying degrees because of their gender, race, class, sexual orientation and ethnic origin, which intersect with their social environment. A lack of awareness by professionals of these cultural differences can impact on reporting, investigation and prosecution of domestic abuse in black and ethnic minority communities.
27. Although domestic abuse is largely gendered and affects a greater number of women than men, Police Scotland figures have shown a rise in the reporting of domestic abuse experienced by men – up from 12% in 2005-06 to 20% in 2014-15<sup>1</sup>.
28. It is also important to recognise that male victims often require services that are tailored to their needs, and that these needs may not be the same as those of female victims.
29. Additionally, in a study of Transgender People’s Experiences of Domestic Abuse, 80% of respondents stated they had experienced emotionally, sexually, or physically abusive behaviour by a partner or ex-partner<sup>2</sup>. It has also been found that transgender people are more likely to have negative experiences when attempting to access services and support<sup>3</sup>. This will naturally impact on the reporting, investigation and prosecution of the offence for transgender victims.

**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?**

30. We welcome the Bill’s law reforms, resulting in the prohibition of the accused conducting their own defence in domestic abuse cases. This is in keeping with our contribution to the recent consultation. This is appropriate to provide adequate protection to victims, in order to avoid abusers using the court process as a further opportunity to exert control over their victim and intimidate them further.

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<sup>1</sup> <https://news.gov.scot/news/domestic-abuse-statistics-published>.

<sup>2</sup> [www.scottishtrans.org/wp-content/uploads/2013/03/trans\\_domestic\\_abuse.pdf](http://www.scottishtrans.org/wp-content/uploads/2013/03/trans_domestic_abuse.pdf).

<sup>3</sup> Ibid.

31. This prohibition ensures domestic abuse victims do not have to experience the trauma of having to face their abuser questioning them in court. The anxiety of this alone could be enough to deter a person from pursuing prosecution, so we therefore see great benefit in enshrining such a restriction into law.

32. As we noted in our response to the consultation, the establishment of an automatic ban on an accused person conducting their own defence in domestic abuse cases is a move which would be reflective of the measures currently in place for victims of sexual offences and vulnerable witnesses.

**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?**

33. We agree with the inclusion of a requirement for the court to consider making a non-harassment order. This would remove the need for victims to enter into the civil justice system, and ensure that the courts consider the protection of the victim in every domestic abuse case.

34. This requirement is imperative given that it prevents the perpetrator from continuing to abuse the victim following their conviction for domestic abuse. This protects victims from repeat victimisation and intimidation, as reflected in the general principles of the Victims and Witnesses (Scotland) Act 2014.

35. As we noted in our response to the consultation, the period directly after an offender has been convicted of domestic abuse can be especially dangerous.

36. It is unfair for victims of domestic abuse to be expected to pursue protection from their abuser through the civil courts when there are means to do so through the criminal courts and at a time when victims are at most need of such protection.

37. The inclusion of the consideration of a non-harassment order ensures that protection of victims of domestic abuse is embedded in the criminal justice system.

**Conclusion**

38. VSS supports the principle of the Domestic Abuse (Scotland) Bill, as it has the capacity to increase understanding of the dynamics of domestic abuse and reduce the stigma surrounding this offence.

39. We are encouraged by the creation of a statutory offence of domestic abuse and the inclusion of non-physical aspects of domestic abuse, including that of psychological harm, which will greatly increase the opportunity for legal redress for victims, and strengthen the criminal justice response to domestic abuse.

**ENDS**