

NOT PROTECTIVELY MARKED**STRATHCLYDE POLICE
DOMESTIC ABUSE COORDINATION UNIT****COMMENT****ON****THE PROPOSED CIVIL PROTECTION ORDERS AND ACCESS TO JUSTICE
(SCOTLAND) BILL – CONSULTATION DOCUMENT (DECEMBER 2009)**

I refer to the above named document, which has been considered by the Domestic Abuse Coordination Unit, Strathclyde Police and can now offer the following by way of comment.

INTRODUCTION

One of the legal responses to Domestic Abuse is to increase the availability and type of civil protection orders available. In Scotland, the Protection from Abuse (Scotland) Act 2001 made interdicts (with a power of arrest) available to anyone subjected to Domestic Abuse. Further protection is now available in the form of Non-Harassment Orders (NHOs) under the Protection from Harassment Act 1997.

Legal and financial constraints, evidential burdens and the fact that the breach of most orders is not criminalised are continuing barriers to those who seek protection from abuse.

OBJECTIVE OF THE PROPOSED BILL

The Proposed Civil Protection Orders and Access to Justice Bill, prepared by Rhoda Grant, MSP was circulated for comment in December 2009.

The Proposed Bill seeks to provide victims of Domestic Abuse with greater access to protection from the perpetrator, and proposes to accomplish this within three objectives:

- Removing the requirement to show a course of conduct before a non-harassment order can be granted by either the civil or criminal court, requiring only one incident of harassing behaviour.
- Making Legal Aid free to all for an application to a civil court for an interdict with a power of arrest, or a non-harassment order, where domestic abuse is involved. This will allow all victims of Domestic Abuse, regardless of economic background, to access the protection afforded by these orders. Victims would no longer have to pay for their own protection.
- Making it a criminal offence to breach an interdict with a power of arrest.

NOT PROTECTIVELY MARKED

BACKGROUND TO CIVIL PROTECTION ORDERS IN SCOTLAND

Civil protection orders aim to protect victims from future Domestic Abuse, whereas a criminal prosecution seeks to punish the perpetrators.

Civil protection orders can prohibit future criminal actions, are useful in curtailing behaviour which otherwise does not amount to a crime and can be obtained whilst a relationship is ongoing or after it has ended.

Before a civil protection order is granted, the civil standard of proof (balance of probabilities) must be considered, whereas the criminal standard (beyond reasonable doubt) requires two independent pieces of evidence for corroboration.

Unlike complaints made through the criminal process, a perpetrator does not face consequences simply because their victim has applied for an order. Any further action would only arise if the perpetrator thereafter breaches the civil order.

CONSULTATION QUESTIONS AND ASSOCIATED RESPONSES:

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

Currently, NHOs are the best protection order available, although can be expensive to obtain. One of their advantages is that the period of time in which a course of conduct can be established is greater than that of many civil orders, allowing more infrequent, sporadic abuse to be taken into consideration. Further, any breach of an NHO is a criminal offence.

Removing the requirement to show a course of conduct before granting a civil or criminal order would allow consideration to be made by the court as to whether there is a risk of future harm to a victim that requires to be prohibited, rather than assessing previous instances of harassment, which may have been ongoing for a considerable time.

A perpetrator's liberty would only be removed if they continued to break the law. If the perpetrator were of good behaviour, their liberty would not be infringed. However, if further abuse was intended, the order may either prevent it or allow the police to take swift action, resulting in criminal proceedings.

NOT PROTECTIVELY MARKED

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

As the law stands at present, when a victim of abuse applies for a NHO, at least two different occasions of harassment are required to be shown to the civil court. This is because a 'course of conduct' must be established before an order can be granted.

The proposed Bill suggests that a NHO may be granted after a conviction for a single incident of abuse, and argues that a single conviction should be evidence enough to entitle the victim to secure an order aimed at protecting them from further abuse.

By making NHOs more accessible to victims of Domestic Abuse, victims (and their families) are afforded further levels of protection. The perpetrator is also restricted with regard to their behaviour in relation to the victim. Any breaches of an NHO can be dealt with swiftly by police and the courts.

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

On 7th April 2009, the Scottish Government increased the annual disposable income limit for civil legal aid from £10,306 to £25,000. This has undoubtedly improved the position of many who seek protection from abuse. However, even with the increased threshold, some victims will continue to encounter financial barriers when seeking protection from abuse. The increase does not address the imbalance between the access to justice afforded to the perpetrator and that available to the victim.

The proposed Bill seeks to make legal aid free to all for applications to civil courts for an interdict with a power of arrest, or a NHO where Domestic Abuse is a contributory factor.

Clearly this would allow all victims of Domestic Abuse, regardless of economic background, to access the protection afforded by these orders. It is unreasonable to expect people to have to pay for protection, or to have to return to the civil courts, at their own expense, on numerous occasions in order to be protected from the abuse at the hands of their perpetrator.

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

By removing means testing, access to protection and justice is greatly increased for anyone who is subjected to domestic abuse. There are many forms of Domestic Abuse that are not considered 'criminal' and so civil protection is vital for victims in this position.

NOT PROTECTIVELY MARKED

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?*

Where a perpetrator behaves in a way that breaches the interdict but does not commit a crime, the current consequences are very limited. The breach is a form of contempt of court, and although the power of arrest allows the police to remove the person, the maximum possible outcome is a remand in custody for no more than two days. The holder of the interdict is left with only one option with which to address the breach of the order and that is to bring an action for breach of interdict by lodging a new initial writ in the civil court. Obviously, this brings about the same issues with prohibitive access to legal aid as earlier mentioned.

The lodging of this application results in a civil hearing, where by the perpetrator is ordered to appear in court to answer the breach of interdict charge. If the charge is admitted, the court can sentence the perpetrator to a fine, or a maximum of three months imprisonment. The current process can be very lengthy and it is very rare that imprisonment is used as a sentencing option. Criminalising the offence of Breach of Interdict would allow the police and courts to tackle any such offences much more robustly and increase the range of sentencing options available to the court.

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

Criminalising a Breach of Interdict, in a similar manner to Breach of NHO, would remove the distinction from the two, enabling a more effective response by the police and prosecution, and act as more of a deterrent to the perpetrator. By criminalising the offence, it also reinforces to the perpetrator that their actions will be taken seriously by the courts and that they can no longer behave in an abusive manner towards their victims.

The current position results in the onus often being placed on the victim to initiate and fund an action for breach of interdict. It can be prohibitively expensive and often comes without satisfactory conclusion. If the breach of interdict were to be criminalised, obviously the onus is removed from the victim, and the offence dealt with through the criminal court, negating the need for the victim to attempt to fund the proceedings.

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

There are no apparent 'direct' costs resulting from the outlined changes, however there may be a number of 'indirect' costs involved for the various criminal justice organisations. Training will be required for Police and Court Staff, the creation of ISCJIS codes will be necessary, staff will be required to

NOT PROTECTIVELY MARKED

update the Police National Computer and COPFS IT Systems with the relevant information (pending case, crime code, sentence etc).

In order to make Legal Aid accessible to all victims of Domestic Abuse, an undertaking from the Government would be required, and a sum of money budgeted for on an annual basis.

Court time may be impacted upon by the increased business these criminal orders may bring, however this will potentially be offset by the reduction of time involved in hearing these cases in the civil courts.

CONCLUSION

By their very nature, victims of Domestic Abuse and their children are vulnerable people requiring various levels of intervention and support. Evaluated research has identified reliable predictors of risk, which once identified can assist partnership responses for those victims and their families who are at the greatest risk of further harm.

One of these identified risk periods is the time shortly after separation. Victims can be subjected to violent behaviour or harassment at this time due to the loss of 'control' over the relationship experienced by the perpetrator.

It is evident that a form of control over a perpetrator will impact upon their likelihood to offend. Feedback regarding the various orders available in their current format shows that NHOs are not routinely applied for by the courts, it is somewhat challenging to prove a 'course of conduct' and the civil orders which can be applied for by the victim are prohibitive due to cost implications.

Strathclyde Police fully support the increased use of NHOs, and there is further support among Scottish Forces for better use of these. By removing the need to prove a course of conduct, and removing means testing for legal aid applications, these orders become more accessible to victims, thus preventing further re-victimisation, and increasing their safety.

I trust the above will be of assistance to you.

Gary Irving
Domestic Abuse Coordination Unit

Working Together Building Safer Communities

NOT PROTECTIVELY MARKED

