

A Criminal Offence of Domestic Abuse Consultation Response

As the Children and Young People's Commissioner in Scotland, my role is to promote and safeguard the rights of children and young people across Scotland. I welcome the opportunity to comment on this consultation and support the creation of a specific offence of domestic abuse or partner abuse, encompassing both conduct, such as threats or physical abuse, and psychological abuse and coercive control.

In 2010 we undertook a consultation exercise involving over 74,000 children and young people across Scotland. "A Right Blether" highlighted being safe and secure as an area of concern for children and young people and I made a commitment to focus on issues around domestic abuse,¹ as part of my aim to promote and safeguard the rights of children and young people, particularly the rights of vulnerable groups, through policy scrutiny and by supporting good practice. This work links closely with children's rights under the United Nations Convention on the Rights of the Child (UNCRC), in particular the following articles:

- **Article 3 (Best interests of the child)** - The best interests of children must be the primary concern in making decisions that may affect them. All adults should do what is best for children. When adults make decisions, they should think about how their decisions will affect children. This particularly applies to budget, policy and law makers.
- **Article 4 (Implementation of Convention)** - Governments have a responsibility to take all available measures to make sure children's rights are respected, protected and fulfilled.
- **Article 6 (Survival and development)** - Governments should ensure that children survive and develop healthily.
- **Article 9 (Separation from parents)** - Children have the right to live with their parent(s), unless it is not in their best interests. Children whose parents do not live together have the right to stay in contact with both parents, unless this might hurt the child.
- **Article 12 (Respect for the views of the child)** - When adults are making decisions that affect children, children have the right to say what they think should happen and have their opinions taken into account.
- **Article 19 (Protection from all forms of violence)** - Children have the right to be protected from being hurt and mistreated, physically or mentally.²

In 2013, I commissioned research, undertaken by the Centre for Research on Families and Relationships at Edinburgh University and Clan Child Law Centre, into Child Contact Proceedings for Children Affected by Domestic Abuse. This research highlighted the lack of a common definition of domestic abuse in Scottish policy or law

¹ <http://www.cypcs.org.uk/education/past-work/blether>

² http://www.unicef.org/crc/files/Rights_overview.pdf

and that the definition at that time was heavily contested. This had negative impacts on services' ability to respond to the needs of children and young people affected by domestic abuse³. I therefore welcome the creation of the proposed specific offence as this will provide clarity on what constitutes domestic abuse and, importantly, incorporate the full spectrum of psychological abuse and coercive control explicitly into the definition.

In 2013 I also commissioned research by Dr Kirsteen Mackay of Edinburgh University, into the treatment of children's views and interests in child contact disputes with a history of domestic abuse. This is their right under articles 3 and 12 of the UNCRC. Dr Mackay's research found that taking children's views and their best interests into account was an important part of protecting them from retaliatory abuse, but that in over 40% of the cases she examined, no background reports were undertaken.⁴

Over the last year my office has been working in partnership with Scottish Women's Aid (SWA) to continue to raise the profile and examine the impact of child contact disputes on children and young people who have experienced domestic abuse. I wish to add my support to their response to this consultation and will focus my response around the impact on children and the safeguarding of their rights.

General Comment

I am concerned that children do not feature in the draft offence. There is a need to take account of the psychological harm caused by abusive behaviour. There is sound evidence of the negative effects coercive control can have on children, either indirectly as a result of the abuse and control of their non-abusing parent (usually their mother) or directly as victims of abuse and control themselves. For example, they may be denied access to support networks or prevented from participating in social or extra-curricular activities.

Question 2: General Structure of the Offence

Children can be the victims of coercive control in a range of different ways. As SWA discovered, when they consulted women to inform their response, their children can be denied access to pets, possessions, to food or medical care or even to the comfort of their mother. Control over mothers' finances or movements directly affects their children as well. Women described how children were used to spy on or monitor their mothers or even to track down mothers who were in hiding from their abuser. Abusers may use threats to the children's wellbeing to control mothers – this may not always amount to physical or emotional harm but includes denying children their personal possessions. Ongoing contact or contact proceedings may provide abusers with a continuing opportunity to exert control over the children and their mother. Finally, abusers may undermine the relationship between mother and child, or the mother's parenting ability, to the detriment of both. These experiences match those children

³ http://www.cypcs.org.uk/downloads/Adult%20Reports/Child_contact_proceedings_March_2013.pdf p95-96

⁴ <http://www.cypcs.org.uk/ufiles/views-of-children-and-domestic-abuse.pdf> p27-28.

described in the research Dr Mackay conducted on our behalf⁵ and in other research (i.e. that of Emma Katz⁶).

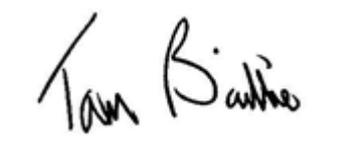
I echo SWA's point that the language of the draft offence should include the psychological and emotional impact on children and agree that, as currently worded, it fails to do this.

Children and the definition of 'other person'

I support SWA's suggestion that section 2(1)(b) should be reworded to include children as a specific category of "person" and their proposed amendment of the draft offence. It is vital that there is recognition within the offence of the ways children are both victims of domestic abuse and manipulated by abusers to continue the abuse of their non-abusing parent.

Likewise, I feel it is important that any specific offence also recognises that children can be separate victims of the abuse and support SWA's call for this to be incorporated into the draft offence in some way.

Should you have any further questions about the issues I have raised in my response, please contact my Policy Officer, Megan Farr, via megan.farr@sccyp.org.uk.



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⁵ <http://www.cypcs.org.uk/ufiles/views-of-children-and-domestic-abuse.pdf> p15-16

⁶ Katz, E. (2016) Beyond the Physical Incident Model: How Children Living with Domestic Violence are Harmed By and Resist Regimes of Coercive Control. *Child Abuse Rev.*, 25: 46–59.