

Rhoda Grant MSP

Speeches in the Scottish Parliament

Domestic Abuse ( Scotland) Bill

16 March 2011

It gives me great pleasure to open the debate.

The bill has taken a long time to bring forward, and there were times when I thought that we would never get here.

Through the process, I have come to realise that there is a lot more to do in tackling domestic abuse—often, that knowledge almost derailed the bill.

Everyone to whom I spoke had another list of things that needed to be done, but much of that work cannot, in my opinion, be done in a member's bill—for example, making restriction orders easier to obtain and ensuring that the victim and children can remain in the home.

Work also needs to be done to protect children from domestic abuse, as being a victim of such abuse damages their life chances.

Scottish Women's Aid carries out good work with children, but we are some way behind other countries in protecting children and repairing the damage that domestic abuse does to them.

When I introduced the bill, I came up against human rights arguments.

Although the clearest human rights argument I could find was that the state has a duty to protect citizens, that appeared to pale in comparison with the arguments that were put forward with regard to the offender's rights.

When the bill was first introduced it contained a section on access to legal aid, which was subsequently removed for two reasons, the first being a human rights one.

If the victim got legal aid, the defendant would need to get it too.

It appears that the needs of the perpetrator take precedence over those of the victim.

I believe that human rights legislation is there to protect citizens and victims, not offenders.

Until we get our interpretation of those laws right, they will remain a bone of contention.

The second issue relating to legal aid was the inability to calculate the cost of the provisions in the bill.

Legal aid that is paid in respect of domestic abuse is not measured separately, and there are therefore no robust figures to work from.

That created enough doubt in Government and committee minds about the costs associated with the provision that they would not back it.

Subsequently, the Scottish Legal Aid Board gave reassurance on their procedures for emergency situations, whereby victims who are fleeing abuse can access legal aid immediately, which enables them to access protection.

Such procedures are required by those who qualify for legal aid but cannot prove it because they have no access to their own paperwork, having fled an abusive relationship, or by people who have funds but are unable to access them if that might lead the perpetrator to track them down.

In both cases, emergency legal aid is available.

In the second case, repayment or a contribution towards the costs would be required to be made only when it was safe for the person to access their funds.

However, if such procedures are in place, why would the provisions in the bill have led to increased costs? Legal aid legislation allows ministers to make legal aid available, free from contributions, to people who are in such a position.

Primary legislation would not be required.

We are still picking up concerns about financial barriers to protection, and I urge the minister to examine that carefully and monitor the situation to find out whether such barriers exist.

If they do, the cost for removing them should be brought back to the Parliament.

Nobody should lack protection because of financial constraints; as a state, we have a duty to protect.

The second contentious issue in the bill was the inclusion of boyfriends, girlfriends and partners who are not or were not cohabiting.

We struggled to find a definition for those people after stage 2, and were in danger of omitting them from the bill's protection.

In 2009-10, the police recorded 11,000 domestic abuse incidents between partners and almost 19,000 incidents between ex-partners.

We all know and use the terms "boyfriend", "girlfriend" and "partner", and we know what they mean.

We know the nature of the relationship and we have no difficulty with it.

It is disappointing that plain English does not suffice in legislation.

I recently spoke to Maureen Macmillan, who told me that during the passage of the Protection from Abuse (Scotland) Bill a similar problem with cohabitees arose—obviously, that is no longer a problem in law.

Our legal system has to be fit for purpose.

We need to use language that we all know and understand.

That is a rant for another day, however.

I hope that we will not have problems in defining boyfriends and girlfriends in future.

The form of words that the Parliament agreed is "an intimate personal relationship", a definition that covers the spectrum of boyfriend/girlfriend relationships and partners in a relationship.

The spectrum needs to cover every stage of the relationship from the start right up where another definition, such as married or cohabitee, applies.

It is also clear that the definition covers same-sex relationships.

There were arguments about what stage of a relationship domestic abuse is likely to occur at and whether those who cohabit are at greater risk of abuse.

It is clear from the figures that a significant number of people who suffer from domestic abuse do not live with the perpetrator.

The bill must cover them. From anecdotal evidence, it is clear that domestic abuse can occur at any point in a relationship.

In essence, domestic abuse is power-based abuse.

It occurs when the perpetrator has the ability to exercise a degree of power over their victim.

In some relationships, domestic abuse takes years to develop; in others, it takes just days.

Someone does not have to share a home with the perpetrator to suffer, but if the victim is a cohabitee, they need further protection. That protection is not offered in the bill.

I ask the Government to take on board the need for a review of the protection that is offered in law to victims of domestic abuse and their children.

Domestic abuse does not happen only in relationships that are fully sexual—relationships in which intercourse has taken place.

It is about not the degree of physical intimacy but the ability to exercise power and control and to coerce.

We need to protect all those who fall victim to this horrendous crime—a crime that is perpetrated by a person who is supposed to love and protect but who instead hurts and humiliates.

I ask members to support the bill at decision time.

As I said, it is not the last word in tackling domestic abuse, but it is another step in the right direction.

I look forward to the day when we as a Parliament and a society can eradicate this scourge.

I move,

That the Parliament agrees that the Domestic Abuse (Scotland) Bill be passed.

Previously in the debate.....

Rhoda Grant (Highlands and Islands) (Lab): Before I speak to amendment 1, I thank the minister and his civil servants for their help in lodging the amendments. It was very much appreciated and I hope that we have reached consensus on them.

Amendment 1 will make two changes to the bill as a consequence of the Damages (Scotland) Bill, which Parliament has recently approved. Stage 3 took place just the other week.

Section 1 of the Domestic Abuse (Scotland) Bill inserts a new section 8A into the Protection from Harassment Act 1997. Section 1(5) amends the definition of personal injuries in the Damages (Scotland) Act 1976 so that it covers section 8A of the 1997 act, as well as section 8.

However, the Damages (Scotland) Act 1976 will be repealed by Bill Butler's Damages (Scotland) Bill. Amendment 1 will therefore amend section 1(5) of the bill to delete the reference to section 10(1) of the 1976 act. Harassment leading to personal injury will be covered by the general definition of personal injury.

Section 2 of the Damages (Scotland) Bill refers to section 8 of the 1997 act. That ensures that rights to damages that arise from actions of harassment under section 8A will continue to transmit to the deceased person's executor. Amendment 1 will amend section 2 of the Damages (Scotland) Bill so that it also extends to actions under the new section 8A.

Given that stage 3 proceedings on the bills were held so close together, we were in a bit of a quandary about how best to deal with the changes, and the amendments were agreed as the best way forward. I doubt that any other bill has been amended as quickly as the Damages (Scotland) Bill has been following its passage at stage 3.

I move amendment 1.

Rhoda Grant: Amendment 2 will amend section 3(1)(za), so that it refers to the determination being granted under the new section that will be inserted by amendment 4. The effect is that section

3(1)(za) will no longer reflect the category of persons that are being protected by the interdict. Instead, it will refer to the determination made by the court under the new section that will be inserted by amendment 4.

Under section 3(2), a person who breaches an interdict to which section 3 applies is guilty of an offence under section 3(1). The section applies when an interdict has been granted on or after the date on which the sections come into force, a determination has been made that the interdict is a domestic abuse interdict and the determination is in effect, and a power of arrest is attached to the interdict under the Protection from Abuse (Scotland) Act 2001 and is in effect.

Following amendment 1, a determination must also be made by the court that an interdict is a domestic abuse interdict and that that determination is in effect, together with a live power of arrest, for breach of the interdict to be a criminal offence.

Amendment 3 is a consequential amendment, in that it ensures that the reference in section 3 to the term "interdict" including interim interdict extends to the new section that will be inserted by amendment 4.

Amendment 4 makes a provision in relation to the determination by the court that the interdict is a domestic abuse interdict. Proposed new subsection (1) provides that a person who is applying for or has obtained an interdict may apply to the court

"for a determination that the interdict is a domestic abuse interdict."

Under proposed new subsection (2), the court may make the determination only if

"the interdict is, or is to be, granted for the protection of the applicant against a person who is (or was)—

(a) the applicant's spouse,

(b) the applicant's civil partner,

(c) living with the applicant as if they were husband and wife or civil partners, or

(d) in an intimate personal relationship with the applicant."

That last point is probably the most difficult in the bill. The Government amended the bill at stage 2 to include spouses, civil partners and cohabitantes. However, the amendment removed boyfriends and girlfriends—people in a relationship who have not formalised the relationship and do not live together—from the bill's protection. Approximately 11,000 cases of domestic abuse are reported to the police by people who fall into that category as current partners and almost 19,000 are reported by people in that category who are ex-partners. It is unreasonable not to protect such a large number of people in the bill. The Government agreed and we worked together to find a resolution to the problem.

We were keen that the protection was not extended to family members, flatmates or business partners. The best way to define the category is "an intimate personal relationship". By that phrase, we mean a relationship that spans from dating to one that is fully sexual, and the spectrum in between. It also covers same-sex relationships within that spectrum. It is difficult to determine when domestic abuse will start within a relationship; it depends on each individual offence.

Amendment 4 also provides, in proposed new subsection (3), that

"Before making a determination ... the court must give the person against whom the interdict is, or is to be, granted ... an opportunity to make representations."

Proposed new subsection (4) provides that the determination has

“no effect for the purposes of section 3 until a copy of the interlocutor containing the determination has been served on”

the interdicted person. That means that the breach of the interdict, and extant powers of arrest, is not a criminal offence until the court’s determination that the interdict is a domestic abuse interdict and that it has been served on the interdicted person.

Proposed new subsection (5) provides that where the court varies the relevant interdict, it must review it to establish whether it is still a domestic abuse interdict and, if it is not, the court must recall the determination.

Proposed new subsection (6) provides that if a determination is recalled it

“ceases to have effect for the purposes of section 3”.

That means that any breach of the interdict would not be a criminal offence.

I move amendment 2.

Closing the debate.....

Rhoda Grant: I thank all members who took part in the debate for their kind words—in fact, their words were so kind that when Roseanna Cunningham came into the chamber she asked whether I was standing down at the election, because people were being so nice to me.

I tell her that it is not my intention to stand down, but that is up to the voters.

Before I address the points that arose in the debate, I will take a couple of minutes to thank some people, without whose help the bill would not be in front of us today.

First, I thank all those who responded to the consultation.

Special mention must go to Scottish Women’s Aid, both nationally and the various local offices.

There are far too many people to mention, but I appreciate all their help, especially that of Louise Johnson, who helped every step of the way.

I also need to thank my staff and researchers, who have come and gone over the piece. Special thanks go to Marian Grimes, who helped me focus, and Liza Gilhooly, who has accompanied me throughout the whole parliamentary process.

I am sure that Liza will be delighted that Nigel Don has studied the financial memorandum, because she put a lot of blood, sweat and tears into it.

I thank Unison, which sponsored the bill.

I thank Dave Watson, Fiona Montgomery, Norma Black and Unison’s women’s committee.

I also thank Norman MacAskill for designing the consultation document and Catriona Burness for pulling together case studies.

A huge thank you goes to James Clark, because the bill would not have got to this stage without him.

I also thank Clare Connelly, who came up with the solution for how the bill could be shaped to tackle the issues.

Clare carried out the 2003 study on civil protection orders, "An Evaluation of the Protection from Abuse (Scotland) Act 2001", which gave her a clear understanding of what needed to be done.

I also want to thank parliamentary staff—committee clerks and support staff.

Mike Pringle said that they are sometimes the unsung heroes and I am very grateful for all their help and support.

I need to extend a special thanks to the Parliament's legislation team, who were wonderful, particularly Frances Bell.

Frances was in the chamber for the earlier stages of the debate, when I was on my toes.

One instance of how hard she works is that she phoned me at midnight over the Easter weekend last year, when she was still in the office and I was at home with a glass of wine.

I am extremely grateful for that level of dedication.

I thank the committees for their scrutiny of the bill, and Fergus Ewing and his staff and officials for their help in drafting the amendments and their work to solve some of the highly technical issues that we faced.

I say a big thank you to Carol—that is not her real name—who allowed her story to be told to illustrate how the bill would help victims of domestic abuse.

Last but not least, I thank Maureen Macmillan, who suggested the bill in the first place.

I am not sure whether I should be thanking her or just saying, "That's another fine mess you got me into."

I appreciate the really good comments that members made during the debate.

I am grateful to the minister for undertaking to investigate the barriers that exist.

The problem may not be with legal aid, but with solicitors who may not be using the available provisions.

I would be grateful if that were looked at as part of the research that the minister is to have carried out.

I am grateful to SLAB and the minister for agreeing to further publicise the protections that are available for people who suffer from domestic abuse.

Robert Brown talked about the police and how they are now dealing seriously with domestic abuse.

The bill will give them the tools that they badly need to help them to tackle the issue.

The domestic abuse figures have fallen as a result of the work that they have been doing, and I hope that that will continue.

Indeed, I hope that no victim will need to use the bill and that the police will offer them the assistance that they need without their having to go to court.

Stewart Maxwell and Bill Butler reminded us of the need for legislation by giving us stark statistics that highlight why we need to protect people.

James Kelly said that the bill will improve access to justice and protection, and I very much hope that it will.

Bill Aitken said that he hoped that I did not think that I was getting half a loaf; I do not.

I am very pleased with the support that I have had, for which I am extremely grateful, and I thank Bill for his help throughout the process.

As others said, non-harassment orders will be much easier to obtain.

As Bill Butler said, it was wrong that a course of conduct had to be shown before someone could get a non-harassment order.

The bill will stop that happening.

It will also mean that the state will deal with breach of domestic abuse interdicts.

Nigel Don suggested that perhaps we should go further and have the state deal with all breaches of interdicts, but I, for one, am pleased that the bill will mean that people who suffer from domestic abuse will get that specific protection.

Victims will no longer be responsible for going back to court to get redress.

A number of members, including Richard Baker and Stewart Maxwell, talked about the increase in domestic abuse that takes place around Christmas, around football matches and around alcohol consumption, but let us be clear that there is no excuse for domestic abuse—none of those things is an excuse for it.

As I said, the bill is not the last word on domestic abuse.

It is merely another step along the way.

I hope that a day will come when, as a society, we will not tolerate such abuse and victims will no longer live in fear.