

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

Scottish Women's Aid written submission, 17 April 2024

SWA support the petition and the reforms it seeks, which are much needed to better improve the position of women and children experiencing domestic abuse in these matters.

Our comments on each of the issues raised by the Petition, are as follows:

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

SWA strongly supports the Petitioner's position that civil legal aid should be made automatically available, without a means test, to women experiencing domestic abuse in divorce proceedings where domestic abuse is a contributing factor; indeed, we support that this should be the position in any civil case where domestic abuse is an issue.

The ongoing reduction in supply of legal aid practitioners, particularly those competent in appropriately representing women experiencing domestic abuse, and the knock-on effect this has for women experiencing domestic abuse in accessing legal representation, is well documented. Workers from our local Women's Aid groups supporting women, especially in rural areas, have, in numerous instances been obliged to telephone 30 to 40 firms in an attempt to secure legally-aided representation for women, regrettably, routinely with no success, meaning that women have had no choice but to represent themselves.

Also, women who are having to hold down several jobs simply to make ends meet may find themselves ineligible for legal aid, which again means that they may have to self-represent. In the current financial crisis, constraints on women's already pressurised income makes paying legal costs difficult. This means that women may have no alternative but to represent themselves in the process, which means dealing with perpetrators directly; given that abusers can, and do, manipulate justice processes as part of the continuation of the abuse, this puts unacceptable pressure on, and adds to the trauma already being experienced by women, who may not be able to navigate the process and secure the best outcomes for themselves and their children.

Whereas many women do qualify for civil legal aid, which covers court actions, they may not be eligible for 'Advice and Assistance' which covers pre-court or non-court work, and that Advice and Assistance does not cover court fees. However, this is only a small part of a much bigger issue; very few firms offering legal aid services will do financial/property claims or complex divorce work under civil legal aid because the work involved is not reflected in the remuneration they receive. Further, if women do ultimately recover any property or money as a result of the action, this will be subject to "claw-back" by SLAB who are required to recover any civil legal aid paid out. Tied in with perpetrators' ability to draw out processes as part of the abuse and

to financially disadvantage women, these situations result in financial hardship and essentially is a form of economic abuse.

This is not a trauma-based response and represents a barrier to women's access to justice and, in our opinion, a breach of women and children's human rights.

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

We note that rights and remedies allowing financial and property claims after separation as part of divorce are already available under the Family Law (Scotland) Act 1985, but women need access to civil legal aid or otherwise affordable legal services to exercise these rights and access the provisions of the Act, a matter discussed above.

The Law Society of Scotland stated in their submission to the Committee¹ that "*Considerations of fairness and equity underpin the Family Law (Scotland) Act 1985*" and the Minister for Community Safety noted in her submission to the Committee² that "... *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.*"

Given that the legislation referring to divorce and separation dates back to 1985, we would call on the Committee to recommend that a review of the law is needed to ensure that it fully includes and considers current understandings around the nature, dynamics and impact of, domestic abuse.

In relation to a review of legislation, the Petitions Committee's Official Report of 6 September 2023³ makes the prescient observation that "... *The SPICe briefing notes that the Domestic Abuse (Protection) (Scotland) Act 2021 introduces two short-term civil protection orders, both of which could exclude a perpetrator of domestic abuse from the place where the person at risk lives. However, the briefing also notes that that part of the act is not yet in force.*" The SPICe Briefing⁴ particularly comments that "*One key policy aim of the 2021 Act is to give a person at risk space to consider their housing options, reducing the chance they would have to leave the family home for their own safety.*"

If this legislation were in force, it would give women in the position of the Petitioner's sister opportunities to seek protection and options for her safety, support women to remain in their home and reduce the financial burden they face in having to move and/or obtain civil protection orders.

In relation to the criminal behaviour perpetrated against the Petitioner's sister, we are not convinced that the police could take no action in relation to the abuse perpetrated against her, either against the perpetrator's stalking and harassment of her sister, particularly given the extremely serious nature of the abuse and the

¹ [Law Society of Scotland submission of 1 November 2023](#)

² [Minister for Victims and Community Safety submission of 1 June 2023](#)

³ [Official Report of Citizen Participation and Public Petitions Committee, 6 September 2023](#)

⁴ [SPICe Briefing on PE2025](#)

criminal charges previously laid against the perpetrator, or against the actions of the perpetrator's family toward her sister.

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

Women must be involved in the court's consideration around any request by the perpetrator to vary any terms of a non-harassment order ("NHO") or to revoke the Order completely and must also be timeously advised of the outcome of any relevant hearings on the matter, regardless as to whether this is done in relation to NHOs granted under either civil or criminal proceedings.

If this is not done, not only are women denied their right to be heard but such changes to the NHO, without notice, will impact on women's safety planning and ability to take alternative steps to seek protection through civil or criminal processes. This facilitates the perpetration of further abuse, compromise the safety of women and children whom the NHO is intended to protect and have a consequential effect on their physical and mental health.