

Responding Well to Domestic Abuse Practice Guidance

Appendix 2: The Legal Context

Individuals who are subjected to domestic abuse can seek protection via two possible routes:-

The first route a victim can use, is by making a complaint to the police, which could result in a criminal prosecution¹.

Most cases can be categorised as an offence against the person and the police can make arrests for offences such as assault, battery, actual bodily harm, grievous bodily harm or one of a number of sexual offences. They can also make arrests for harassment under the Protection from Harassment Act 1997, which includes a stalking offence, (e.g. which could encompass behaviour such as watching or spying on a person; interfering with a person's possessions). A person does not have to be the victim of a physical assault in order to be subjected to harassment (or stalking). This legislation provides both civil and criminal remedies. These include non-harassment and restraining orders². There is also the "revenge porn" offence contained in section 33 of the Criminal Justice and Courts Act 2015, which creates an offence of disclosing private sexual photographs and films with intent to cause distress, which could equally be viewed, in some cases, as a form of domestic abuse.

A further criminal offence was introduced in 2015 which closed the gap in the law around patterns of controlling or coercive behaviour in an intimate or family relationship (Section 76 of the Serious Crime Act 2015). This offence criminalises patterns of coercive behaviour where they are perpetrated against a family member or between individuals who are or used to be in an intimate personal relationship. The offence carries a maximum sentence of 5 years' imprisonment, a fine, or both.

The behaviour, when viewed in isolation, may appear innocuous, but the cumulative effect on a victim may be significant, causing damage and distress. Although there is no statutory definition of controlling or coercive behaviour, the Government has issued statutory guidance under section 77 of the Serious Crime Act 2015. This guidance contains the following cross-Government definitions of "controlling behaviour" and "coercive behaviour":-

"Controlling behaviour is: A range of acts designed to make a person subordinate and/or dependent by isolating them from sources of support, exploiting their resources and capacities for personal gain, depriving them of the means needed for independence, resistance and escape and regulating their everyday behaviour."

"Coercive behaviour is: A continuing act or pattern of acts of assault, threats, humiliation and intimidation or other abuse that is used to harm, punish, or frighten their victim."

The guidance also gives a non-exhaustive list of the types of behaviour that may be associated with coercion or control.³ A person investigating offences with regard to controlling or coercive behaviour must have regard to this guidance.

¹ For further information in relation to offences and possible remedies in connection with "Honour Based Violence"; Forced Marriage and Female Genital Mutilation see [paragraphs 9.2, 9.3 and 9.4 and Promoting a Safer Church](#).

² Section 12 of the Domestic Violence, Crime and Victims Act 2004 amended the Protection from Harassment Act 1997, to extend the availability of restraining orders to all offences, and also to give the court the power to make a restraining order even when a person has been acquitted, where the court considers it necessary to do so to protect a person from harassment by the defendant

³ Controlling or Coercive Behaviour in an Intimate or Family Relationship – Statutory Guidance Framework (December 2015)

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The second route, a victim can use, is to pursue directly a claim for damages and/or other remedies through the civil courts.

It is possible to pursue a civil claim where the conduct does not constitute a criminal offence or there is insufficient evidence to convict or where a person does not want to involve the police. The standard of proof in civil courts is lower than in criminal courts, (i.e. “balance of probabilities” rather than “beyond all reasonable doubt”). A civil claim for domestic abuse would usually take the form of an action for negligence, battery, or trespass to the person, depending on the circumstances of the case. Examples of remedies in the civil court are damages, injunctions, non-molestation orders and occupation orders under the Family Law Act 1996 (as amended by Part 1 of the Domestic Violence Crime and Victims Act 2004).

Domestic Violence Disclosure Scheme

Since March 2014 there has been the Domestic Violence Disclosure Scheme (colloquially known as “Clare’s law”), which contains two specific rights. That is a “right to ask”, which allows an individual to ask police to check whether a new or existing partner has a violent past and a “right to know”, which enables an agency (e.g. a statutory agency or a charity) or an individual to ask the police to release information concerning an individual being at risk of domestic violence. The police will consider whether to release the information to the individual involved or to the person that is best placed to protect that individual.

Anyone can apply for a disclosure by visiting their local police station or calling 101. The police will ask for an overview of your concerns and take your contact details. You may be invited to a face to face discussion where you will require two forms of ID. The police will undertake a risk assessment and will make a disclosure to the person affected if they believe that abuse is likely. They will then help any potential victim to put together a safety plan. You may not hear the outcome of your request if the police do not deem this to be necessary.

Government guidance in relation to domestic violence and abuse can be found on the website listed below, in particular there is guidance on the Domestic Violence Disclosure Scheme, as well as further information about how to report domestic abuse and where to get help: <https://www.gov.uk/guidance/domestic-violence-and-abuse>

Domestic Violence Notices and Orders

The initial period of response to domestic abuse is critical. Domestic Violence Protection Notices and Orders (DVPN and DVPO) are part of a scheme introduced in March 2014 that provides protection to victims in the immediate aftermath of domestic violence. The scheme comprises an initial temporary notice (the DVPN), authorised by a senior police officer and issued to the perpetrator by the police, followed by a DVPO that can last from 14 to 28 days, imposed at the magistrates’ court. Under the DVPO scheme, the police and magistrates can, in the immediate aftermath of a domestic violence incident, ban the alleged perpetrator from the family home or victim’s residence or to have any contact with the victim for up to 28 days. This is important as, often due to lack of evidence or the victim’s reluctance to pursue a prosecution, the perpetrator may not be charged and therefore cannot be bailed with any conditions to stay away. DVPOs are designed to help victims who may otherwise have had to flee their home, giving them time to access support and consider their options.

Restraining Orders

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/482528/Controlling_or_coercive_behaviour_-_statutory_guidance.pdf

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Restraining orders can be made on conviction or acquittal for any criminal offence. These orders are intended to be preventative and protective. The guiding principle is that there must be a need for the order to protect a person or persons. The test to be applied by the court before making an order is whether an order is necessary to protect the persons named in it from harassment or conduct that will put them in fear of violence. This necessitates an evaluation by the court of the evidence before it. It will require the court to determine whether there is sufficient evidence in front of it to enable it to form a view that an order is necessary. Restraining orders are civil behaviour orders and therefore the standard of proof is a civil one.

Other civil court orders

There are also two main Orders which the Courts can make. These are called the Non-Molestation Order and an Occupation Order. Secular legal aid may be available for an application for a Non Molestation order and/or Occupation Order. This is means and merit tested. An Occupation Order controls who can live in a property. It can also restrict the respondent from entering a certain area. If you do not feel safe living with the respondent and you have left because of violence or intimidation and want to return without the respondent being there, the order you would apply for is an Occupation Order. A Non-Molestation Order prevents the respondent from using or threatening violence against you (and if applicable your child/children) or intimidating, harassing or pestering you. This is to ensure the health, safety and well-being of yourself (and if applicable your child/children). A breach of a Non-Molestation Order is an arrestable offence and now carries a maximum sentence of 5 years imprisonment. A breach of an Occupation Order is not a criminal offence but will be regarded as “contempt of court” in a civil court. That said, a power of arrest can be attached to an Occupation Order, which means that an individual can be arrested if the Occupation Order is breached.