

JUSTICE COMMITTEE

PROSECUTION OF ELDER ABUSE

SUBMISSION FROM DR HANNAH BOWS, DURHAM LAW SCHOOL

Introduction

Dr Hannah Bows is an Assistant Professor in Criminal Law at Durham Law School. She has been researching violent crime, particularly domestic violence, sexual violence and homicide, against people aged 60 and over for the last seven years. Her Masters thesis examined domestic violence against mid-life and older women, exploring access to support services and their support needs. Her doctoral research examined rape and sexual assault by penetration against people aged 60 and over in England, Wales and Northern Ireland; this was the first study to look nationally at the extent of recorded offences involving older people, the characteristics and nature of these offences and how practitioners and victims responded to sexual violence in later life. Her most recent work examined, for the first time, domestic homicides against people aged 60 and over in the UK (including Scotland) and found that despite people aged 60 and over constituting only approximately 18% of the UK population, approximately 1 in 4 (25%) of domestic homicides involves a victim aged 60 and over. Importantly, older people have an almost equal chance of being killed by their partner/spouse as they do their adult son, a significantly different finding compared with younger victims (where very few are killed by other family members). This submission is based on this body of research as well as Bows' experience as a trustee (2014-2015) and chair (2015 – present) of Age UK Teesside and as a magistrate sitting on the County Durham and Darlington Bench.

Background

Older people (defined for the purposes of this submission as aged 60 and over) have been traditionally viewed as low risk for all crime, but particularly for violence and abuse. Both criminologists and feminist scholars have focused most of their attention on the victimisation of younger women, who have been considered highest risk for both domestic and sexual violence. At the same time, however, 'elder abuse' studies have documented the extent of different forms of violence and abuse experienced by older people. The latest global systematic review suggests a least 1 in 6 people aged 60+ experience 'elder abuse' each year (Yon *et al*, 2017). In the UK, this would equate to 2 million older people each year. To put this into context, **this figure is very similar** to the UK statistics¹ on domestic violence against people; the Scottish Crime Survey estimates 161,000 people experienced domestic violence in 2014-15 and the Crime Survey for England and Wales estimates 1.9 million people aged 16-59 experience domestic violence/abuse each year (ONS, 2017; Scottish Government, 2016) whilst the Crime Survey for Northern Ireland indicates approximately 80,000 people aged 16-64 experience domestic violence each year

¹ Due to varying sample demographics, comparable data is not possible (Scotland survey 16 and over, the CSEW has traditionally collected data from those aged 16-59, recently extended to 74, and Northern Ireland have an upper age limit of 64).

(Campbell and Rice, 2017). Risk of experiencing violence and abuse might be *lower* than younger people, but it can no longer be said that it is *low*.

Issues and recommendations

The merits of having a specific statutory offence of elder abuse (possibly based on the new domestic abuse offence provided for in the Domestic Abuse (S) Act 2018)?

One of the ongoing issues with examining violence and abuse against older people is definitional ambiguity which underpins current approaches to conceptualising and defining this problem:

1. There is no unified global definition of elder abuse: most definitions incorporate physical, psychological, financial and sexual violence/abuse, however, it is not uncommon for some definitions to exclude one or more of these forms of violence and abuse. In Asia, for example, most definitions of elder abuse exclude sexual violence (Bows, 2018b).
2. This is further complicated by the incorporation of 'neglect' and/or 'mistreatment' into some operating definitions of elder abuse; there is no agreement about what constitutes these and whether they should actually be viewed as abuse, since the dynamics of mistreatment and neglect offer differ significantly from the dynamics of physical/psychological/financial/sexual abuse, and lumping these together under the umbrella of elder abuse makes comparisons and theorising impossible.
3. A further problem with the use of the term 'elder abuse' is that research and policies often, but not always, include abuse by partners, family members **and** 'those in positions of trust' (usually carers or helpers). This again leads to inconsistency in research findings and policy recommendations and makes comparisons difficult across research and official data (Bows, 2019).
4. Most elder abuse research indicates partners or family members are the most common perpetrators of abuse. This therefore means that 'elder abuse' is actually domestic violence and should be recognised and labelled as such.
5. Separating domestic violence against younger people from elder abuse of older people, despite the nature, characteristics and dynamics being the same, explicitly suggests that violence and abuse experienced by older people from their partners or family members is distinct from domestic violence and abuse experienced by younger people. It is ageist, victim blaming, suggests the problem is one associated with older age and prevents a comprehensive, life course analysis of violence. Furthermore, since the majority of 'elder abuse' research indicates women are at higher risk of violence/abuse perpetrated by partners or family members (Bows, 2019), the use of the term 'elder abuse' obscures the gendered nature of these offences.
6. There is currently no evidence to support the bracketing off of violence/abuse against older people as a separate, distinct problem.

Recommendation: the current use of 'elder abuse' is inconsistent and confused; there is no agreed definition and the evidence does not support the separation of violence/abuse of younger women with violence/abuse of older women. The dynamics of mistreatment/neglect are completely different to that of other forms of 'elder abuse' and 'domestic violence'. Violence/abuse of older people should be

conceptualised and approached through the domestic violence/abuse definitions and frameworks. A separate term 'elder abuse' may be appropriate for describing neglect/mistreatment or abuse by carers or professionals.

The merits of introducing a new statutory aggravator applying to situations where a more general offence involves elder abuse?

There is insufficient evidence to support the introduction of a statutory aggravator of 'age' or 'elder abuse'. The existing statutory aggravators described in the latest Scottish Government (2019) criminal proceedings report reflect the protected characteristics that are known to motivate hostility and hatred (e.g. sexual orientation, race/ethnicity etc.) which manifests in criminal offences. There is **absolutely no evidence** that violence/abuse against older people is usually, often, or even sometimes committed by offenders who have a hatred of, or hostility towards, older people. In fact, the vast majority of interpersonal (e.g. by a partner or family member) violence/abuse of older people is caused by exactly the same issues/reasons as violence/abuse of younger people and mirrors the characteristics of these offences (Bows, 2019; Bows and Westmarland, 2018). For example, the majority of rapes of older people involve female victims and male perpetrators, most occur in the victim's home and in most cases the offender is known to the victim (acquaintance, partner/family member). Similarly, in domestic homicides of older people, most victims are female, most perpetrators are male, are either partners or adult sons and most incidents occur in the home (Bows, 2018c). Crimes, including violence and abuse, against older people is not a hate crime and should not be approached as such.

Recommendation: a statutory aggravator applying to situations where a more general offence involves 'elder abuse' should not be introduced; however, there is scope to consider applying domestic violence/abuse as a statutory aggravator which would incorporate all age groups and recognise the additional (important) contextual feature of domestic violence which should be taken into consideration when sentencing.

The ability and willingness of victims to be able to report elder abuse?

It is difficult to get an accurate understanding of the extent of under-reporting, due to a number of reasons. First, the most common method of assessing under-reporting to official agencies is to examine the number of self-disclosed experiences in victim surveys (e.g. the Scottish Crime Survey) with the number of offences reported by the police. However, police data is based on crimes *recorded* by the police; not all *reported* incidents will be counted as crimes and recorded as such (a particular issue in relation to domestic and sexual violence which are under-recorded by the police, see HMIC, 2014). Furthermore, the existing crime surveys across the UK have varying methodological strategies, for example the Crime Survey for England and Wales (CSEW) has imposed upper age limits of 59 on the self-completion interpersonal violence module which collects data on domestic violence, sexual violence and stalking (increased to 74 in 2017) whilst the Northern Ireland survey caps at 64. Consequently, data is not available to compare. In Scotland, a cap is not imposed, and the survey does ask participants whether they disclosed partner abuse to anyone in the previous 12 months; the latest findings indicates the highest levels

of non-disclosure to anyone were in those aged 65 and over (49.1% had not disclosed to anyone). However, the motivations/reasons for not disclosing are not well known and it is not clear whether these differ from the reasons for (high rates of) under-reporting among younger groups. However, research with older victims of domestic/sexual violence does suggest that reasons cited by younger women can be magnified and exacerbated for older women and a combination of generational norms/attitudes, lack of awareness of violence against older people, fear of the police/criminal justice system and lack of awareness of available support (or the available support not being appropriate) may act as additional barriers for older people (Bows, 2018a; 2018b; Bows, 2019; for a review see Safelives, 2016).

Any specialist skills which may be required within the police and prosecution system to adequately address elder abuse offences?

Little is known about the experiences of older victims in the criminal justice system and their justice needs. Research is required to explore this to inform the development of evidence-based responses. The majority of victims of domestic violence have concerns about the criminal justice system and the available evidence suggests older people share these concerns (Bows, 2018a; 2018b). However, age may exacerbate some of the reasons for not reporting to the police (Bows, 2019). It is, however, important not to make ageist assumptions about what older people want or do not want, what their needs are and what is best for them in the system. Older victims should be treated with respect, should not be automatically considered any more vulnerable because of their age (compared with any other victim of crime/violence, all of whom may be considered vulnerable in those circumstances) and the existing support provisions and special measures should be discussed with older victims to enable them to make informed decisions.

Recommendation: research which examines the perceptions and experiences of older people, including what ‘justice’ means to them, their justice needs/interests and the adequacy of existing responses/processes is required before effective initiatives can be introduced.

Any parallels in the criminal protections extended to persons based on certain equality protected characteristics, (i.e. race, disability, those under a certain age etc.) and the lack a specific aggravating factor in relation to offences targeted at those over a certain age?

Recommendation: As detailed above, violence/abuse of older people is not a hate crime and should not be approached as such. Domestic violence, sexual violence and other forms of interpersonal violence and abuse (e.g. coercive control, financial abuse etc) that are captured by the existing criminal offences are not age limited or age specific offences and should be used regardless of the victim’s age.

Whether Scotland is fully meeting its international human rights commitments to older people in terms of not having a statutory offence on elder abuse?

Recommendation: The existing offences Scotland has for addressing different forms of violence/abuse are not age limited; they apply to victims regardless of age. The available evidence does not support bracketing off violence/abuse of older

people into a separate elder abuse category and offence which is inherently ageist. The existing criminal offences should be used to prosecute domestic and sexual offences against older people.

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