

Domestic Abuse (Scotland) Bill Evidence from LGBT Youth Scotland—April 2017

About LGBT Youth Scotland

LGBT Youth Scotland is both a third sector youth work organisation and a LGBT equality organisation and runs a specific LGBT Domestic Abuse Project. The project works across Scotland to increase awareness of LGBT Domestic Abuse and build the capacity of professionals and organisations to respond to the needs of LGBT people experiencing Domestic Abuse and other forms of gender based violence. We have read and agree to the *Policy on Treatment of Written Evidence by Subject and Mandatory Committees* and are happy for this organisational response to be made public.

Q1: 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?

Q2: 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?

Q3: 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?

Q1-3: LGBT Youth Scotland welcomes the introduction of the Domestic Abuse Bill which includes both physical harm and psychological abuse. Although some abusive behaviours currently come under other criminal offences, such as stalking, a large range of other behaviours integral to domestic abuse are not currently criminalised. We take a positive view on the definition of abusive behaviour within the introduced Bill and expect that the legal response to domestic abuse will be improved with the inclusion of coercive behaviours such as isolation, monitoring, and humiliation.

These behaviours are part of an overall pattern of domestic abuse that cannot be fully identified based on individual incidences. Coercive control is a pattern of behaviours with an aim to limit an individual's freedom, whether through direct actions of a perpetrator or through self-regulation for fear of recourse from a perpetrator. This closely aligns with the Bill's proposed inclusion of psychological harm which may have the effect, as described in Part 1 Section2(3), of making an

individual dependent, subordinate, isolated from support networks, controlled, regulated, monitored, deprived of or with limited freedom of action, and frightened, humiliated, degraded or punished. These behaviours are central to domestic abuse.

In regards to court decisions about whether a 'reasonable' person would consider the behaviour to (potentially) cause harm, or find that the perpetrator was reckless about the impact of such behaviour, understanding of equality issues may affect the outcome. For instance, if an individual does not understand the impacts of homophobia, biphobia and transphobia, or the dynamics of LGBT domestic abuse, harmful and abusive behaviours may be misinterpreted as not causing substantial harm to B.

LGBT people experience coercive control within abusive relationships in many of the ways listed above but also experience additional layers of homophobia, biphobia or transphobia from a perpetrator who may use an individual's sexual orientation or gender identity and expression against them. For some behaviours, an individual's experience of discrimination as a LGBT person may exacerbate the impact. For instance, an individual who has reduced social networks after coming out to friends and family, or who is not out to social networks, has an increased risk of social isolation. Other behaviours may disproportionately affect LGBT people. A perpetrator who has carried a child in a same-sex relationship, for instance, may undermine her partner's parenting despite the fact that both are legal parents.

There are also specific ways to channel the abuse which draws on an individual's identity and experiences. LGBT-specific displays of coercive control:

- Threats to out an individual in regards to sexual orientation or gender identity, whether to family, social networks or employers
- Acting on threats to out an individual, which may cause further isolation or have financial implications
- Undermining an individual's sexual orientation or gender identity
- Normalising abuse in LGBT relationships, particularly since LGBT people are at increased risk of not recognising the abuse they experience (due to a lack of public imagery of LGBT-inclusive abusive relationships)
- Controlling access to a transgender person's hormone medication
- Drawing on fears of homophobia, biphobia or transphobia to distort perspectives- telling individual that no one will believe them, that services will not be supportive or understand
- Enforcing gendered norms in how an individual expresses their gender, particularly for transgender people
- Restricting a transgender parent's access to children

Knowledge of the social discrimination and potential social isolation experienced by LGBT people would highlight how threats to share an individual's sexual orientation or gender identity or expression with others or undermining an individual's sense of identity could have serious consequences for an individual's physical or emotional safety, or mental and emotional health.

We therefore recommend the development of guidance that explores the ways in which discrimination and inequality are often used within abusive relationships, including specific reference to LGBT women and GBT men, with discussion of social and structural experiences of inequality to illustrate why such tactics are powerful.

Q4: 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?

LGBT Youth Scotland agrees with restricting the relationships within the offence to partners and ex-partners, in line with other Scottish legislation, policy, and practice. This serves to recognise the abusive dynamics and tactics of intimate partners.

We warmly welcome the aggravation in relation to a child as it recognises the ways in which perpetrators ('A') may subject children to abuse in order to cause harm to 'B', use children as tools for the abuse, or expose them to the abusive behaviour.

Q5: Do you have any views on factors which might impact on the reporting, investigation and prosecution of the offence?

For those that recognise the abuse and who are confident and willing to report, a specific criminal offence of domestic abuse will likely increase access to justice as the proposed measures more closely reflect the lived experiences of domestic abuse as a pattern of coercive control rather than individual incidences.

Current issues affecting LGBT people's access to justice, however, include:

- barriers to LGBT young people recognising a crime¹ and understanding their legal rights or reporting that crime².
- 49% of all LGBT young people feel safe and supported by the legal system, with 40% of transgender young people feeling safe and supported. This evidences the need for increased attention to transphobia and assuring transgender young people that the legal system will not subject them to, but rather protect them from, discrimination. Young people who knew their rights under hate crime legislation were more likely to feel safe and supported by the legal system³.
- LGBT young people have concerns about being outed when reporting a crime to the police⁴.

Once these barriers are overcome and a case is reported, there are specific concerns for LGBT people when a domestic abuse case reaches prosecution. This concern can in itself be a barrier to reporting: with courts open to the public, the current special measures do not protect LGBT people from being outed.

A recent scoping survey with LGBT people found that of those that had experienced domestic abuse and had not reported it to the police, 29.5% said that the reason they did not report was that they did not want the case to go to court. For transgender people, this number rose to 46%⁵. We are also aware of anecdotal evidence that concerns over open courts may also be an issue for individuals of particular faiths or from certain communities. Until individuals can be assured at the time of reporting that their cases will not be heard in open domestic abuse courts, this is likely to remain a barrier for many.

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¹ Best *et al.* (2011) *Voices Unheard. Domestic Abuse: Lesbian, Gay, Bisexual and Transgender Young People's Perspectives*. LGBT Youth Scotland. www.lgbtyouth.org.uk/files/documents/02_Voices_Unheard/Reports/VoicesUnheardWeb2011.pdf

² Lough Dennell and Logan (2013) *Life in Scotland for LGBT Young People: Safety*. LGBT Youth Scotland. www.lgbtyouth.org.uk/files/documents/LGBTYS_Life_-_Safety2c_final.pdf

³ *Ibid.*

⁴ See: Best *et al.* (2011); Lough Dennell and Logan (2013).

⁵ Unpublished scoping into LGBT people's experiences and perspectives of domestic abuse on behalf of the FearLess project. LGBT Youth Scotland 2016.