

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

Consultation Response

West Lothian Violence against Women Strategic Group welcomes the proposed Civil Protection Orders and Access to Justice (Scotland) Bill.

Numerous studies¹ have identified the period of separation from an abusive partner as the time when he is most dangerous. The need for effective legal protections at this time is vital to the safety of women and children.

The proposed bill crucially addresses barriers that prevent women experiencing domestic abuse from effectively accessing legal protection and benefiting from the implementation of protection orders for themselves and their children. Evaluations of use of civil protection orders² reveal that despite some positive outcomes for survivors of domestic abuse, in many cases these orders fail women and children.

NHOs: removing the course of conduct requirement

An important barrier to justice is the requirement to show a 'course of conduct', based on two distinct incidents of harassment, before a non-harassment order can be granted. To require a woman experiencing domestic abuse to wait for a second incident of harassment to occur before the prosecutor can seek a protection order exposes her to further dangers and increased threats. We therefore welcome the proposed removal of the course of conduct requirement in relation to non-harassment orders.

Additionally, we would recommend that applications for non-harassment orders should be an automatic process following the perpetrator pleading guilty. Currently, it is at the Procurator Fiscal's discretion to decide whether or not to apply for a non-harassment order, following a conviction. This leaves some women unnecessarily at risk and exposed to further abuse.

Free legal aid

Another fundamental barrier encountered by some women who seek protection under the civil law arises because the applicant rather than the state is required to finance an application for a civil protection order. This automatically excludes a very high number of potential applicants from access to justice: those who have neither the financial means nor the state support to fund their application.

¹ Cavanagh, Kate, Clare Connelly and Jane Scoular (2003) "An evaluation of the Protection from Abuse (Scotland) Act 2001" Scottish Executive Social Research

² Connelly Clare and Kate Cavanagh (2007) "Domestic Abuse and Civil Protection Orders and the New Criminologies: is there any value in engaging with the law?" Fem Leg Studies.

The inclusion of free access to non-means-tested legal aid for anyone looking for an injunction with powers of arrest to protect them from abuse is most welcome. We feel that this is of crucial importance to ensure equal access to justice for all, regardless of financial background.

We know this is a particularly important measure from our local domestic abuse service, which is constantly dealing with women who are unable to apply for a protection order due to lack of funds. A true case study below, provided to us by West Lothian domestic abuse service, reflects this.

Breached orders

A substantial barrier to accessing justice relates to difficulties encountered by women experiencing abuse in pursuing breached protection orders with a power of arrest, in part because that breach is not a criminal offense. Research in Scotland has shown that criminal proceedings rarely result in conviction and charge³.

As the breach of an interdict is not considered a crime, the civil protection order fails to act as a deterrent to the perpetrator's use of abusive behaviour. The lack of criminal sanction undermines the importance and purpose of protection orders, encourages the flouting of these orders, and places the onus for obtaining justice and protection on the women and children at risk.

Criminalising breached orders would remove the onus from the individual to return to court under civil proceedings, which are cumbersome, lengthy and costly processes. It would also emphasise the gravity of the act and ultimately ensure accountability.

Such a change would moreover make clear that the problematic enforcement of civil protection orders is also in part due to widespread prejudicial assumptions which so often inform criminal justice professionals' practice in the area of domestic abuse. Much literature indicates that professionals' constant reliance on stereotypes that blame victims for court attrition have engendered false preconceptions about women's lack of co-operation in the prosecution of an abuser and ultimate desire to reconcile with the abusive partner.

"The views of professionals expressed in interviews as part of the Scottish study suggested that continued reliance on myths and misconceptions around domestic abuse result in misunderstandings about what domestic abuse is and what causes domestic abuse, expectations that women will use civil protection orders inappropriately, that women who have ended an abusive relationship are not genuine victims of abuse and harassment."⁴

"These assumptions result in the focus and responsibility for domestic abuse, adherence to the terms of civil protection orders and responsibility should an order be breached, being attributed to women rather than men."⁵

³ Cavanagh, Kate, Clare Connelly and Jane Scoular (2003) "An evaluation of the Protection from Abuse (Scotland) Act 2001" Scottish Executive Social Research.

⁴ Connelly Clare and Kate Cavanagh (2007) "Domestic Abuse and Civil Protection Orders and the New Criminologies: is there any value in engaging with the law?" *Fem Leg Studies*, pg. 283

⁵ See footnote 4, pg.280

We would therefore recommend that, for legislative change to be effective, it should also be paralleled by regular and mandatory training of all who are involved in implementing laws relating to domestic abuse.

Case Study:

Cathy⁶, the mother of four children of 2, 5, 7 and 11 years old, has experienced domestic abuse for a number of years. Following the first reported incident, Cathy, who was 7 months pregnant with her 3rd child, ended up in hospital with a broken nose. According to Cathy, the doctor in charge questioned her in front of her husband. She denied he was responsible for the incident and blamed herself for being clumsy. Cathy returned home. Many other unreported incidents followed.

After the birth of her fourth child, Cathy returned to employment. Consequently her husband became more controlling. A series of violent incidents followed. Cathy, with the support of a work colleague, phoned the police and eventually gave a statement. Her husband was cautioned and charged. He was released on special bail conditions. He breached the bail conditions twice. On each occasion he was released into the community with the bail conditions again being imposed. He continued to threaten Cathy by phone calls and texts on release.

Prior to the trial date, Cathy approached a lawyer to enquire as to the best form of protection. She was informed that she could not apply for a non-harassment order as the abuser had no prior convictions and the order required a course of conduct. Additionally, as Cathy was now in employment, she would have to contribute towards paying for an interdict. Having barely enough money to cover the basic household expenses Cathy is unable to contribute towards an interdict. Her husband is found guilty of assault, fined and released.

Cathy and the children moved out of the family home and relocated to another area. Two months later Cathy's husband tracks her down. There are no legal orders preventing him from approaching her. He assaults her again. Cathy ends up in A&E with a ruptured spleen. Her husband was charged with assault and released on special bail conditions.

If Cathy had been granted a non-harassment order when her husband was found guilty of assault, he would have been arrested for later harassing her and the criminal element of the order may have deterred him from approaching her.

⁶ Please note the woman's name and some of the details in the case study have been modified to protect the victim's anonymity.

