

Minister for Victims and Community Safety submission of 1 June 2023

PE2025/A: Improve the support available to victims of domestic violence, who have been forced to flee their home

In regards to the above petition, my response refers to marriage and divorce (there are equivalent arrangements for civil partnerships and dissolution of civil partnerships) and the issues raised by the petitioner in general terms. You will understand I cannot comment on the petitioner's sister's individual treatment in the justice system.

The Scottish Government remains committed to tackling all forms of violence against women and girls, including domestic abuse, and ensuring that victims and survivors receive the support they need.

Legal aid in divorce proceedings

The petitioner raises the costs of obtaining a divorce where legal aid is not available to the applicant. Around 60% of divorces are obtained under the simplified (form-based) procedure, which is intended to be used without the necessity of employing a solicitor although a party may choose to do so. Information on when the simplified procedure can be used is available at <https://www.scotcourts.gov.uk/taking-action/divorce-and-dissolution-of-civil-partnership>.

The simplified procedure is not available where:

- the parties are in dispute either about the divorce or financial provision,
- the basis of the divorce is unreasonable behaviour or adultery, or
- where there are children of the marriage under 16 years old.

We committed in the [Family Justice Modernisation Strategy](#) to consulting on proposals to extend the simplified divorce procedure to cases where the spouses have agreed about the upbringing of any children in the family under 16 years of age.

Civil legal aid is not available where the simplified procedure is used but it may be possible to obtain advice and assistance through legal aid.

The Legal Aid Fund is demand led and open ended and to target funding appropriately, applications for legal aid are subject to statutory tests which cover the merits of the case and the means available to the applicant. If the tests are met, civil legal aid is available in a wide range of actions, including contested divorces through the ordinary procedure and applications for civil non-harassment orders. There are generous eligibility thresholds. Around 70% of people are eligible for some form of civil legal aid in Scotland. Means testing is an important lever for retaining this wide scope.

There are also other ways in which advice and support can be provided to those who have suffered gender-based violence. We have invested significant levels of funding into front line services, as well as working closely with statutory agencies to improve their response to victims and survivors. We support the Scottish Women's Rights Centre (SWRC) which offers free legal information and advice to women in Scotland who have or are experiencing gender-based violence. Funding is provided to SWRC by the Scottish Legal Aid Board up to a limit of £230,000 a year for the next 3 years and the Scottish Government has committed up to £384,000 for 2023/24.

Compensation for loss of the marital home

Domestic abuse is the leading cause of homelessness for women in Scotland, and we are strongly focused on improving housing outcomes for women and children experiencing domestic abuse. In December 2020, [Improving housing outcomes for women and children experiencing domestic abuse](#) (social rented sector) was published. The Scottish Government has convened an implementation and monitoring group to drive change and oversee delivery of the recommendations in the report. This includes a recommendation to explore the options for financial support for women leaving an abusive partner. We are working closely with partners to consider the details including feasibility, development, and delivery of such support.

The [Matrimonial Homes \(Family Protection\) \(Scotland\) Act 1981](#) (the 1981 Act) makes provision for a spouse (and in some cases, a cohabitant) who is not otherwise entitled to do so as a tenant or owner, the right to occupy the matrimonial or family home. The 1981 Act also provides protection for a spouse (and, in certain circumstances, a

cohabitant) at risk of physical or mental injury because of the other party's conduct. They can apply to the court for an 'exclusion order', to suspend the rights of the other party to occupy the family home. An exclusion order can be sought by a spouse who has already left the family home. An exclusion order is temporary and will end when a married couple divorce.

In granting an exclusion order, unless satisfied it is unnecessary, the court is bound, following an application by the applicant spouse, to issue certain ancillary orders. These ancillary orders include an interdict prohibiting the removal by the non-applicant spouse of any furniture and furnishings from the matrimonial home except with written consent of the applicant or by further order of the court.

The Scottish Law Commission has previously [confirmed to the Committee](#) that they expect Phase Two of its project on aspects of family law to focus on a review of the civil remedies available for domestic abuse. The Commission is currently considering the scope of the review.

Where one party to a marriage seeks a divorce, the arrangements for financial provision and the division of the matrimonial property are set out in the [Family Law \(Scotland\) Act 1985](#) (the 1985 Act). Matrimonial property includes property acquired by one of the parties before marriage for use as a family home and its contents.

Under the 1985 Act, a court can make a range of financial orders, including an order for payment of a capital sum or the transfer of property, such as the family home, where this is justified by one or more of principles set out in [section 9](#), and is reasonable with regard to the resources of the parties.

Under the 1985 Act, a party's behaviour is not usually relevant to financial provision on divorce. However, under [section 11\(7\)](#), the court can take account of conduct in certain circumstances, such as where the conduct has adversely affected financial resources that are relevant to the court's decision.

The 1985 Act is based on the Scottish Law Commission's Report "[Family Law: Report on Aliment and Financial Provision](#)" (Report No 67).

[Research](#) indicates that the law in Scotland on financial provision on divorce is generally well regarded.

Consultation with victim where changes are sought to a non-harassment order

It is not clear whether the petition is raising points on non-harassment orders (NHOs) issued in criminal or civil proceedings.

A criminal NHO can be issued under [section 234A](#) of the Criminal Procedure (Scotland) Act 1995 (the 1995 Act), as part of criminal proceedings, where the offence or offences involve misconduct against a person. A request for an NHO can be initiated by the prosecutor leading a case for the Crown Office and Procurator Fiscal Service, but under [section 234AZA](#) of the 1995 Act, the court is bound to consider making a NHO when dealing with certain domestic abuse cases.

The person against whom such a criminal NHO is made, or the prosecutor in the case in which it was made, may apply to the court for its revocation or variation. The [Act of Adjournment \(Criminal Procedure Rules Amendment No.2\) \(Non-harassment order\) 1997](#) (legislation.gov.uk) sets out rules which apply to an application for variation or revocation of a non-harassment order. These state that the applicant has to serve a copy of the application on “any person, other than the offender, who is named in the order” – i.e. the victim. This provision seeks to ensure that the intimation is made to the victim in advance of the application being heard.

A victim can also raise an action in the civil courts seeking a non-harassment order under section 8 and section 8A of the [Protection from Harassment Act 1997](#).

The Scottish Courts and Tribunals Service has indicated that rules of court provide the procedure for an application to vary or revoke a civil NHO under the 1997 Act. Where the person against whom a civil NHO has been granted makes the application, those rules provide that they must serve the application on the holder of the NHO. However, this would be subject to any order by the court, on cause shown, to dispense with service. Once the application has been intimated to them, the holder of the NHO may oppose the application.

Criminal Injuries Compensation Scheme

The petitioner mentions criminal injuries compensation in the background information to the Petition. The [Criminal Injuries Compensation Scheme](#) (the Scheme) is a Great Britain-wide scheme designed to compensate victims of violent crime. The Criminal Injuries Compensation Authority (CICA) administers the Scheme and processes Scottish cases on behalf of the Scottish Ministers, deciding if applicants are eligible and assessing the appropriate value of any award.

The Scheme rules and the value of the payments awarded are set by a UK Government Secretary of State (most recently from the Ministry of Justice) and approved by the UK Parliament. To qualify for an award, an injury must be described in the tariff of injuries at Annex E of the Scheme. The CICA must pay an award in line with these prescribed amounts, based on the severity of the injuries and the impact on a person.

The Annex to my letter sets out some further information on the Criminal Injuries Compensation Scheme.

SIOBHIAN BROWN MSP

MINISTER FOR VICTIMS AND COMMUNITY SAFETY

ANNEX

FURTHER DETAILS ABOUT THE CRIMINAL INJURIES COMPENSATION SCHEME

The [Criminal Injuries Compensation Scheme](#) sets the criteria and amounts of compensation that can be paid. The current scheme has been in operation since 2019, and explains

- what kind of injury might make someone eligible for compensation
- where a person must live to be eligible
- what to do if a person's injury happened before 2012
- why someone might not get compensation
- details about compensation due to injury, loss of earnings, special expenses, or bereavement
- what happens after someone has applied for compensation

- how to appeal if the person doesn't agree with a Criminal Injuries Compensation Scheme decision

CICA can consider claims for the following:

- mental or physical injury following a crime of violence
- sexual or physical abuse
- loss of earnings - where a person has no or limited capacity to work as the direct result of a criminal injury
- special expenses payments - these cover certain costs a person may have incurred as a direct result of an incident. A person may only ask CICA to consider special expenses if their injuries mean they have been unable to work or have been incapacitated to a similar extent for more than 28 weeks
- a fatality caused by a crime of violence including bereavement payments, payments for loss of parental services and financial dependency and funeral payments.

Scottish Government

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