

Proposed Civil Protection Orders and Access to Justice (Scotland) Bill

Combined consultation response from Midlothian Domestic Abuse Forum and East Lothian Violence Against Women Forum – February 2010

INTRODUCTION

Midlothian Domestic Abuse Forum is a partnership of statutory and voluntary sector partners within the Midlothian local authority area who work to provide service improvements to those affected by domestic abuse in the community. East Lothian Violence Against Women Forum is a similar forum for the East Lothian area but has a wider remit in terms of the gender equality agenda. A significant number of the partners of both forums are members of each. In addition, as part of a move towards increased shared services across both local authorities, there is a commitment to develop a shared forum to plan for services to tackle violence against women across both areas in a strategic way.

This response is an amalgamation of responses from the various partners and collated by the Violence Against Women Strategy Coordinator who supports both the Midlothian Domestic Abuse Forum and the East Lothian Violence Against Women Forum.

CONSULTATION RESPONSE

This part of the response deals solely with the consultation questions provided.

1. What advantages or problems might arise as a result of removing the course of conduct requirement?

In dealing with disclosure of abuse, is it essential that individuals and agencies are able to respond effectively. Most victims do not name their experience as abuse at first and disclosure can occur in a very wide variety of ways that can make it difficult to identify sometimes. For that reason it is important that those responding to such a disclosure keep an open mind and demonstrate that they believe the victim/survivor as the first step in providing effective support.

The widely accepted principles of effective support are:

- Believe and validate the person's experience
- Affirm that the victim/survivor is blameless
- Enable the victim/survivor to regain control
- Accept difference of opinion, be non-judgemental
- Be supportive, encouraging, open and honest
- Give accurate information

Having to provide 'proof' of a course of conduct can lead to services focussing on this requirement rather than providing the necessary advice, information and support for victims..

Removing this requirement will free up services to be able to respond in a more person centred, outcome focused way that should ultimately empower the victim to regain control and deal with the effects of their abuse more readily.

Offences of this nature are still very much hidden crimes, with convictions being rare and incidents being under-reported. Having an approach in place that focuses on supporting the victim and not burdening them with a requirement to prove their abuse, should gain the confidence of victims to feel more confident in disclosing their abuse.

2. What do you see as the main benefits of making it easier to obtain a non harassment order?

If we recognise the principles of effective support as set out above, there is a need to clearly define the boundaries of criminal justice and public protection. The current arrangements in place for obtaining a non-harassment order demonstrate that this is not the case at present.

Criminal justice should afford the alleged perpetrator an opportunity to address allegations effectively regardless of the truth or otherwise of the allegations made against them. The existing arrangements effectively enable this and this principle should stand. However, there is a fundamental imbalance with protection measures. This, mainly gender biased, imbalance leads to most victims feeling that they are unable to access much needed support.

Making it easier to obtain a non harassment order redresses this balance but does not reduce the rights of the alleged perpetrators. It affords effective protection to victims as any breaches of orders are only going to impact on those who are intent on continuing a course of action that breaks the law. Any innocent parties need not fear the imposition of a non-harassment order if they do nothing to breach it and are afforded the opportunity under the justice system to 'clear their name'.

3. What advantages or problems might arise with the removal of means testing?

In considering the impact of the proposed bill, evidence came to light of cases where victims of domestic abuse were approaching antisocial behaviour teams to seek antisocial behaviour orders to protect them from further abuse. These actions are only feasible in a small number of cases that such situations would be applicable (i.e. where the perpetrator does not live as part of the household). The victims in these cases approached the local authority because they were unable to afford to access non-harassment orders or had experience of interdicts not having worked. It is worth noting that the burden of proof was not the primary motivator for these individuals.

Such an approach makes the local authority responsible for pursuing action against a perpetrator but do not empower the victim. This goes against the principles of supporting victims although it is a pragmatic method of countering the existing imbalances in existing civil proceedings.

4. What do you see as the main benefits of removing means testing?

In respect of the gendered analysis of domestic abuse, the current system could be interpreted as being in breach of Gender Equalities legislation by disproportionately limiting access to justice, primarily due to financial restrictions. While any amendment would obviously benefit both male and female victims of abuse, such a change would also redress such gender inequality.

5. What are the advantages and problems that might arise from making it a criminal offence to breach an interdict with a power of arrest?

We previously indicated that other orders where a breach is considered a criminal offence have been picked up by victims as a possible tool to protect them. While the use of antisocial behaviour action is very limited in that it cannot be used for members of the victim's household their use does have the benefit that any breach is a criminal offence with the power of arrest. Given that victims of domestic abuse are willing to go through the process of obtaining an antisocial behaviour order to protect themselves, there is clearly a perceived benefit in terms of the additional powers granted as part of the award of an order. It should be noted that the use of such measures is gaining momentum across local authorities. Employing a similar measure for interdicts will save councils considerable resources as it can cost several thousand pounds to succeed in obtaining an ASBO depending on the level of evidence etc.

Implementing any changes to improve access to non-harassment orders by removing the burden of proof and means testing will be less effective without measures to strengthen their authority. Without some sort of recourse to more serious consequences of a breach of measures put in place to protect a person, they are effectively useless.

6. What do you see as the main benefits of making it a criminal offence to breach an interdict with a power of arrest?

Violence in any form must be seen as a criminal offence. Given the Scottish Government's definition of Violence Against Women incorporating domestic abuse, there is an opportunity to influence behaviour through the justice system. Unfortunately our understanding of violence as a society has not progressed sufficiently to classify domestic abuse as a crime. Establishing a mechanism that puts the protection of the victim first in such cases, with serious repercussions for those violating their conditions, will start to make a difference. By criminalising persistent offending in relation to domestic abuse, coupled with continued awareness raising and education, there is a greater chance of reducing the instances of domestic abuse in the first instance.

In discussing the possible impact of the proposed bill, members of the housing profession highlighted other inequalities that exist within the civil court system in respect of domestic abuse. Tenancies can be terminated if the tenant, someone residing in the house, or anyone visiting it, has acted in an anti-social manner towards, or has harassed, someone else in the locality and it is not reasonable for the landlord to transfer them to another house. In many cases women can be presenting as homeless and require to be housed in adequate

accommodation while the perpetrator remains in the family home with no penalty. Strictly speaking the landlord could take action to evict the perpetrator from the home but in practice evictions are not granted because the courts do not appear to treat domestic violence as seriously as harassment of others in the neighbourhood. Even in the event of the court deeming it more appropriate for the perpetrator to be re-housed, victims are forced to leave their family home, and when necessary seek assistance from homelessness services.

While the preceding paragraph details a situation that could be regulated more effectively by housing legislation, it demonstrates the extent to which the various protection measures need to be matched up and awareness of the impact of violence against women has to be improved. Raising public awareness and that of professionals (to make maximum use of existing measures) and imposing penalties on perpetrators can have an impact on people's behaviour. This has been seen by the difference in attitudes to drink driving and smoking in public places. That is not to trivialise the abuse that many women suffer but it highlights that change is possible if approached holistically.

7. What costs would be associated with all of the proposals contained in this Bill?

There will clearly be cost implications to changing the current system but this need to be weighed up against the cost of not tackling violence against women more effectively.

The cost of domestic abuse alone to public agencies in Scotland is estimated at £2.3 billion per year. In recognising this as part of the case for tackling violence against women, the Scottish Government and COSLA identify three key issues that need to be considered. While one of those relates to the need to have a more robust understanding of the extent of violence against women, the changes proposed within the bill would make a significant impact:

- Develop an effective approach to prevention
- Providing improved support for marginalised women and women and children with diverse needs

In working towards more positive outcomes for women and children the longer term impact of measures can only be guessed at until we have a much clearer picture of the extent to which it impacts on the lives of individuals and communities. However, there is already a body of evidence as to the cost of domestic abuse within existing responses and services that indicates that this is a significant problem. Through a more holistic approach that supports victims to regain control and live more fulfilled lives, the cost implications of domestic abuse within the continuum of violence against women should reduce.

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