

## **Glasgow Violence Against Women Partnership**

### **Response to Civil Justice Review**



working together  
to end violence against  
women and children

1. The Glasgow Violence Against Women Partnership (GVAWP) was established in 2000 to:

- develop improved and consistent responses and services to women and their children throughout the city, taking into account the new community planning structures in Glasgow
- To ensure improved protection for women and their children
- To promote a community response to male violence, with the aim of reducing levels of violence against women and women's fear of violence
- To ensure that strategic planning (by the Partnership, new community planning structures and their partner agencies) is informed by the needs of abused women

The GVAWP membership is chaired by the Deputy Leader of the Council, Councillor James Coleman and includes representatives from the following agencies:

Glasgow City Council Education and Social Work Department  
Strathclyde Police  
Procurator Fiscal Services  
Women's Voluntary Sector Standing Group on Violence Against Women  
Community Health and Care Partnership  
Community Planning Partnership  
Greater Glasgow and Clyde NHS  
Glasgow Community and Safety Services  
Crown Office Procurator Fiscal Service  
Job Centre Plus

The GVAWP has four multi agency Working Groups to take forward the work of the Partnership on an operational level under the headings of Prevention, Protection, Provision, and Women Asylum, Immigration and Refugees. Each group has an overarching aim and a clearly defined Action Plan that sets out the priorities of the GVAWP Strategic Plan. The Protection Working Group includes in its membership representatives from Strathclyde Police; COPFS; Women's Support Project; ASSIST; SAY Women; Victim Support; GCC Social Work Services; SCRA; Castlemilk Law Centre.

The GVAWP welcomes the opportunity to respond to this important consultation and is grateful to the Protection Working Group for developing this response on behalf of the GVAWP.

It is timely that the Civil Justice Review is being undertaken just now especially when the Scottish Government are considering the potential roll out of the Domestic Abuse Court and corresponding advocacy services to improve the court response to domestic abuse. There are a number of issues which have been raised by the Protection Working Group members which we feel are worthy of consideration.

## **2. Access to Legal Aid**

Women experience real difficulty in attempting to access justice and legal recourse via the civil route. Increasingly we are seeing fewer solicitors willing to carry out civil legal aid work. If there is success in finding a solicitor, the legal thresholds are such that very few people qualify.

In effect this means that civil protection is only available to those who can afford it.

The nature of domestic abuse as with many other forms of violence against women is that more often than not it occurs in private with no other witness's to provide essential corroboration necessary to pursue a charge which could be pursued using criminal proceedings.

Additionally, there are many forms of domestic abuse which would not be considered 'criminal' and so civil protection is vital for women in this position.

## **3. Breach of Interdicts**

Any breach of interdict Matrimonial or otherwise is considered to be a civil matter, to be taken via civil procedures as Breach of Interdict. Women report that police officers take no action apart from referring the women to her solicitor. If then a women decided to pursue this apart from the cost potentially being prohibitive, the time that it may take to get to court maybe significant. This gives out a message to those who are in 'breach of interdict' that the court does not treat the offence as serious and therefore neither does that individual and that they can continue to act with impunity. This seriously compromises women's safety and her faith in a legal system.

A more appropriate method of dealing with this would be the criminalisation of any 'breach of interdict' similar to a breach of 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.

## **4. 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.

Glasgow Violence Against Women Partnership in conjunction with the Greater Glasgow Training Consortium are hosting an Information Seminar to address this very issue, we are intent in collating a report subsequently and would be keen to share outcomes from this event.

#### **4. The cross over between civil and criminal proceedings**

It has come to the attention of ASSIST that 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 complainer 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 that they could use on completion of a case that 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 women 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 when domestic abuse is highlighted as a factor in a child contact case, it is refused to be admitted to evidence despite the Family Law (Scotland) 2006 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'.
- Research carried out in 2005/06 regarding violence against women training to legal and court personnel stated that currently there was no accredited course or opportunity for continuous professional development for legal professionals in relation to violence against women; we would recommend that this action is taken forward.

## **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 put 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.

## **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 and can be supplied if required.

## **8. Exclusion Orders**

The law states that the applicant need not be resident when an Exclusion Order is applied for. However the reality is that 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 then makes it very difficult for a woman to pursue an Exclusion Order safely. 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. Exclusion Orders via Children Act (Scotland) 1995**

Whilst it is not under the scope of this review for the following to be considered it is none the less worthy of mention. Since the advent of this provision there has been very little uptake of this piece of legislation. The relevant section (S.76) allows a Sheriff to grant an exclusion order excluding an abuser when a child has suffered, is suffering or is likely to suffer significant harm. In the majority of domestic abuse cases, children are present during incidents. It may greatly assist women and their children if this power were to be used by social work departments. One of the conditions of the provision is that 'an appropriate person' has to be capable of taking responsibility for the care of the child; in many, if not, most cases, this person will be the child's mother. It appears to us to be an underused remedy. It is suggested that research should be carried out around this remedy, exploring current reasons for its under-use. In the absence of the abuser being removed using this method, the onus falls upon the mother to access other legal remedies. We have already described difficulties for women accessing civil justice in this context, in particular, the issue of entitlement to legal aid, as well as sometimes long out-drawn procedures. The current approach can sometimes have a severe impact on children and on their non abusive parent, especially when she is not the source of harm or danger. Women's groups strongly advocate that if women are kept safe and supported to do so then children will be kept safe.

It would be appropriate is for a piece of research to be commissioned that would identify and analyse any barriers and make recommendations as to the way forward. The research could identify any:

- Reluctance/unwillingness of local authorities to pursue this
- Lack of knowledge/awareness or reluctance/unwillingness of behalf of social work staff to pursue. There is concern that the process to have a child looked after and accommodated is significantly clearer
- Reluctance/unwillingness on behalf of Sheriff's to grant orders
- Support mechanisms that could be put in place to help the non-abusing parent

#### **10. Streamlining of court procedures**

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.

#### **11. 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 a 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.

The Glasgow Violence Against Women Partnership welcomes the opportunity to respond to the Scottish Civil Courts Review. We consider that strong effective laws are vital in protecting women and children from random, serial and predatory abuse and providing a deterrent in our society. Strengthening the access to civil protection and justice will result in greater safety being afforded to women and children.

**Glasgow Violence Against Women Partnership**