

JUSTICE COMMITTEE

PROSECUTION OF ELDER ABUSE

SUBMISSION FROM SOCIAL WORK SCOTLAND

Social Work Scotland is the professional leadership body for social work, working closely with our partners to shape policy and practice within social services. We welcome this opportunity to respond to the Committee's call for views on the nature, extent and prosecution of elder abuse.

1. 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)?

Social Work Scotland would support the creation of a specific statutory offence of elder abuse, to augment the current arrangements associated with the protection of vulnerable people, domestic abuse, etc. It is appropriate to consider that older people may be vulnerable through some factor associated with their age, and a new offence – going beyond physical assault, sexual harm and financial – may be beneficial in addressing the nuances of emotional harm and neglect.

However, the definition of elder abuse would need to be clearly determined (e.g. an age definition), as well as what would constitute abuse under the new offence. Links with existing Adult Support and Protection legislation should be explored and made explicit.

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

Social Work Scotland would support the creation of a statutory aggravator. The key factor here would be the resultant difference to sentencing, acknowledging the serious impact of elder abuse.

It may be beneficial if the aggravator is defined in terms of the victim's ability to safeguard themselves. In this regard, we would refer to Lord Bracadale's recommendations regarding a statutory aggravator as per questions 28 and 29 of the Consultation on Scottish Hate Crime Legislation (SG 2019).

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

We believe that the legal system has challenges in providing protection and justice where the current investigation and prosecution processes fail people whose reliability as witnesses may be questioned, for example vulnerable frail older people and adults affected by dementia. Often, the evidence produced is not sufficiently robust for criminal prosecution. It would be beneficial to focus on how supports and systems can be strengthened, and how vulnerable adult witnesses can be prioritised in the vulnerable witnesses policy work.

One specific issue that has been highlighted to us is the difficulty proving when a person with Power of Attorney misuses an older relative's money. This is particularly acute when the older person is unwilling or unable to contribute to the evidence gathering process, although reluctance to contribute may of itself be a factor in indicating that abuse is occurring.

Effective guidance given to COPFS and Police Scotland around how best evidence can be gained would go some way to addressing the issues. Greater use of indirect evidence, such a written statement taken from an older person or video evidence would assist. A good practice example is the scheme previously available in Liverpool <https://www.youtube.com/watch?v=gpgPM2X0CcM>

We also have to understand that many victims of harm may not wish their relative to be prosecuted but rather that the harm ceases. In this regard care would be required as to how the need for support and protection is balanced with prosecution.

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

We think that video recorded interviews should be used in capturing evidence from vulnerable people. This would present an opportunity to demonstrate the impact on the vulnerable person, and may preclude the need for court attendance.

Such a record would preserve the contemporaneous account by the victim, important if the older person's health or capacity deteriorates.

5. 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?

We think that there are both clear parallels and distinctions. Elder abuse is not a hate crime where the older person is targeted because of a hatred of them; it is more the case that older people are seen as an easy target. However there are similarities in that older people can be viewed as intrinsically of less worth than younger adults. In opposing prejudice of this kind, greater protection of the older population would be a major advance.

We note that the dissolution of the National Financial Harm Group was seen by some of our membership as a reduction in the national commitment to tackling financial abuse of older people.

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

We think if a specific statutory offence were introduced, then Scotland would be in a more defensible position in this regard.

7. Any other issues you consider relevant to the topic.

We would wish to reiterate comments made in the Social Work Scotland response (attached) to the consultation on the Vulnerable Witnesses (Criminal Evidence) (Scotland) Bill where we were in support of extending good practice in taking evidence from children to taking evidence from vulnerable adults.

https://www.parliament.scot/S5_JusticeCommittee/Inquiries/VW-SWS.pdf

Social Work Scotland members are of the view that existing measures to support vulnerable adult witnesses are not being used consistently or regularly.

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