

## Submission from Zero Tolerance to the Justice Committee re: the proposed Abusive Behaviour and Sexual Harm (Scotland) Bill

November 2015



We thank the Committee for the opportunity to comment on this Bill. We are a charity working to prevent violence against women in all its forms.

### **S1. Aggravation of offences where abuse is of a partner or ex-partner**

1. We welcome the change in the law that will enable offences involving the abuse of a partner or ex-partner to be treated as aggravated offences. The aggravator model is well known and understood. This will allow more proportionate sentencing.
2. This aspect will necessitate training and CPD for professionals; and population-level awareness-raising and education measures.

### **S2. Disclosure of an intimate photograph or film**

3. We broadly welcome this section and the creation of a new offence. We know from our *'Under Pressure'* youth worker training project, which seeks to prevent the sexual exploitation of teenagers, that the non-consensual sharing of intimate images is a significant problem facing young people in Scotland. In the pilot for this project, we found that well over half of youth workers (58.5%) had experience of young people exchanging images or texts with content which involved harmful gender stereotyping or could be seen as sexually demeaning or abusive<sup>1</sup>. We know that in a climate of sexual aggression and coercion, this sharing can often be non-consensual. It is informed by the gender and power dynamics which pervade our society and so it is often girls and young women who share images with boys and young men that are then used to harass, bully, control and demean them.
4. One youth worker said to us during that project, *"How do you teach a 14-year-old, who's used his mobile phone to film a girl performing a sexual act, about the complex nature of 'consent'? What if his frames of reference come from pornography on mobile phones at school?"* In our research with young people we found that almost a quarter of boys aged 14-19 we surveyed agreed that 'most boys share sexual pictures of people they know with others'. This underlines to us, that there will be a need for a great deal of public education about this offence, and to make links with other work around sexual health and wellbeing and public understanding of consent and healthy behaviours.
5. We agree with the majority of the evidence submitted by Professor Clare McGlynn (Durham University) and Professor Erika Rackley (Birmingham University), re: the non-consensual sharing of intimate images. Specifically, we agree with them this Bill presents a landmark opportunity to enshrine in law that image-based abuse is a fundamental breach of privacy and dignity, a

serious form of harassment and abuse and, therefore, a cause of significant harm. We also agree that the prevalence of image-based sexual abuse is a form of cultural harm which creates a climate in which women's sexual expression is not respected. We see image-based abuse as undermining wider societal messaging about the need for consent.

6. We believe that the requirement to show intention to cause fear, alarm or distress should be removed from the proposed legislation, as this unnecessarily limits the law and focuses attention on the motives of the perpetrator rather than the harm to the victims.
7. We agree that victims should be guaranteed anonymity.
8. We would prefer the offence to be extended beyond images. The offence should capture any media which an abuser can use to humiliate and control a person, including images but also sound files, emails, texts, video clips, and photo-shopped or composite images. Men who seek to control and humiliate women are often capable of being extremely creative and clever in their abusive behaviour; and if an offence is too narrowly constructed they will find other means of achieving the same ends, so it is important for the offence not to be limited to images.
9. We think that the definition of intimate images is too narrow. In s.3, 'Interpretation of section 2', it states that a person is in an intimate situation if the person is engaging or participating in, or present during, an act which a reasonable person would consider to be a sexual act, and is not of a kind ordinarily done in public, or the person's genitals, buttocks or breasts are exposed or covered only with underwear. This could unwittingly exclude the sharing of images which are private and intimate but non-sexual, for example a Muslim woman not wearing a hijab which she would usually wear in public or someone unconscious or using drugs.
10. We hope that the creation of this offence will trigger a debate about the nature of images that are shared in other spaces, including public spaces, such as the salacious images seen in tabloid newspapers, and those created and distributed by the pornography industry, which feeds this problem. There is a risk that if sexualised and objectifying images are seen everywhere in our society, that this creates a mindset that it is normal to view such images. In our research with young people, 66% of boys and 48% of girls aged 14 – 19 said they see sexualised images 'every day'.<sup>ii</sup>

#### **S5. Non harassment orders**

11. We welcome this reform.

#### **S6. Jury directions relating to sexual offences**

12. We strongly welcome this and absolutely agree that judicial directions in the matter of sexual offences trials are a legitimate constraint on judicial discretion. We strongly believe that this provision will enhance women's

access to justice. Despite sterling efforts by the COPFS to bring more rape cases to trial, juries remain reluctant to convict, and the use of the Not Proven verdict remains higher than we would expect (20%). Any measures which go some way to challenging jurors' assumptions about the 'normal' way to react to sexual assaults are welcome and important. There is still a misperception that most women would resist physically and report immediately, and this affects women's access to justice for rape, one of the most heinous crimes. Too many rape trials conclude that the alleged rape was in fact 'rough sex'; too many women are re-traumatised by their experience of seeking justice.

13. We agree with Rape Crisis Scotland that providing factual information on how women may respond to rape or serious sexual assault, behaviour which may differ from a juror's perception, should enable jurors to assess the truth better. We agree with RCS that consideration should be given to extending jury directions, to tackle the full range of erroneous preconceptions that members of the public may hold around rape. (E.g. a complainant's demeanour in court being perceived as 'not upset enough').
14. It will be important for judicial training on this matter to persuade judges of its importance, so that they make these remarks in a way that conveys their gravity. It will be important that judges are not able to say some variation of "I have to tell you this..." in a tone that suggests they do not believe it to matter.

### **S7 and s8 - Incitement to commit certain sexual acts elsewhere in the UK and Commission of certain sexual offences elsewhere in the UK**

15. We agree with these reforms.

### **Other matters**

### **Tackling all forms of VAW**

16. Whilst law reform around domestic abuse and sexual offences is very welcome, there is also a need for reforms to tackle other forms of violence against women which are currently tolerated societally to some degree. Commercial sexual exploitation, including stripping and prostitution, have been subject to fairly limited discussions. Lap-dancing and strip clubs, which are venues which normalise and perpetuate gender inequality, are to be regulated through the new SEV scheme under the Air Weapons and Licensing Act, but there is no ambition apparent to close these venues. Prostitution is to be further researched. The Human Trafficking and Exploitation (Scotland) Act is welcome but will not extend to all forms of prostitution in Scotland.
17. The visibility of prostitution, for example in Edinburgh which has unlicensed brothels on busy main roads street with highly visible signage, such as 'The Ambassador Sauna' on Lothian Road, and 'Carol's Sauna' on Easter Road, sends confusing messages to the general public about consent. Sexual consent is being bought in such places. The Scottish Government must at some point in the future decide whether it believes that meaningful consent,

as free agreement, to sexual activities, can be paid for; and how that might link to its work to prevent domestic abuse and sexual harm.

18. Mr Matheson described this Bill as “bold and unapologetic”; it would be good to see a similarly bold and unapologetic response to tackling profit-driven harm, and the range of VAW that occurs in the commercial sphere. Otherwise, anomalies arise and some forms of VAW continue to thrive.

### **Coercive control offence**

19. We look forward to the Scottish Government bringing forward a specific offence on coercive control.

### **Prevention of VAW**

20. While this legislation is very welcome, there needs to be much more focus on prevention of domestic abuse and sexual harm. This consultation is about how to address violence or abuse after the fact. What equivalent measures does the Scottish Government intend to introduce to prevent it from happening in the first place?

21. We are concerned that successive governments have adopted rhetoric around prevention of VAW but have not prioritised it. The Equally Safe strategy was first published in June 2014 and yet the joint strategic board which oversees its delivery only met for the first time in November 2015. There remains work to be done on embedding a gendered analysis of VAW across the Scottish Government’s work in all policy areas.

22. We note that the Violence against Women, Domestic Abuse and Sexual Violence (Wales) Act<sup>iii</sup>, passed in March 2015, includes specific duties on Welsh Ministers to prepare, publish, review and implement a national strategy, and also includes duties on local authorities and health boards jointly to create local strategies. It also creates a duty to create National Indicators on VAW, and to appoint a National Adviser on VAW. This may be an approach that the Scottish Government would wish to consider.

### **Further information**

For more information, please contact Jenny Kemp, Co-Director, Zero Tolerance ([Jenny.Kemp@zerotolerance.org.uk](mailto:Jenny.Kemp@zerotolerance.org.uk); 0131 556 7365).

*NB: This submission is made on behalf of the organisation and may be published.*

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<sup>i</sup> [http://www.zerotolerance.org.uk/sites/www.zerotolerance.org.uk/files/UnderPressure\\_Doc\\_Web\\_V1.pdf](http://www.zerotolerance.org.uk/sites/www.zerotolerance.org.uk/files/UnderPressure_Doc_Web_V1.pdf)

<sup>ii</sup> <http://www.zerotolerance.org.uk/resources/young-peoples-attitudes-research-2014?destination=node%2F333>

<sup>iii</sup>

<http://www.senedd.assembly.wales/documents/s37622/Violence%20against%20Women,%20Domestic%20Abuse%20and%20Sexual%20Violence%20Wales%20Bill,%20as%20passed.pdf>