Exclusion and barring orders

Domestic abuse: the third largest cause of homelessness in Scotland

In 2015–16, of the 34,662 homeless applications, a “dispute within household: violent or abusive” was the reason given for a homeless application by 4,135 applicants. This cause of homelessness is highly gendered; 72% of applications were made by women, and women with children made up 36% of applicants.

These statistics significantly underestimate the scale of the problem, as women may not disclose that they are experiencing domestic abuse when making a homeless application for numerous reasons, not least because they rightfully fear that a social work intervention may result in their children being removed from their care. Many women when forced to leave their home initially rely on friends or relatives for a place to stay and do not make a homeless application until later.¹

Domestic abuse is also closely linked with repeat homelessness. Research has also shown that families that experience domestic abuse are four times more likely to lose their home due to arrears.²

The findings from our research project on homelessness as a result of domestic abuse, which was led by women with direct experience of these issues, highlighted that most women felt they had no choice about leaving their home either because it was unsafe to stay, they were not offered any safe alternatives to leaving, or because the homelessness system reinforced the perpetrator’s control and sense of entitlement to the home. Women were encouraged and often coerced by the police, social work and housing to leave their homes in order to protect themselves and their children while the perpetrator remained unchallenged in the family home.

Our research found that almost half of the women that took part had been made homeless more than once and 40% more than twice. Although moving women into the homeless pipeline was an easier option for practitioners, it was not an easy option for women and their children. Women often had to move multiple times and experienced cumulative losses in terms of their belongings, social networks and finances, as well as significant negative impacts on their physical and mental health. Multiple moves also impacted negatively on their children’s health, wellbeing, social networks and education. In many cases women did not feel any safer, the abuse continued despite women moving and many women felt unsafe in their new home, and community, in the long-term.

Women experienced enforced homelessness as a means of self-protection as fundamentally unjust. On the one hand they were told domestic abuse is not your fault but on the other that losing their home was some kind of judgment and that they were to blame. All of this significantly added to the impact of domestic abuse on women and children’s health and wellbeing, delayed their recovery process and their ability to begin to rebuild their lives.

The research in Fife confirmed the findings of our previous research on the use of exclusion orders in preventing homelessness. This study set out the difficulties and limitations of these orders in enabling a woman to remain safely in her home. Amongst the reasons for this are women’s ineligibility, breaches were unenforced, women were unable to access legal advice and legal aid and because the homelessness route provides a faster, reliable and straightforward approach for practitioners working in social work, health and housing than their experience of the court system. Scotland’s current legislation and practice does not meet its ‘due diligence’ obligation. Civil provisions for women to seek interdicts and exclusion orders take time and money to pursue. They also require women to bear the burden of taking action against the very person who has used coercion and possibly physical violence to control her actions.

**International and domestic imperatives for action: EBOs**

Various international instruments and institutions have clarified states’ due diligence obligation to ensure immediate protection of victims experiencing domestic abuse and to hold perpetrators accountable for their actions, including the have UN Commission of Human Rights and Article 52 of the Council of Europe’s “Istanbul Convention,” which specifically relates to Member States’ obligation to ensure victims of domestic abuse are protected from immediate danger without having to vacate their homes.

**Existing law in Scotland**

Various protective civil orders, both statutory and common law, offer protections that enable women to exclude abusive partners from the home. Whereas these orders can be applied for, and granted with a degree of urgency, some, for example Exclusion Orders and civil Non Harassment Orders, are not often used. All require women to take action themselves and, further, to fund such applications either from their own money or via civil legal aid, increasingly difficult for women to access.

Non-harassment orders can be imposed by the criminal courts upon sentencing on a discretionary basis, but their success is also based upon the nature of the conditions adequately keeping the perpetrator away from the woman and/or children, compliance with the NHO and robust responses by the police and courts to breaches. Although local authorities and housing associations have access to statutory options allowing them to exclude perpetrators, these are not routinely used (as noted above).

In this regard, we are aware that the Housing (Scotland) Act 2014 introduced provisions, yet un-commenced, for new, streamlined eviction process. This provides
that the court is required to grant an eviction order if is satisfied the landlord has statutory grounds for granting the eviction order, which, crucially, include a tenant/joint tenants, a person living in or lodging in the house, a subtenant or a person visiting the house having been convicted of an offence punishable by imprisonment, committed in, or in the locality of, the house, within the previous 12 months.

This could be potentially extremely useful as part of the armoury of protection for women and children experiencing domestic abuse, particularly the link between criminal behaviour as evidence in a civil process, if used appropriately by social landlords. Such use, however, is predicated on their having an adequate understanding of domestic abuse and focussing their powers on the perpetrator as opposed to the women and children in matters involving anti-social behaviour.

It should be noted that this will not protect women who are tenants of private landlords, are joint or sole owners of their property, or who have no rights of occupation or ownership in terms of the home they share with the perpetrator. Therefore, this mechanism must sit alongside some form of exclusion and barring mechanism that affords all women and children experiencing domestic abuse equal protection for specific, determinate period and is not aligned with property tenure rights.

**Scotland’s Due Diligence Obligation**

Therefore, we suggest that Scotland’s current legislation and practice does not meet its ‘due diligence’ obligation in providing immediate protection from an abusive partner nor does it give women the space and time to consider their housing and other options. Immediate safety measures are needed to ensure that women have the time and space to consider their housing as well as other options. Longer term safety measures are needed to make sure women can remain in their homes should they choose or in the very least remain safe in a new home.

**European EBOs**

Twelve European Member States (as well as England and Wales) have EBOs in place as an immediate temporary measure to prevent further abuse or harassment (Council of Europe Analytical Study of 47 member states, 2014; POEMS, 2015; WAVE report, 2015). EBOs have a different application, and different set of specific characteristics, than the usual civil or criminal protection orders:

- The order can be imposed in crisis situations of (immediate danger) of domestic violence.
- The order can be imposed without an arrest.
- The order can be imposed immediately (at the intervention of the police).
- The order can be imposed without the consent of the victim
- The order has the effect of removing the violent person from the family home.
- The order typically lasts for a short period of time (for instance 2-4 weeks).
- The order is imposed with the aim of stopping the risk immediately and allowing for prolonged protection to be put in place.
What we need in Scotland

The Scottish response to Violence against Women and Girls has, for almost 20 years, been at the very forefront of policy in Europe. The lack of EBOs is a critical gap for us as well as a compliance issue for the Istanbul Convention, soon, we hope, to be ratified in the UK. The new Domestic Abuse Bill is an opportunity to set out a Scottish model for emergency protection that builds on the learning from elsewhere in the UK and Europe and puts Scottish law on firm ground around domestic abuse response. Such a mechanism should reflect the following:

- We need a short, sharp immediate response that supports a longer-term civil and/or criminal response.
- We do not wish to replicate the DVPN/DVPO model in England and Wales; our sister agencies there have provided us with substantial evidence that says DVPNs/DVPOs are neither designed nor delivered in ways that significantly improve women’s choices about staying or fleeing the family home. The solution must be tailored to the requirements of Scots law and procedure and be fully supportive of the women and children it is purporting to protect.
- To make any such response effective, proactive monitoring of compliance and immediate responses to breaches are required or it will be “another piece of paper.” Clear and robust sanctions are needed for failure to comply and must be criminal in nature. One of the core criticisms with DVPOs in England and Wales is that a violation of the DVPO is a civil Contempt of Court (maximum fine of £5,000 or imprisonment for 2 months), not a criminal offence and therefore the lacks consequences it needs to prevent perpetrators from breaching the conditions.

Scottish Women’s Aid
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