



The Scottish Women's Convention

Response to the Proposed Civil Protection Orders and Access to Justice (Scotland) Bill Consultation

February 2010

Introduction

The purpose of the Scottish Women's Convention (SWC) is to communicate and consult with women in Scotland to influence public policy. Through the Convention's policy work, round table and celebratory events the SWC strives to have contact with women and relevant organisations. The SWC aims to provide an effective way of consulting with a diverse range of women in Scotland.

The Scottish Women's Convention has a network of over 300,000 women from relevant organisations throughout Scotland.

Position

The Scottish Women's Convention wholeheartedly supports Rhoda Grant MSP's Proposed Civil Protection Orders and Access to Justice (Scotland) Bill. We believe that this Bill is potentially a very important piece of legislation which would ensure that all women in Scotland who have experienced domestic abuse are guaranteed access to justice.

Through consultation with women across Scotland in a series of roadshow events, the SWC has explored the issue of male violence against women and children. Many of the women the SWC have engaged with, from both rural and urban areas, have recorded difficulties in identifying and reporting incidents of domestic abuse, accessing and obtaining legal aid and ensuring that perpetrators are brought to justice.

Many women believe that victims of violence against women are reliant on a legal system that is underpinned by legislation weighed against them.

It is, in our view, essential that any woman in Scotland who has experienced domestic abuse should be afforded the right to non-means tested legal aid to pursue civil court action against those who have subjected them to abuse. We also agree with the proposals in the Bill to remove the course of conduct requirement for obtaining a non-harassment order and believe it is vital that any man who breaches an interdict with a power of arrest is subject to criminal charges.

- 1. What advantages or problems might arise as a result of removing the course of conduct requirement?**
- 2. What do you see as the main benefits of making it easier to obtain a non-harassment order?**

The SWC see a number of advantages in removing the establishment of a 'course of conduct' of abuse for women seeking to obtain a non-harassment order.

Women in Scotland have told the SWC that reporting even one incident of domestic abuse can be extremely stressful. Some behaviours are so subtle that initially it can be very difficult for women to identify their partners' behaviours as abusive.

Women, particularly in rural and remote rural communities in Scotland, have spoken of the degree of apprehension in highlighting or reporting abuse. A dread of wider local awareness of personal problems and fear of exclusion in a small community is a huge deterrent for women reporting abuse.

The course of conduct requires that eyewitness accounts and the evidence of a professional, preferably a doctor, back up at least two separate incidents of harassment. The victim's statement alone is not sufficient to meet requirements of evidence¹. This is an additional barrier for women attempting to access a non-harassment order, as often feelings of shame and guilt can make it very difficult to tell anyone about abuse. Doctors may be known to the perpetrator or other family members, which in turn can prevent women from speaking out. It is also particularly difficult for women to prove they are subject to mental abuse. Often they will be dismissed as 'hormonal' or 'hysterical'.

The above comments illustrate barriers faced by women in initially identifying and reporting that they are experiencing domestic abuse. It is therefore grossly unfair that in attempting to secure a means to protect them from further abuse they must not only admit they have been abused but seek proof and corroboration from other sources. There is a real fear of recrimination and community awareness

The Scottish Women's Convention believes that the main benefit of making it easier to obtain a non-harassment order is simple – women, and more often than not their children, will be protected from further abuse.

¹ Cavanagh, K., Connelly, C., Soutar, J., (2003) An Evaluation of the Protection from Abuse (Scotland) Act 2001, (Edinburgh, Scottish Executive Social Research).

3. What advantages or problems might arise with the removal of means testing?

4. What do you see as the main benefits or removing means testing?

The Scottish Women's Convention supports the removal of means testing for civil legal aid applications.

The SWC held a 'Speak Out' event on Male Violence against Women and Children in November 2009 and the issue of legal aid was widely discussed. It was felt that there is a critical lack of advocacy services around legal processes and legal aid advice aimed specifically at women.

Many women who leave abusive relationships are subject to further reprisals by the perpetrator, not only physically and emotionally, but also materially. This is a significant problem for women with no financial independence, many of whom experience homelessness and extreme poverty as a result. Access to a civil protection order without fear of being unable to finance such an application would go some way to alleviating many of the worries faced by these women.

The SWC welcomes the recent increase in the annual disposable income limit for civil legal aid, as announced by the Scottish Government in April 2009. We acknowledge that this will improve the position of some women seeking protection from abuse.

However the SWC believe that every woman in Scotland, regardless of economic background, should be entitled to non-means tested legal aid. Women should be able to apply for civil protection orders without fear of being denied the means to do so.

It is our view that in removing means-testing there would no longer be disparity in access to justice between perpetrators and victims of domestic abuse. If men who subject women to abuse are automatically granted non-means tested legal aid, then the women who have suffered at their hands should be given the same right.

5. **What are the advantages and problems that might arise from making it a criminal offence to breach an interdict with power of arrest?**
6. **What do you see as the main benefits of making it a criminal offence to breach an interdict with power of arrest?**

It is the opinion of the SWC breach of an interdict with power of arrest should be made a criminal offence.

Too many perpetrators remain outside of the law and will continue to abuse unless sanctions are put in place. It was also felt that others may think it is acceptable to engage in this behaviour by what they see as limited retribution imposed on abusers.

As it stands, women who wish to pursue a breach of interdict face an uphill struggle. Perpetrators subject to an interdict know that unless they commit a criminal offence, they will face extremely limited consequences. This means they will, for example, loiter outside the victim's home knowing that very little will be done about it. What is not taken into consideration is the fear and distress this causes victims and often their children.

Imprisonment for breach of interdict is rare². This is due, in part, to the holder of the interdict having responsibility for paying the costs of the action and the lengthy process involved in a civil hearing process.

The purpose of an interdict is to protect women and ensure they feel safe in their homes. If breach of interdict with a power of arrest was treated as a criminal offence, a strong message will be sent to those who, under the current system, continue by their disregard for interdicts to intimidate and harass their victims.

² Macphail, I. (1998) *Sheriff Court Practice*, (2nd Edition by Nicholson C. and Stewart A.L.), Edinburgh: W Green.

7. What costs would be associated with all of the proposals contained in the Bill?

The Scottish Women's Convention are unable to provide comment on this question.

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All SWC reports and consultation responses can be accessed on our website
<http://www.scottishwomensconvention.org/what-we-do.asp>



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