

**Hamilton & Clydesdale Women's Aid response to:  
Proposed Civil Protection Orders and Access to Justice (Scotland) Bill  
consultation document December 1<sup>st</sup> 2009**

**Responding on behalf of Hamilton & Clydesdale Women's Aid:**

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**Questions:**

**Non-Harassment Orders:**

1) One advantage of removing the course of conduct requirement for obtaining a non-harassment order would be to make it easier for women living with abuse that is secretive to obtain protection. It is our experience that much abuse is hidden from public view and the controlling nature of abusive relationships often means that no one outside the perpetrator and victim are aware of the full extent of the abuse. To require prosecution for two separate incidents could put a woman/family in significant danger before they are eligible for protection. Fear of reprisals or escalation of abuse could result in silencing the abused person, thus obscuring the truth about her situation and chance for civil protection. As spelled out clearly in the consultation document, a convicted abuser need only chose not to further harass his victim and his liberty will not be affected.

It is our experience that very few women we support choose to apply for a civil non-harassment order due to the cost, burden of proof and the risk that the harassment will get worse between the first and the second conviction, if there is a second conviction. Abuse often gets much worse once the abuser knows the victim is taking steps to protect herself.

2) The main benefit for making it easier to obtain a non-harassment order is that more victims of harassment will be protected. If there is a higher chance that a non-harassment order can be obtained after one conviction then more victims are likely to come forward; thus, moving towards protecting the rights of women and their children to live a life free of abuse.

### **Access to legal aid:**

3) An advantage to removing means testing would be that a victim of domestic abuse would no longer have to consider whether she can afford to seek protection through the courts. She could concentrate on finding the courage to speak out. Let's not forget that financial abuse is more often than not part of domestic abuse. The women we support are often prevented from seeking further education and work and it is common for women who do work to be pressured into taking on the debt of their abuser. This is all orchestrated to keep her dependent and financially tied to her abuser, which limits her choice and continues to create problems even when she manages to remove herself from the abusive situation.

An added advantage may be victims receiving the message that her right to be protected from abuse is as important as her abuser's right to protect himself from lost income or a miscarriage of justice. If legal aid cannot be granted automatically when seeking civil protection from domestic abuse then, at very least, the two parties concerned should be judged by the same criteria with no unfair advantage given to the perpetrator simply because his behaviour has required he be remanded.

4) Removing means testing will mean that one of the obstacles to applying for civil protection orders will be removed. Hopefully, this will encourage more victims to come forward. The more victims are encouraged to come forward the more we will see how prevalent domestic abuse is in our society. Most victims suffer in silence with no protection.

### **Failure to provide a robust response to breached orders:**

5) The main advantage to making it a criminal offence to breach an interdict with a power of arrest must be added protection for victims of abuse. If the perpetrator is in custody he will be unable to continue abusing his victim. If the threat of aggression is removed then a little of the control he holds over her may be relinquished making it easier to seek support to flee the abuse. There will be no economic impact on the victim to unsure the enforcement of breach of an interdicts with power of arrest.

In order to get an interdict with power of arrest the victim will have proved that it is necessary for her safety. The abuser will have been told to stay away from his victim and any breach will mean he has boldly chosen to ignore the order. By not making it a criminal offence to breach the interdict with power of arrest he will be sent the message that he does not need to follow the law. Civil law is, in effect, condoning his behaviour by not holding him responsible for it by imposing serious sanctions when there are breaches. As it stands, all the effort

to affect change must come from the victim. When will the perpetrator be held to account for his part in the abuse?

6) The benefits are numerous if it deters ongoing abuse and violence. Women/families may opt to stay in their own homes if they are given the tools to protect themselves from continuing abuse. If perpetrators of abuse can be discouraged from continued assaults or threats by the risk of being arrested and acquiring a criminal record then there could be a drop in the number of homeless families and thus a drop in the cost of providing emergency accommodation.

There is an enormous impact on the lives of those living with ongoing abuse. There is often increased contact with health services; both due to physical and mental health injuries, as well as social work and the criminal justice service. There is often a disruption to children's education. If victims are working and have to give it up due to abuse there will be loss of economic output which impacts on the individual and on society as a whole. The human and emotional costs are also very important, if harder to quantify.

#### **Costs associated with proposed changes:**

7) There will be an increased cost for legal aid but this may be outweighed by decreased costs to other services. There will be the increased cost of arresting, bring charges and putting perpetrators in jail but maybe with the real possibility of custodial sentences for breaches they will chose not to offend.

The changes in law will, in time, help to send the message that domestic abuse is not acceptable; victims will be supported and perpetrators will be punished. Getting those messages across is the only real chance we have of stopping domestic abuse.

