

Scottish Women's Rights Centre submission of 6 February 2024

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

We welcome the opportunity to respond to the Citizen Participation and Public Petitions Committee in relation to petition PE2025.

The SWRC is supportive of the petition and its calls. The SWRC agrees that more must be done to support victims of domestic abuse and other forms of gender-based violence (GBV), and those forced to leave their family home.

Considering each of the points raised:

1. Ensuring access to legal aid for divorce proceedings where domestic violence is a contributing factor

We strongly support that legal aid should be made available for victim/survivors of domestic abuse where they require to raise related legal proceedings. We are currently facing a legal aid crisis in Scotland. We have seen an increase in enquiries to our services from survivors of GBV who are unable to obtain legal aid funded representation. It has been reported to us by our service users that they have contacted anywhere between 30-50 solicitors to seek legal representation. We have seen a steady increase in the number of survivors self-representing in civil cases due to the legal aid crisis and the decrease in solicitors willing to provide legal aid funded work, due to inadequate remuneration.

In relation to divorce actions, it can lead women not entitled to legal aid, or not able to find representation, to self-represent or accept settlements that do not represent a fair share of the matrimonial property.

We are aware that perpetrators use legal processes to continue to perpetrate abuse following separation, particularly in child contact and divorce actions. Perpetrators will use the legal system to continue their abuse by delaying proceedings, refusing to share documents and, in some cases, sending threatening letters through their solicitors. Where a victim/survivor is unable to secure legal aid funding they will be required

to consider privately funding their legal representation. Due to the complexity and length of such cases, legal fees are extremely high and can cause significant hardship for survivors. Perpetrators often use this as a way of perpetrating continued economic abuse.

Where a victim/survivor is unable to afford privately funded litigation costs, they are faced with self-representing, which can lead to re-traumatisation of victim/survivors. Furthermore, the victim/survivor will be faced with representing themselves in front of their abuser. Special measures can be requested in some cases although these are limited and not practical in ongoing child welfare proceedings.

We are aware from our service users, that often they require to accept low settlement offers in order to bring their case to an end due to rising legal costs. Many of our service users report feeling that they have not achieved a fair settlement and that their perpetrator has “won”. This often continues the economic abuse if they have been placed into a difficult financial position following the settlement; leaving many victim/survivors and their children unsafe.

We ask for the Committee to make a positive call for a review of the legal aid fee structure of the Scottish Legal Aid Board, to increase funding for solicitors in these cases and ensure victims can access justice.

Particularly, as highlighted in our [briefing paper](#), we continue to call for a review of the funding for protective order cases as we are aware of issues with sourcing legal representation in these cases. We recommend that in the interests of justice, protective orders cases should be exempt from means-testing for civil legal aid and that no contribution should be required.

2. Ensuring victims are financially compensated for loss of the marital home, including loss of personal possessions and furniture left in the property

We have concerns regarding the lack of inclusion of the impact of domestic abuse within divorce/separation legislation. The Family Law (Scotland) Act 1985 provides the framework for financial provision upon divorce. The provisions do not account for the impact of domestic abuse nor does the court process ensure the protection of victim/survivors through the process. We often hear from victim/survivors that despite the perpetrator’s abuse (and often specifically economic abuse) during their

relationship and continued abuse through the court process, this is not dealt with by the court.

We have heard from our service users that perpetrators of abuse have used the divorce/financial separation process to continue to perpetrate their abuse. For example, we have heard of perpetrators stopping paying the costs for the matrimonial property which leads to threats of repossession and has significant impact upon the victim/survivor's credit rating and future credibility.

An issue which often arises for our service users following separation surrounds personal possessions and furniture, as they often struggle to regain their personal possessions. When contacting the police, they are told that it is a civil matter, and they require to seek legal representation. They may then run into issues around legal aid due to the low value of items and a complex legal process. The length of time to progress through a legal action for recovery of property can lead to the possessions being sold/destroyed by the perpetrator in a continuance of abuse.

We call on the Scottish Government to bring into force the Domestic Abuse (Protection) (Scotland) Act 2021, which received Royal Assent on 05 May 2021 but is not yet in force. The 2021 Act allows the police to make a domestic abuse protection notice (DAPN), and the court to make a domestic abuse protection order (DAPO), for the purpose of protecting a person from abusive behaviour by their partner or ex-partner. Such orders are necessary for the interim protection of victim/survivors and specifically in bridging the gap for protection to remove the perpetrator from the family home. This will support victim/survivors to remain in the family home and reduce the economic burden which follows separation in abuse situations.

3. Ensuring that victims are consulted before any changes are made to non-harassment orders.

Civil Non-Harassment Orders (NHOs) are governed by section 8 and 8A of the Protection from Harassment Act 1997. NHOs provide civil legal protection to victims of harassment¹.

¹ [Section 8\(7\) of the 1997 Act](#)

To raise an action for a NHO the court action must be served against the defender (perpetrator of harassment). They are afforded the opportunity to defend the orders sought.

We consider that it is crucial that victim/survivors of abuse/harassment are likewise afforded the opportunity to answer any requests to revoke or vary a protective order made by the court.

Any changes made to a protective order can have significant consequences for the victim/survivor. The impact of revoking or varying an order could be:

- Safety concerns – reducing the level of protection available to the victim/survivor;
- Impact on further protective measures that may be available to the victim/survivor; for e.g. from the police, social work department or family court;
- Mental health impact – removing peace of mind from the victim/survivor and increasing their hyper-vigilance and fear response;
- Escalation of abuse following removal of protection.

The victim/survivor must be aware of any changes made to a protective order to allow them sufficient time to put in place any available safety measures. The victim/survivor may require to update their safety plan with their support worker or to contact the Police regarding safety measures. Without notice of changes to protective orders victim/survivors can be placed in dangerous situations without warning.

We note that the Scottish Legal Commission are currently undertaking a review of current domestic abuse legislation and we warmly welcome said review and any positive changes that this may bring for victim/survivors.