



Domestic Abuse Bill Stage 1 debate

September 2017

Key Points

- As Scotland's national children's charity, Children 1st unequivocally recognises the need for the Domestic Abuse Bill and strongly supports the Bill's intention to provide protections for victims of domestic abuse, including children and young people.
- Children 1st welcome the explicit recognition of children on the face of the Bill and the introduction of the aggravation in relation to a child.
- There are a number of additional ways that protections for children can be strengthened within this Bill; through other legislative vehicles and via better protections for child and adult witnesses who have experienced domestic abuse – before, during and after trial.
- To ensure there is no gap in protections for adults and children experiencing domestic abuse we would welcome an amendment to the Bill to include a mandatory duty on the court to consider whether to impose a non-harassment order that includes the children in all cases where the statutory aggravation in relation to a child is applied.
- Children 1st would also highlight to the urgent need to consider ways to enhance the inclusion of children in bail conditions; to develop a Scottish model of the Children's House (also known as Barnahus) and to improve connections between criminal, civil and child protection systems around the adult and child victim, with particular regard to contact orders.

Children 1st supports children, families and communities across Scotland through local and national services providing relationship-based, practical advice and support in difficult times. Last year our local services supported 496 children (from pre-birth to age 18) experiencing domestic abuse.¹ Through our work we see the far reaching and long term impacts of psychological and physical domestic abuse on children and their families. Children 1st therefore strongly supports the need for the Domestic Abuse Bill to better recognise the complex dynamics of domestic abuse by creating a new offence of abusive behaviour towards a person's partner or ex-partner which covers both physical violence and non-physical abuse.

We believe that this Bill is a crucial step towards understanding and tackling all forms of violence against women and children and in recognising the psychological and emotional impact of coercive control. The Bill's recognition that abuse can be both physical and non-physical and that violence can be emotional and psychological is an important part of the culture change that is required across the judicial, health and social care sectors. We are confident that this change in legislation will address the gap in current law which fails to protect people from coercive control, while also supporting the much needed cultural shift in public and professional understanding of the dynamics and impacts of domestic abuse. We are therefore pleased that the Scottish Parliament's Justice Committee has welcomed the draft Bill and recommended to Parliament that its general principles are approved.

In Children 1st's oral and written evidence to the Committee we highlighted the following issues:

Recognising the impact of domestic abuse on children

Where children live in a family where there is domestic abuse, they will also be victims of that domestic abuse. Domestic abuse has been a ground for referral to Children's Hearings since 2011 and the Guidance for Child Protection in Scotland, 2014 states that "*domestic abuse can*

¹ Children 1st local summary report 2015-16, research flags overview

profoundly disrupt a child's environment, in undermining their stability and damaging their physical, mental and emotional health."

A range of studies, including by the BMA, document how tactics of violence and abuse, from pregnancy onwards, can severely disrupt the relationship between mother and infant, undermine the mother/child connection and compromise the strongest protective factor that can mitigate against children experiencing poor outcomes. In its 2016 Concluding Observations to the UK, the UN Committee on the Rights of the Child raised concern at the "high prevalence of domestic violence and gender-based violence" and the "negative impact that those forms of violence have on children." As recognised in 'Equally Safe,' young survivors of domestic abuse experience domestic abuse as 'coercive control' of the whole family environment, not just the mother. An increasing body of robust international evidence recognises domestic abuse as one of ten types of traumatic adverse childhood experiences (ACEs) which can increase the likelihood of people developing chronic diseases, mental ill-health and a range of negative social and emotional impacts, such as being a victim of violence throughout their lifetime.²

This legislation will help to realise the right of children and young people to be safe from harm, as set out in article 19 of the United Nations Convention on the Rights of the Child (UNCRC). However, Children 1st are disappointed that the Committee did not support the inclusion of an offence to hold perpetrators of domestic abuse against a partner/ ex-partner to account for causing harm in the context of that domestic abuse to any children closely connected to the perpetrator/ person experiencing domestic abuse.

Along with our colleagues in the Equally Safe Children and Young People Stakeholder Reference Group we have raised the need for this offence with the Committee and the Government regularly. In the absence of the inclusion of a parallel offence we remain concerned that failing to recognise children as victims of coercive and controlling behaviour within the proposed offence will make children less visible to services and place them at greater risk of continued abuse by the perpetrator. Domestic abuse is separate to the types of abuse currently set out in Scottish legislation, and we think it is important to ensure that children and young people who experience domestic abuse are protected.

We understand that these concerns will be taken forward in the context of wider child protection work and that there may be alternative legislative vehicles to progress this issue. However, we would seek assurances from the Scottish Government that introducing separate legislation would not increase the potential for non-abusing parents to be criminalised, if it sits outwith the domestic abuse legislation. Placing a parallel offence within the Domestic Abuse Bill would maintain the definition of domestic abuse through a gendered analysis as abuse to a partner/ ex-partner and would focus on the perpetrator's behaviour rather than proving harm.

We would also encourage members to seek assurances that the introduction of the legislation is accompanied by broader public awareness raising and high-quality professional training and guidance that will help to improve understanding of an issue that can have far reaching consequences for victims, including children and young people.

Strengthening the aggravator

Children 1st were among the stakeholders that raised concerns that initial proposals did not fully reflect the impact of domestic abuse of children. We welcome the explicit recognition of children on the face of the Bill and the introduction of the aggravation in relation to a child as an important step forward, but believe there are additional ways that protections for children can be strengthened

We therefore welcome the Committee's invitation that the Scottish Government responds to evidence that the way in which the aggravator is currently drafted is too narrow. Further steps should be taken to ensure the aggravator recognises the specific nature of domestic abuse and its impact on children – whether or not they 'see' the abuse.

² <https://www.cdc.gov/violenceprevention/acestudy/index.html>

Protections for child victims

Better protections for child and adult victims of domestic abuse are required before, during and after trial – we therefore welcome the proposed reforms to criminal procedure, evidence and sentencing and believe that these could be further strengthened via changes to the law and broader reforms.

An outright ban on the accused conducting their own defence in domestic abuse cases will ensure perpetrators do not have an opportunity to perpetrate further abuse through the court system and will significantly lessen the level of trauma experienced by victims and witnesses in Scottish courts.

Children 1st also support the introduction of expert evidence relating to the behaviour of the complainer (Chapter 1), but are clear that it must be accompanied by several other changes, most importantly training and development for all those working in the criminal justice system; including the judiciary. Domestic abuse is extremely complex and nuanced and in order for cases to receive a fair hearing, it is essential that jurors, judges and court officials understand: the nature of coercive control, survivor strategies/ coping mechanisms and how in many cases the courts themselves are used by perpetrators to continue to perpetuate abuse.

More radical reform of the treatment of child victims and witnesses is urgently needed to enable children to give their best evidence and ensure they are not re-traumatised by court processes. The forthcoming Equally Safe Delivery Plan provides an excellent opportunity to scope and pilot a Scottish approach to uniting the justice and care needs of a child witness based on the learning from the Evidence and Procedure Review and the experiences of developing Barnahus or Child's House across Europe, encapsulated through the Promise Project which Children 1st and the Scottish Government have been involved in.

Non harassment orders and child contact

Children 1st recognise and welcome the intent behind the requirement to consider making a non-harassment order, but believe this does not go far enough. We are concerned that if a non-harassment order were to be imposed on a perpetrator only in relation to the partner/ex-partner and a subsequent order for contact with the children were made via civil court, this could enable the abuse of both partner/ex-partner and children to continue.

Through our work supporting children and families experiencing domestic abuse, we have often seen contact with an abusive parent result in continued coercion and control. This has included pressure on the child to persuade the other parent to bring the family back together which can be traumatising for the child. It has also increased the likelihood that families who have moved for safety reasons have their whereabouts shared, leading to an increased risk of ongoing threats and abuse. We would therefore welcome an amendment to the Bill to include a mandatory duty on the court to consider whether to impose a non-harassment that includes the children in all cases where the statutory aggravation in relation to a child is applied.

While contact orders are a matter of civil, rather than criminal law, we are concerned that a perpetrator's abuse is often invisible in decisions about contact. We note the Scottish Government's intention to review Part 1 of the 1995 Act on contact and residence, but in tandem with this strengthening of children's rights and protection under the civil law, believe there is a currently a strong opportunity to bring the criminal and civil law closer together in its response to domestic abuse by including an offence against a child within the criminal law. We look forward to working with the Scottish Government on these issues as the Bill progresses.

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