

**COPFS CONFERENCE ON DOMESTIC ABUSE  
THURSDAY 8 MAY 2014**

**MINISTERIAL ADDRESS by LESLEY THOMSON QC,  
SOLICITOR GENERAL**

**WELCOME**

- Good morning and welcome to this important conference hosted by the Crown Office and Procurator Fiscal Service.
- I am delighted to see such a high turnout and I hope that you will make the most of this opportunity; that you will ask questions of the speakers and actively participate in the workshop sessions planned. At the end of the day, I hope we each will have improved our knowledge and understanding of some of the key issues; but also that we take away some new ideas to progress in our individual lines of work.
- In opening this conference today and I wish to share with you my own thoughts on what more we can do to tackle domestic abuse in Scotland.

**DOMESTIC ABUSE – THE STORY SO FAR**

- Scotland has come a long way in dealing openly and honestly with the causes and consequences of domestic abuse. In my lifetime, I can confidently say both as a woman and as a prosecutor, that I have witnessed a cultural change in the way in which domestic abuse is viewed and treated by society.
- Domestic abuse is not treated as a private matter but is, as it should be, a public concern.
- Domestic abuse is not something we turn a blind eye to but is, as it should be, something that is thoroughly investigated and vigorously prosecuted in order to hold abusers to account.
- Victims of domestic abuse are not sidelined and silenced by our criminal justice system but are, as they should be, afforded protection and given a voice.
- As a society, we have come a long way in recognising the significant and enduring consequences that domestic abuse can have on victims and children.
- Prosecutors have made significant improvements in terms of our understanding, knowledge and awareness of the dynamics and

consequences of domestic abuse. The prosecution of cases involving domestic abuse is a strategic priority for COPFS.

- **BUT**, there is a lot more to be done.
- As Solicitor General and before that a senior member of COPFS, I am of course extremely proud of the achievements and progress of the prosecution service in its approach to tackling domestic abuse. However my pride is irrelevant. What matters is whether victims of domestic abuse in Scotland are getting justice. What matters is whether we have the best apparatus in place for the effective prevention, protection, prosecution and provision of support to victims.
- It is of course important to take stock of past achievements insofar as it helps us to understand the current context in which we operate, but it should not be the measure of our success. The question for us is not: "*Are we dealing with domestic abuse better than we did 10 or 20 years ago?*" The question has to be: "*Are we dealing with domestic abuse in the best way possible?*"
- It is of little comfort to a victim of domestic abuse today to hear that the individual and collective response of the police, prosecutors, courts and support services has much improved over the past 20 years if ultimately that victim still feels failed by those 'improved' systems.

## **PROBLEMS OF CURRENT FRAMEWORK**

- So how can we reduce the risk of victims feeling failed by the system? I have no doubt in the skill and commitment of investigators in Police Scotland and prosecutors working in this area. Nor do I have any doubt in the collective good will and desire that exists throughout the entire criminal justice system to ensure that victims of domestic abuse are protected and supported and that perpetrators are held to account.
- But despite this, some victims of domestic abuse continue to feel failed by the criminal justice system.
- Sometimes this is because their cases do not come to court – for example where there is a lack of corroborative evidence.
- The existing rule of corroboration in Scots law means that in order to prove a crime, the Crown must lead evidence from at least two independent sources of the essential facts of that crime.
- This rule of two independent sources of the essential facts is applied to all crimes in Scotland. It applies equally to pub brawls that take place in the presence of a roomful of witnesses and to incidents of domestic abuse that most frequently occur behind closed doors.

- If there is no second source of evidence to support a victim's allegation of domestic abuse, there can and will be no prosecution. No matter how serious the allegation or how severe the consequences for the victim; that victim will, as a matter of law, be denied access to justice.
- To me, this is entirely unacceptable. The very nature of domestic abuse means that it often occurs in private and that should not, in any fair and modern legal system, be a barrier to justice.
- I fully support the Government's proposal to abolish the requirement for corroboration in Scots law.
- At the other end of the spectrum there are also victims whose cases are successfully prosecuted yet despite this; they too feel that their experience as a victim of domestic abuse has not been fully recognised by the courts.
- Instead they feel that months, years and sometimes decades of abuse are distilled into discrete, isolated incidents on which they are called to give evidence. Instead of being able to describe the patterns of psychological, emotional and financial abuse that they were subjected to, the focus of the courts tends to be only on the episodes of sexual abuse or violence that punctuated this campaign of abuse (and of course only those episodes which were corroborated).
- Victims find that the focus of the courts on the consequences of the abuse falls upon the presence or otherwise of physical injury and not the isolation, fear or psychological trauma endured by the victim.
- The patterns and consequences of coercive control so often experienced by victims of domestic abuse are simply not on the court's radar in any formal manner. Of course individual Sheriffs and Judges trained in this area will recognise these patterns from the evidence presented but there will be no charge before them requiring them to deal with this aspect of the accused's behaviour. Instead it is for them to sentence the accused on the basis of the crime that is proved – an assault, a statutory breach of the peace or some other offence. Each incident is treated in isolation and the cumulative harm to the victim is not recognised, instead such an episodic approach leads to the minimisation of abuse by the criminal justice system.

## **OFFENCE OF DOMESTIC ABUSE (& AGGRAVATION)**

- My own view is that we need to look towards developing a modern approach that takes account of the devastating emotional damage to victims that is caused by domestic abuse. Our laws often focus on the damage to property or to a person's physical integrity but the harm caused by domestic abuse tends not to fit into these categories. Domestic abuse attacks a person's confidence and self esteem. It undermines their autonomy and has a corrosive effect on their ability to enjoy their everyday life and to participate in their relationships, their family, their community. Domestic abuse violates the emotional and psychological integrity of victims and we need a law that recognises that and punishes those responsible.
- In my personal view, there are strong arguments in favour of creating a new bespoke criminal offence of domestic abuse
- I believe that the creation of a specific offence would:
  - reflect the true experience of victims of long term abuse during which they are, on repeated occasions, subjected to multiple forms of abuse, including non violent abuse;
  - acknowledge the true impact and consequences of all types of abusive behaviours including non violent tactics of control and abuse;
  - acknowledge the role of coercive control;
  - raise awareness of the offence and the impact on victims;
  - provide clarity to the public and to law enforcement; and
  - declare without ambiguity that this conduct is not acceptable and will be met with the full force of the law including the imposition of criminal sanctions.
- In addition to the creation of a specific offence of domestic abuse I also see the merit in the introduction of a statutory aggravation of an offence being motivated wholly or in part by an intention to commit domestic abuse. This aggravation would be used where it was not possible to prove the substantive offence of domestic abuse but it was possible to prove that a seemingly unrelated offence was committed in furtherance of an offence of domestic abuse or motivated wholly or in part by an intention to commit an offence of domestic abuse.

- Statutory aggravations already exist to assist in the identification and prosecution of many types of offences including serious and organised crime and offences aggravated by prejudice. Most recently, the Scottish Government has proceeded with proposals for a statutory human trafficking offence.
- In Scotland in recent years we have modernised our law in sexual offending serious and organised crime stalking and human trafficking. Now is the right time to modernise the law on domestic abuse.
- Such laws exist elsewhere. In 2010 France introduced a law relating to 'psychological violence' against spouses and partners.
- In Sweden, there has been a law in force since 1998 criminalising the 'gross violation of a woman's integrity'.
- In Westminster, Plaid Cymru MP, Elfin Llwyd, is seeking to introduce a Private Member's Bill which would create a criminal offence of domestic abuse in England and Wales. Time will tell what progress that proposal makes but it has been welcomed by members of all parties and is sure to ignite the debate south of the border.
- Scotland's parliament has a strong track record in pioneering legislation. In Scotland in recent years we have modernised our law in sexual offending, hate crime, serious and organised crime, stalking and human trafficking. Now is the right time to modernise the law on domestic abuse. It is an area in which bespoke specialist legislation has a role to play.

## **CLAIRE'S LAW**

I know that the criminal law alone will not eradicate domestic abuse, but enacting the right laws is an important step. It has the potential to effect further change in societal attitudes, to instil confidence in victims and of course to ensure that their abusers are held to account.

- However, prevention must be an overriding aim of all those working in this area. Again, we must challenge ourselves to be innovative and progressive. There are approaches elsewhere that we can learn from.
- For example, in England and Wales they have recently rolled out the Domestic Violence Disclosure Scheme, widely known as Claire's law. I know that this is something that Police Scotland have been watching and monitoring and I look forward to working with them on developing a Scottish solution if that is felt appropriate.

## **CONCLUDING REMARKS**

- So to conclude ladies and gentlemen, I recognise that law enforcement in partnership with organisations here today have made substantial progress but we need to continue to work together and challenge the way we respond to this serious type of crime. Going forward we need to consider progressive proposals to ensure that our criminal law is and remains fit for purpose.
- So putting down a marker today I'm saying that creating a specific offence of domestic abuse encompassing coercive control is one way in which I believe we could achieve that.