

**Consultation Response:
The Proposed Civil Protection Orders and Access to Justice (Scotland) Bill**

Please find the response by the Violence Against Women Strategy Group, part of the Community Planning structure in Highland, outlined below. Statutory members in the partnership addressing Violence Against Women in Highland are NHS Highland, The Highland Council, the Crown Office and Procurator Fiscal Service and Northern Constabulary. These members work in collaboration with a number of voluntary organisations on this issue including Caithness & Sutherland Women's Aid, Community Violence and Abuse Support Service, Lochaber Women's Aid, Inverness Women's Aid, Ross-shire Women's Aid, Victim Support, Witness Service, Rape and Abuse Line and Children 1st.

[Redacted Name]

Violence Against Women Development & Training Officer
Highland Community Planning Partnership
7th December 2009

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

We would welcome the removal of the course of conduct requirement. We believe that those affected by domestic abuse should be protected from further abuse. We see the key advantage of removing the course of conduct requirement as being a reduction in domestic abuse (people would not have to wait for multiple incidents before obtaining an order).

However, we also note a problem in relation to the removal of the course of conduct requirement. This is particularly in relation to the non-harassment order being granted after a single criminal conviction. In reality, the criminal justice system is based on single incidents, which constitute criminal offences. It does not, always, take cognisance of the realities of domestic abuse. In particular, what Michael Johnson (1995) calls, intimate terrorism¹, situational couple violence² and violent resistance³ and the differences between these (see Appendix 1, attached). Many actions that could be classified under these headings could constitute crimes, although, only those carried out as "intimate terrorism" would meet our understanding of what constitutes domestic abuse. This means that sometimes those who are the victims of abuse (and are using 'violent resistance', most often women) are convicted through the criminal justice system. Therefore, we would caution against securing an order after a conviction of "situational couple violence" or "violent resistance".

¹ "violence that is embedded in a general pattern of controlling behaviours, indicating that the perpetrator is attempting to exert general control over his partner"

² "violence that is not connected to a general pattern of control"

³ "The critical defining pattern of violent resistance is that the resistor is violent but not controlling, and is faced with a partner who is both violent and controlling, i.e., he is an intimate terrorist"

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

We see the main benefits as:

- Prevention of future domestic abuse
- Reduction in levels of fear for victims (will not be 'waiting' for another incident just so they can get an order)
- Potentially, an increase in applications for orders

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

We see the following advantages:

- Increase in 'follow through' from enquiry stage re: orders to going to court to secure one
- Improved access to the orders – especially for those on low-medium incomes

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

- Women with dependents have access to increased protection without household income being compromised
- The disparity between access to legal aid for perpetrators and for victims is addressed
- Women in situations where access to funds is controlled by the perpetrator have access to legal assistance.

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 absolutely support the creation of a criminal offence for breach of interdicts with a power of arrest. The current situation renders the order almost useless when a perpetrator of abuse breaches it.

However, the issue still remains that victims of abuse remain responsible for 'policing' the orders. Many women experiencing domestic abuse may not be in a position where they can call the police when an order is breached. Consideration needs to be given to women's capacity to do this. It may be more appropriate for other professionals, e.g. DALO, Women's Aid worker, Social Worker, to be aware of the order and to have the woman's permission to respond when the order is breached. Or, if organisations could seek interdicts to protect women on their behalf, that might be a useful consideration during the consultation process for this Bill.

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

The main benefit is that it sends a clear message to perpetrators that their behaviour is unacceptable and that they will be held to account for it. The current situation often leaves women in dangerous and in vulnerable situations if their partner or ex-partner is showing disregard for the law. By making it a criminal

offence, we are better placed to improve protection from abuse for victims and their families.

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

There may appear to be financial costs associated with increased access to civil Legal Aid, however, the financial savings that can be made by providing an increasingly robust response to domestic abuse far outweighs this.

By reducing revictimisation rates of domestic abuse we will contribute to a reduction in use of police, health, social work, housing and Crown Office & Procurator Fiscal service resources. We will also reduce the long term burden on the voluntary sector, which, in Highland, still turn more women away from refuge than they can accommodate as the demand for their services outweighs provision.

The impact of domestic abuse (and, therefore, the cost of it) on the lives of those who experience it, and the children and young people who are affected by it, is immeasurable. In Highland, as in Scotland, we recognise that a key indicator of our progress towards the achievement of gender equality is the level of Violence Against Women in society. We believe that the proposals outlined with this consultation will support us in our progression towards that goal.

Appendix 1

From "A Case for a Gendered Analysis of Violence Against Women",
Lesley Orr, Scottish Government, 2007

Gender Symetry & Women's Violence Towards Men

Johnson (1995, 2006) has argued that seemingly contradictory research findings arise from a conflation of fundamentally different understandings of violence in intimate relationships, and that major sources of data (Conflict Tactic Scale surveys on one hand, and evidence from agencies and shelters (refuges) on the other) map different kinds of violence. He describes three main types of intimate partner violence:

- *Situational Couple Violence* occurs when a disagreement that turns into an angry argument escalates into violence, which can be mild or severe. It may be an isolated incident, or there can be a recurring pattern. As implied, the violence is situational, but is not used as part of a general process of coercive control. Although women and men may both be perpetrators, men usually do more serious damage, and their violence is more likely to introduce fear into a relationship. Even if not starkly gendered as the intimate terrorism which mostly connects power and control with notions of male entitlement, it has differential impacts and meanings for women and men.
- *Intimate Terrorism* is when the perpetrator uses violence in combination with other control tactics to assert coercive power and privilege. In heterosexual relationships, intimate terrorism almost always involves a man terrorizing a woman. This is the kind of abuse which is most often reported to law enforcement and agencies providing refuge or support
- *Violent Resistance* is the violence sometimes used when a victim of intimate terrorism fights back, in an attempt physically to resist domination by abusive men. It is often transitory, but occasionally extreme (e.g. homicide as a last resort)

Johnson contends that the major social concern is about 'intimate terrorism', but that all too often the data used to inform discussions and policy about 'domestic violence' comes from general surveys, based on the CTS, which largely measure situational couple violence, not domestic abuse. This category confusion leads to the erroneous claim that there as many 'battered husbands' as abused wives. To maintain the distinction between these types of violence in relationships is not to trivialise the dangers and problems of 'situational couple violence' for both women and men. However, it does clarify a confusion which has hindered advocates, service providers and public understanding/debate of the issues.

Domestic abuse as gender-based abuse: coercive control

The Scottish Government definition of domestic abuse is careful to focus, not on particular *acts* or *incidents* as constitutive of such abuse, but rather on the *intent* and the *impact* of conduct perpetrated by partners or ex-partners. It recognises that physical, sexual, mental and emotional abuse are included in a range of tactics and behaviours, which function to exercise coercive control over the partner. Physical aggression and threats are among the strategies available to intimidate, humiliate, isolate, exhaust, disable, punish and reward the partner in order to demonstrate power. This characteristic pattern of behaviour has been described by leading researchers in the field as a 'constellation of abuse' (Dobash and Dobash 2004) and as 'intimate terrorism' (Johnson 1995). The typical strategies employed bear many resemblances to those utilised by terrorists, hostage-takers and in concentration camps. The harmful and often severely traumatising consequences for those who are victimised are likewise similar (Herman 1992). Although incidents of physical assault may be the most readily identified as criminal behaviour, it is crucial that we do not measure or assess such incidents without taking into account the *context* in which they have been committed. Considerable confusion has arisen, both in academic debate and also in the domains of public policy and opinion, when acts of physical aggression and force have been tallied, and taken in isolation, to constitute 'domestic violence'. (For example, the Scottish Crime Survey, in common with other large-scale random samples of populations, focuses on incidents of physical threats and force).

A leading researcher has recently called for a radical reframing of domestic violence to account for the realities of women's experience of entrapment and subjugation by male partners. Evan Stark argues the key to understanding abuse is not physical assault, but coercion and control, which 'jeopardises individual liberty and autonomy as well as safety', and is centred on 'the micro-regulation of women's default roles as wife, mother, homemaker and sexual partner' (Stark 2007). He maintains that this strategy has been adopted by many men in societies (like Scotland) where the traditional norms and regulations of patriarchy are under challenge by changing laws and moves towards formal equality.

Where women's lives are socially circumscribed by religious, cultural, political and economic inequality, individual men who seek domination have less need to regulate their wife's behaviour and access to resources, because male control and entitlement, and restrictions on women, are enshrined and supported beyond the interpersonal domain. Stark's conclusion is that domestic abuse as coercive control is primarily a liberty crime rather than a crime of assault, because it results in gender-specific infringements: appropriation of resources, subversion of rights to self-respect and autonomy, and prevents women from freely exercising their social, economic and political agency,

"If women's attainment of formal equality leads men who wish to dominate them to construct what amounts to a patriarchy in miniature in individual relationships,

they can only succeed because men can exploit persistent inequalities, such as the huge difference between men's and women's earnings. Thus coercive control is personal because it is constructed in personal life; but it could not exist if women enjoyed full equality. [Coercive control] depends on sexual inequality and focuses on the imposition of stereotype sex roles." *Evan Stark (2007)*

It should be noted that the Scottish Government definition of domestic abuse does not actually use the word 'violence'. It is rooted in a human rights perspective, not a calculation or tally of physical assault committed by one partner against another.

Respondent Information

Name: Gillian Gunn

Address: Assynt House, Beechwood Business Park, Inverness,
IV2 3BW

Email address: [REDACTED]

Please indicate whether you are responding as an individual member of the public or on behalf of an organisation.

Member of the public :

On behalf of an organisation ✓

If you are responding on behalf of an organisation please give details below:-

Name of Organisation: Highland Community Planning Partnership

Your title: Violence Against Women Development & Training
Officer

Address: Assynt House, Beechwood Business Park, Inverness,
IV2 3BW

Telephone: [REDACTED]

Email address: [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]