

## Social Work Scotland: Criminal Justice Standing Committee

### **Response to call for evidence:**

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

The Bill recognises the various forms of abuse, which frequently coexist within an abusive relationship but are nonetheless significant in their own right in terms of the effect on victims and families. It is the experience of social workers and partner agencies that the conduct described under section 2(3) affects victims lives profoundly and inhibits the achievement of positive outcomes.

The Bill recognises the impact of domestic abuse upon children through the provision of an aggravation in relation to a child. The impact of domestic abuse directly and indirectly upon children is difficult to overstate. The presence of children in a relationship where abuse occurs places them at potential risk of physical harm and of long term psychological harm. It also affords the perpetrator an opportunity to use children within and beyond the end of a relationship as a source/means of control.

The inclusion of the aggravation is welcome but depending on how it is used in practice within complaints/indictments and on the subsequent attitude of the judiciary it may not fully address the harm arising from domestic abuse upon children. It is recognised that where a child is physically harmed within a domestic abuse context the law as it stands will continue to be applied. It is hoped that the inclusion of the aggravation will raise the profile of the impact upon children and support the work of Criminal Justice Social work in relation to the accountability of perpetrators.

The impact of the Bill when implemented will depend on successful investigation, prosecution and conviction. It is recognised that the successful prosecution of domestic abuse presents challenges not least as a consequence of abusive behaviour of a coercive/ controlling nature as set out within the Bill. We would not wish to diminish the challenges but would hope that the formal recognition of the impact of such behaviours will have apposite effect on the wider understanding of domestic abuse.

The inclusion in the Bill of prohibitions on the accused with regard to obtaining precognitions or statements and conducting their own defence is welcome. These measures follow logically from the recognition of the psychological impact of abuse and hence of the opportunities within current criminal procedure to continue or extend this type of conduct.

The Bill recognises that there are features regarding the effects of domestic abuse which require explanation to a court or jury. The facility to provide expert evidence with regard to the reaction and decision making of a person affected by domestic abuse is welcome given the continuing widespread misconceptions regarding its

effects. For instance with regard to the passage of time or that the absence of obvious distress does not indicate absence of trauma.

The inclusion of a requirement for the court to consider a non-harassment order post conviction is a change from the present position which requires an application from the prosecution. It is appropriate that the merits of such an order are considered in a consistent and proportionate manner and that the court should have regard to the offenders conduct towards the victim. The Bill as it stands is silent on the sources of information which may inform decision making including information based on the risk assessments undertaken by Criminal Justice Social Work in the preparation of reports and /or from agencies working with the victims and children affected by domestic abuse.

The creation of a specific offence of domestic abuse which takes account both of the physical and psychological dimensions of harm and recognises the pernicious nature and corrosive impact of coercive/controlling behaviours is welcome. In working with perpetrators of domestic abuse Criminal Justice Social Workers recognise the physical and psychological impact on victims and families and work closely with partners in the statutory and third sector to ensure the safety of victims. The intended impact of this Bill when implemented is to hold more perpetrators to account and secure the safety and secure future of victims and families. It will be important to align in a consistent manner the operational impact of the present legislation with the multi agency work being undertaken to deliver the outcomes of "Equally Safe"