

Scottish Civil Courts Review Consultation

Response from Glasgow Community and Safety Services

Glasgow Community and Safety Services welcomes the opportunity to respond to the Consultation on the Scottish Civil Courts Review.

Glasgow Community and Safety Services (GCSS) is an organisation owned by Glasgow City Council and Strathclyde Police which brings together services and functions which tackle crime prevention and community safety. The Violence Against Women Team is located within GCSS and one of the projects within the Team is ASSIST (Advocacy, Support, Safety and Information Services Together). ASSIST provides advocacy and support to people who are involved in the Glasgow's specialist domestic abuse court as victims or witnesses. The service is available to both women and men but the main client group is women.

The experience of supporting clients through the pilot domestic abuse court has raised a number of issues which should be considered within the review. Therefore this response is mainly based on ASSIST's experiences within the specialist court and contact with women outside that process.

1. Availability of Legal Aid

It is becoming more and more difficult to obtain a solicitor who will carry out civil legal aid work. Even when a solicitor can be found, the legal aid thresholds are such that very few people qualify.

The result is that civil protection is only available to those who can afford it. It is unlikely that there is any other situation where the victim has to pay for protection to prevent a crime being committed.

The nature of domestic abuse is such that it more often occurs in situations where the opportunity to obtain corroborative evidence is extremely difficult. Men who use violence usually exhibit a markedly different public and private face. It is therefore very difficult to obtain the evidence required for a criminal charge to be brought. Civil protection is a vital part of the armour a woman requires; yet few women, in relation to the total numbers who experience abuse, avail themselves of this option.

2. Breach of Interdicts

Currently interdicts are ineffective in protecting someone from a violent partner. Any breach is considered a civil matter which must be tackled through civil procedures as a Breach of Interdict. In practice, police officers take no action apart from referring the woman to her own solicitor. If someone did decide to use this provision, it would take so long to get to court that the time span between the incident and any proceedings would be significant.

A far better system would be the criminalisation of any 'breach of Interdict' similar to a breach of a Non Harassment Order. This action would remove the distinction between civil and criminal breaches of protection orders and ensure that if a court order is breached, it is treated seriously. The current system downgrades a breach of

interdict and gives the message that such orders are not important.

3. Non-Harassment Orders

Non-Harassment Orders (NHO), when they can be obtained, are currently the best protection order available, although very expensive. Their strengths include the length of time a 'course of conduct' can cover and that any NHO breach is treated as a criminal offence. However, there is confusion about when an NHO can be awarded in criminal summary procedures and, although not be part of this review, it is important that the issue is highlighted.

Some legal professionals, including Sheriffs, believe that 'a course of conduct' must be indicted in one charge before an NHO can be awarded. Others believe that a 'course of conduct' can, as in civil cases, be a number of instances over a period of time. Depending on your viewpoint, the availability of an NHO as a sentencing option when a number of incidents have happened over a period of time may or may not be available. It is important that this issue is clarified.

4. The crossover between civil and criminal proceedings

There have been instances within the domestic abuse court where criminal proceedings are put on hold because 'child contact' issues are being argued within the civil court. At the same time, in the civil court, the issue under discussion is also put on hold until the outcome of the criminal case. Stalemate then ensues for a period of time. The result for the victim and any children is a complete fragmentation of their experience. This is especially problematic when domestic abuse is the issue in both the civil and criminal courts. Improvements that take cognisance of the situation in both courts would be helpful, and if a way could be found to consider all the issues facing a family in one court, it would be very helpful indeed.

During criminal proceedings, special bail conditions can be put in place to protect the Complainer. However, some Sheriffs and Solicitors are reluctant to pursue or indeed grant an Interdict or NHO via the civil courts whilst the Accused is on bail as they believe that additional protection is not necessary. Yet when the bail conditions fall on completion of a case either at the Intermediate Diet or Trial Date, the woman is left completely without protection and again forced to find the resources to pay for it herself. To ensure continuing protection, it would be helpful if Sheriffs had access to an order which could be used on completion of a case, which was not as complex as an NHO, yet criminalised any breach.

5. Training for all court personnel

It is vital that appropriate training is given to all those who have a role in situations of domestic abuse, whether in the civil or criminal court. Currently, the risk to the woman and child/ren can be exacerbated if those involved do not have appropriate knowledge. There have been instances where personnel in all roles, Sheriffs, Solicitors and court staff, have put women's lives at risk simply due to a lack of knowledge. Examples of this include:

- the woman being asked directly, in front of the perpetrator, whether she has experienced any abuse,
- solicitors disclosing her address or other information to the other party's solicitor
- situations where domestic abuse is highlighted as a factor in a child contact case, but it is refused to be admitted to evidence despite the Family Law Act.

It has been suggested that although it is on the statute book, it is not being used by some Sheriffs and Solicitors as it is 'unworkable'.

6. Safety Issues within the Court

It is vital that the safety of those attending court is addressed. There have been many instances, both in civil and criminal cases, where the woman has been placed in physical danger. In civil cases there is no separate muster area and court staff and solicitors have indicated to those involved that they should all sit together outside the courtroom until called. If the woman does not have someone to advocate on her behalf, she can be left in an extremely vulnerable position. Safety audits could be undertaken which would alleviate such situations and information on such is appended. Although the information appended relates to a specialist domestic violence court, the provisions could apply to any court.

7. Mediation

It is vital that clear guidance is issued stating that mediation is not appropriate in **any** domestic abuse situation. Mediation in situations of abuse can be extremely dangerous and indeed collude with the abuse.

There is a wealth of research detailing the limitations of use of mediation and other similar processes where domestic abuse is an issue. Further information can be provided if required.

8. Exclusion Orders

It is incredibly difficult to obtain an Exclusion Order safely. Solicitors advise women not to move out as it makes the process more difficult, but if the perpetrator also refuses to move out, then a very dangerous situation can ensue. It is important that a way forward is found to keep everyone safe whilst allowing a fair hearing of the evidence. In practice, Exclusion Orders are not used on a regular basis.

9. Streamlining of court procedures

In areas such as domestic abuse, there have been calls for the civil and criminal processes to be dealt with **together** rather than separately. It would be beneficial to have same judge residing over both the civil and criminal case so they are aware of all the facts, e.g. will take the domestic abuse into account in the child contact case. If it is not possible for the same judge to be involved, it is essential that each one is briefed on the parallel action which is occurring in another court.

The length of time the civil justice process can take is a real cause for concern. Where there is an action for contact for example, the fact that the situation can take years to resolve is very difficult for all concerned. The establishment of the domestic abuse court has illustrated the vast improvements that can be made to court timescales and, although the civil process is not as straightforward as a criminal case, it is vital this issue is tackled.

10. Contact and Residency

The issue of safe contact is also important. Most Sheriffs take the view that contact centres should be an interim measure only, and that the ultimate goal should be unsupervised contact. In situations of domestic abuse, safety should be the prime concern. It is recognised that this issue has received much attention and changes are being considered. However, in the meantime, non-abusing carers and children are

being put in danger. There are some situations where unsupervised contact will be safe.

Appendix

The Safety Audit of a Specialist Domestic Violence Court

The term Safety Audit¹ is used here to refer to an examination of how the safety of domestic violence survivors (as victim/witnesses in court and/or as the partners of domestic violence defendants appearing in court) can be improved in practical terms at all stages in their contact with the court.

Purpose of the Audit

The purpose is to use a practical and systematic audit method to collectively:

1. Identify areas of existing good agency practice and gaps and areas for improvement in relation to safety for victims of domestic violence before, during and after coming to the court building – whether they are witnesses in an eventual trial or not.
2. Consider safety in its broadest sense – including physical safety in the building, and information that could increase the confidence of the victims in their use of the SDVC.

Benefits of the process

The process of carrying out a Safety Audit with several key agencies and court staff can produce important benefits in addition to the practical changes identified:

- Understanding of, and empathy with domestic violence victims' realistic fears of coming to court, and acknowledging the diversity of victims' needs
- *A realistic assessment of what each agency in the partnership can contribute to the changes needed to increase safety*
- A collaborative process of problem sorting and problem solving that can strengthen partnership working
- A concrete and systematic focus on one of the key aims of the SDVC, that is, to increase the safety of victims of domestic violence and their ability to make use of the criminal justice system.

Method

The Audit can last half or one day.

A half day session includes a 'walk through in a victim/witness's shoes' and observation of the court building, and a facilitated discussion about practical steps to increase

¹The term 'Safety and Accountability Audits' also has a much broader meaning, in relation to the innovative work developed by Ellen Pence and Praxis in Duluth, where it is a comprehensive, systematic and multi agency method for analysing how institutional relationships and systems work, and whether and how survivor safety and perpetrator accountability are built into every aspect the daily practices of staff within those institutions.

victim/witness safety at all stages before, during and after the case comes into the SDVC. A full day session can go further into action planning, and could include an exploration with the judiciary and others of the full use of the law, powers and procedures to enhance the safety of domestic abuse victims and their families.

The Audit benefits greatly from the active involvement of front line workers and managers with experience based on different roles and perspectives in relation to the (criminal) court process.

We look forward to working with you.

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Awareness in Practice
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Peta Sissons has designed and conducted two safety audits in specialist domestic violence courts.