

# Joint protocol between Police Scotland and the Crown Office & Procurator Fiscal Service

In partnership challenging domestic abuse



CROWN OFFICE  
& PROCURATOR  
FISCAL SERVICE

SCOTLAND'S PROSECUTION SERVICE

## **Purpose**

1. We recognise that domestic abuse can have a significant and enduring impact on victims and children who often face a continuing threat to their safety. Domestic abuse denies victims their right to feel safe in their personal relationships and restricts their freedom to make their own decisions. Victims may lose their autonomy and become isolated, controlled or manipulated and will often live in fear. It can have a devastating effect on every aspect of a victim's life. Victims commonly suffer physical injury, poor health and psychological difficulties as well as reporting feeling demoralised, degraded, humiliated, angry and depressed.
2. Effectively tackling domestic abuse is an organisational priority for both the Police Service of Scotland (referred to hereafter as Police Scotland or PS) and the Crown Office and Procurator Fiscal Service (COPFS). A consistent and robust approach is essential when dealing with criminal conduct arising from domestic abuse. This Protocol outlines the procedures and practices that will be followed by PS and COPFS in the investigation, reporting and prosecution of allegations involving an element of domestic abuse.
3. We will treat all victims and witnesses in a fair, sensitive, respectful and ethical manner. We will treat all suspects and accused persons fairly and ethically, and respect their rights under law. We will ensure there is consistency in our approach whilst taking into account the needs of individuals. We will meet the needs of the communities we serve by recognising the diversity of culture, religion, ethnicity, age, gender, transgender identity and sexual orientation that comprise our society. We will consider any special requirements that vulnerable or disabled people may have. Regard will also be had to the significant impact that domestic abuse can have on children who are exposed to it. We will keep the views and best interests of any children at the forefront of our consideration when investigating and prosecuting cases involving domestic abuse.

## **Definition**

4. For the purposes of this Protocol, domestic abuse is defined as:
  - any form of physical, verbal, sexual, psychological or financial abuse which might amount to criminal conduct and which takes place within the context of a relationship. The relationship will be between partners (married, cohabiting, civil partnership or otherwise) or ex-partners. The abuse can be committed in the home or elsewhere including online
  - it is acknowledged that domestic abuse as a form of gender based violence is predominately perpetrated by men against women. This definition also acknowledges and includes abuse of male victims by female perpetrators and includes abuse of lesbian, gay, bisexual, transgender and intersex (LGBTI) people within relationships
  - this definition of domestic abuse encompasses the entire spectrum of behaviour by perpetrators where this amounts to criminal conduct. This

includes cases which involve isolated incidents as well as cases involving a course of conduct and includes both violent and non-violent abusive behaviour. Some cases will involve elements and tactics of coercive control, which can involve a range of behaviours designed to control and harm a victim, while others will involve isolated incidents of conflict provoked by situational factors.

### **Initial Action**

5. Responding to reports of domestic abuse is a priority for Police Scotland. Every report received will be assessed to determine the most appropriate policing response. Where the abuse is ongoing and where there is an imminent risk or threat of harm the police will respond immediately. Where a report is received, which is not ongoing, or where following assessment there is no imminent risk or threat of harm, then an appropriate response will be determined taking into account a number of factors, including the wishes of the person making the report.
6. The initial priority for those dealing with reports of domestic abuse is the safety and well-being of the victims, their family and any other person present. Every effort will be made to provide attending officers with relevant background information. The circumstances of each report will take into account all known factors including the history and nature of the relationship and previous incidents.

### **Investigation**

7. When investigating incidents of domestic abuse, the police will ensure that all possible lines of enquiry are rigorously pursued and all available evidence is secured. Where a crime has been committed, consideration will be given to the arrest and interview of suspects in order to secure further evidence. Where the suspect is not traced and is at large, he/she will be actively pursued until arrested.
8. Whether or not the victim makes a complaint, the police will take appropriate action, including arrest of the suspect where there is reasonable cause to suspect a crime has been committed. Only where there is sufficient evidence available will the police charge the suspect and report the circumstances without delay to the Procurator Fiscal for consideration of prosecution.
9. The police will record full details of all reports made, consider any risk to the victim and provide the victim with appropriate safety advice relevant to the risk indicated. Officers will inform victims' of their rights regarding the sharing of their information with appropriate statutory and non-statutory agencies who have support, wellbeing, health responsibilities or provide domestic abuse advocacy services.
10. Incident information will be considered for sharing whether or not the case is reported to the Procurator Fiscal. The police will make victims aware that post incident, suitably trained domestic abuse officers will contact them to offer follow-on contact and where appropriate local specialist domestic

abuse support services are available, consideration should be given to a partnership approach in relation to ongoing victim safety.

11. When investigating reports of domestic abuse the police will have regard to the individual needs of victims and witnesses. Officers will be aware that diversity of culture, insecure immigration status, religion, ethnicity, language barriers, age, sexual orientation, gender, transgender identity or disability can present particular hurdles to the reporting of instances of domestic abuse. Consideration will be given to whether additional support during the investigation would be of assistance to victims and witnesses. For example, the use of an appropriate adult, independent interpreting services (including BSL interpreting) or allowing the victim to be accompanied by a person of their choice when being interviewed by the police will be considered. The police will also have regard to the special measures available to vulnerable witnesses under the Victims and Witnesses legislation to assist them in giving their evidence in court. Officers should also be mindful that domestic abuse can be perpetrated as a form of so called 'honour' based violence and abuse and may be committed with the knowledge or approval of other family or community members who might consider any disclosure of abuse by the victim to break a perceived 'honour' code.

### **Safeguarding Children During the Investigation**

12. Children can be profoundly affected by domestic abuse. They may hear or see the abuse, live with the consequences of domestic abuse and can also be subjected to abuse themselves. Sometimes perpetrators will use children as a way to exercise power and control and to further abuse the victim.
13. On all occasions when children are present during domestic abuse incidents or ordinarily form part of the household, police in attendance will consider all information to assess whether, in addition to the child's general wellbeing and requirement to raise a child concern form, the information suggests there may be a child protection concern.
14. When responding officers assess a child is at immediate risk of significant harm and there is no alternative to protect them, provisions outlined in Sections 37-39, 55 and 56 of the Children's Hearing (Scotland) Act 2011 (emergency powers) should be used.
15. Where it is suspected that a child has seen or heard domestic abuse during a domestic incident, the attending officers will make all efforts to speak with the child to establish i) if they are a witness to a domestic incident ; ii) if they feel safe and iii) if there is anything that is upsetting them. Increased awareness of trauma and understanding that certain adverse experiences during childhood, including growing up in a household where there is domestic abuse, strengthens the need for officers to be trauma informed and communicate in an age appropriate way.
16. When there is a child protection concern this must be immediately brought to

the attention of the relevant Divisional Public Protection Unit for the designated officer to assess the information and determine whether child protection procedures should be instigated. If so, an Inter-Agency Referral Discussion (IRD) will take place with core agencies where relevant information must be shared to inform decision making. This will include whether the child should be subject of a Joint Investigative Interview. Such interviews must be undertaken in line with the Scottish Government's published Joint Investigative Interviewing of Child Witnesses in Scotland.

17. In cases where it is considered that a child is in need of protection, guidance, treatment or control and that it might be necessary for a compulsory supervision order to be made in relation to the child all relevant information will be passed to the Children's Reporter (SCRA). Where possible, the police report to the Procurator Fiscal will highlight any previous/ongoing involvement by the Children's Reporter or social work department into the child's wellbeing.
18. The police will also have regard to the special measures available to child witnesses under the Victims and Witnesses legislation to assist them in giving their evidence in court.
19. Further information regarding child witnesses can be found at page 19 below under the heading 'Child Witnesses'.

### **Investigative Liberation**

20. There may be some occasions where the police require further time to complete their investigations.
21. Investigative liberation may be appropriate where:
  - there are further enquiries to carry out;
  - officers are satisfied that enquiries may be conducted whilst the person is at liberty and subject to conditions and
  - the further enquiries cannot be completed immediately but there is a reasonable prospect they will be completed within 28 days.
22. Investigative liberation provides the police with powers to liberate a suspect from custody and impose such liberation conditions as are necessary and proportionate for the purpose of ensuring the proper conduct of the investigation into the relevant offence, including, for example, a condition aimed at securing that the person does not interfere with witnesses or evidence.
23. The **proper conduct of the investigation** relates to the investigation as a whole and not the investigation as it relates only to a single witness. An investigation is not complete at the point where a witness statement is obtained. Witnesses might be asked to provide follow up statements commenting on other evidence which subsequently comes to light, or to participate in an identification parade. There are also risks, particularly in domestic abuse cases, that witnesses might be persuaded to retract or

change statements at any point.

24. Given the particular risks associated with domestic abuse, in all cases where it is appropriate to release a suspect in a domestic abuse case on investigative liberation, police officers must, before the suspect is released, give careful consideration towards the conditions to be attached to the release of the suspect. There must be a full assessment of any risk posed to the victim, witnesses or the investigation. This should take into account the views of the victim, particularly in respect of any conditions which might be appropriate. Regard should also be had to the factors listed in **paragraph 39**.
25. Victims will be notified by the police as soon as possible after a decision has been made to release a suspect on investigative liberation and, wherever possible, this will be done before the suspect is released. The conditions of release must be carefully explained.
26. Investigative Liberation Conditions automatically cease to apply at the end of the 28th day after the conditions were first imposed or before then if the suspect is re-arrested or charged with a relevant offence or where the condition has been modified or removed by a police officer or a sheriff.
27. A suspect may apply to the Sheriff Court to have investigative liberation conditions reviewed. As no Standard Prosecution Report (SPR) will have been submitted at this stage, the police will submit a report to COPFS with the relevant information, including the views of the victim where appropriate. The Crown will have an opportunity to make oral representations to the Court at the review hearing but the decision as to whether any condition is necessary and proportionate is one for the Court. Where the Court decides to modify or remove conditions, police will have regard to any ongoing risk posed to the safety of the victim, children or any other member of the public. The police will notify the victim or any relevant witness of the removal or variation of a condition as soon as possible. Where appropriate local specialist domestic abuse support services are available, consideration should be given to a partnership approach in relation to ongoing victim safety.
28. A person commits an offence if, without reasonable excuse, they fail to comply with an investigative liberation condition. In such circumstances, where there is sufficient evidence, the person will be arrested and reported to the Procurator Fiscal in custody or on an undertaking.

### **Reporting of Cases**

29. In all cases of domestic abuse where there is sufficient corroborative evidence of a crime the case will be reported to the Procurator Fiscal. This means that there is evidence from at least two separate sources (not necessarily two eye witnesses) to establish both that:
  - A crime was committed; and
  - The accused was the perpetrator.

30. Cases which would otherwise likely be prosecuted in a summary forum but where there is insufficient evidence must not be reported to the Procurator Fiscal.
31. The Victims and Witnesses (Scotland) Act 2014 section 6 confirms that a victim is entitled to ask Police Scotland for information about a decision not to proceed with or to end a criminal investigation and any reasons for this. Police Scotland will provide this information unless they consider that it would be inappropriate to do so.
32. Cases which would otherwise likely be prosecuted in a solemn forum but where there is insufficient evidence must only be reported to the Procurator Fiscal where there are active lines of investigation being pursued which are likely to result in a sufficiency of evidence and where there are risk and safety considerations which merit early reporting prior to the conclusion of the investigation.

### **Counter Allegations**

33. There will be occasions when counter allegations are made in domestic abuse incidents. The police must thoroughly investigate the full circumstances of the incident in order to identify and report the principal perpetrator to the Procurator Fiscal. It will not generally be appropriate to arrest and report both parties to the Procurator Fiscal.
34. In determining the identity of the principal perpetrator, the circumstances of the domestic abuse incident should not be looked at in isolation and officers must also have regard to the history and nature of the relationship and the criminal history of both parties. Careful consideration should be given to all relevant factors including:
  - the nature and circumstances of the incident, including the manner of reporting and evidence of injury to either party (bearing in mind that the fact that one party initially reports the incident, and the presence or absence of injuries, do not necessarily establish who is the principal perpetrator)
  - the fact that a victim of an assault may have acted to defend her/himself and her/his children in self-defence and that a level of verbal retaliation in response to a physical or verbal assault against a victim should not normally result in their arrest
  - any previous history of domestic abuse between the parties (including unreported incidents)
  - any previous history of domestic abuse with other partners (including unreported incidents)
  - the criminal history of both parties, including any bail conditions which have previously been imposed including any investigative liberation,

and undertaking conditions.

- officers' professional judgement; and
  - any other relevant information.
35. Following thorough investigation, the principal perpetrator will be identified and, where sufficient evidence exists, they will be reported to the Procurator Fiscal. In general only the principal perpetrator will be reported but full details of the counter allegation will be contained within the narrative section of that report. If required, the Procurator Fiscal can then request a full report in respect of any counter allegation.
36. Every effort must always be made to identify the principal perpetrator and only in limited circumstances and where it is justified should both parties be reported to the Procurator Fiscal. Examples of such limited circumstances may be where following thorough investigation both parties appear equally responsible, or due to the nature and severity of the offending behaviour.
37. Where this occurs, officers will be expected to explain the reasons for this within the reports to the Procurator Fiscal and the reports should cross-refer and the Description of Events sections must contain a common narrative of the full events.

### **Undertaking /Custody**

38. Where there is a sufficiency of evidence, the accused will either be released on an undertaking to appear at court at an early diet or, in appropriate circumstances, held in custody pending appearance at court. Police officers must take every precaution to ensure that a person is not unreasonably or unnecessarily held in police custody. However, given the particular risks associated with domestic abuse cases, it is recognised that in some cases, it will be both reasonable and necessary to hold an accused in custody pending the submission of a report to the Procurator Fiscal. Undertakings are available for both summary and solemn offences.
39. When considering whether to release by way of an undertaking or hold in custody, police officers must have regard to the following factors:
- the ongoing risk posed to the safety of the victim, children, witness or any other member of the public. Regard should be had to any risk assessment carried out
  - the nature and circumstances of the offence including the severity of the conduct and likely forum for prosecution
  - the likelihood of reoffending having regard to the frequency of repeat victimisation in domestic abuse cases
  - any previous convictions, pending cases, previous investigative liberation or undertaking conditions, and previous bail orders or other



court orders in place; including any history of non-compliance with investigative liberation, undertakings, bail or other court orders

- whether the incident reported is part of a course of conduct or pattern of behaviour. In assessing this, officers must consider any previous history of domestic abuse, including incidents which have not previously been brought to the attention of the police; and
- whether further lines of enquiry have been identified which may establish sufficient corroborative evidence for additional crimes or offences. In such circumstances, subject to considerations regarding the risk posed to the victim, it may be considered more appropriate to release an accused on undertaking pending full investigation instead of only reporting the current circumstances immediately to the Procurator Fiscal.
- the terms of the Lord Advocate's Guidelines on Liberation by the Police and any other relevant guidance issued by PS

40. If, having given due consideration to the factors listed above, it is considered that there is a likelihood of the accused reoffending, failing to comply with undertaking conditions or where there is a significant risk to the safety of the victim, , children, witness or any other member of the public and it is not considered that these risks could appropriately be managed by the imposition of proportionate conditions of undertaking, the accused should be detained in custody pending appearance at court.
41. Where an accused is released on an undertaking, the reasons for release must be recorded in the police report with reference to the factors noted above. The terms of the undertaking will require the accused to attend a specified court on a specified date at a specified time and this should be no later than fourteen days after the date of liberation.. Reports must be submitted to the Procurator Fiscal without delay and at least four clear days in advance of the court appearance.
42. Consideration must be given to any appropriate further conditions of undertaking that ought to be imposed, including conditions not to approach or communicate with, or attempt to approach or communicate with, the victim or relevant witness directly or indirectly for example via social media and not to enter the street on which the victim or relevant witness resides. The appropriateness of conditions of undertaking must be considered on a case by case basis and there may be a variety of conditions that are appropriate in the specific circumstances of a case. Account should be taken of the views of the victim or witness, particularly in respect of any conditions which might be appropriate. Undertaking conditions will remain in place until the accused appears in court, unless the undertaking is rescinded or the terms and any conditions of the undertaking are modified or removed by the Procurator Fiscal or the Court.
43. Victims will be notified by the police as soon as possible after a decision has been made to liberate an accused on an undertaking and, wherever

possible, this will be done before the suspect is released. The conditions of that undertaking must be carefully explained to the victim.

44. There may be further investigations to be carried out following the release of an accused on an undertaking. These should be carried out expeditiously and their outcome included within the report to the Procurator Fiscal.
45. Breach of an undertaking is a criminal offence. Should the accused, without reasonable excuse, fail to appear as required at court or fail to comply with an imposed condition, the terms of the undertaking will have been breached. Any breach of an undertaking condition where sufficient evidence exists must be reported to the Procurator Fiscal. Where arrested, the person will not be suitable for a further undertaking unless exceptional circumstances exist, and should be detained in custody to appear at court the next lawful day.
46. Where a person has been released on undertaking and a constable has reasonable grounds to suspect that they have broken or are likely to break the conditions of the undertaking but there is insufficient corroborative evidence to report them for a breach of undertaking the person can be arrested. When they are arrested the undertaking is rescinded and they are treated as simply having been charged with the original offence and will be reported to COPFS. The person will not be suitable for a further undertaking unless exceptional circumstances exist and should be detained in custody to appear at court the next lawful day.
47. Where the accused is not traced at the time of the incident and there is sufficient evidence, the police will report the circumstances to the Procurator Fiscal within the same accelerated timescales as if the accused was detained in custody and, if appropriate, a warrant will be sought for the apprehension of the accused. The Procurator Fiscal will deal with any requests for warrants as a matter of priority.
48. An application to review undertaking conditions may be made by the accused. If no Standard Prosecution Report (SPR) has yet been submitted, the SPR will be submitted by the police to COPFS without delay. Where conditions are modified or removed, police will have regard to any ongoing risk posed to the safety of the victim, children or other members of the public. The police will notify the victim or any relevant witness of the removal or variation of a condition affecting them as soon as possible.

### **Standard Prosecution Reports (SPRs)**

49. All cases involving an element of domestic abuse will be reported to the Procurator Fiscal in the form of a Standard Prosecution Report (SPR). This police report is the basis on which all initial decisions are made. It is essential it contains all the information required to ensure the proper consideration of cases including:
  - **Summary of evidence** – setting out the nature and circumstances of the offence and the evidence available. This must include full details

of the accounts of witnesses, including where applicable details of any counter allegations, injuries sustained, medical treatment received, any property damaged and cost of repair. Details of the interview with the accused, including any relevant admissions or exculpatory comments, must also be included.

- **Analysis of evidence** – setting out a corroborative summary of the evidence for each charge submitted which supports that: (1) a crime was committed; and (2) the accused was the perpetrator.
- **Relationship** - between the accused and victim – including current status, length of relationship and whether parties live together. The report should specify the sources of evidence required to prove by corroborated evidence, if challenged, that the relationship is one of partner or ex-partner.
- **Risk** – any identified risk in relation to the victim, children and other witnesses including the outcome of any risk assessment carried out by the police.
- **History** – any previous history of domestic abuse, including incidents which have not previously been brought to the attention of the police, including confirmation as to whether these incidents involved the current victim and the outcome of any police investigation into these incidents. Details of relevant previous convictions should also be included along with confirmation as to whether these incidents involved the current victim. Details should be given in relation to any previous breaches of investigative liberation or undertaking conditions.
- **Court orders** – details of all and any bail conditions, interdicts or other court orders that the accused is currently subject to, both civil and criminal, and compliance or otherwise with these orders.
- **Children** – including the following:-
  - whether there are children from the relationship or either the victim or accused have children and where the children reside;
  - whether there are any concerns or issues around the safety of or risk to the victim and children, and any expressed views by the victim or children during the investigation in relation to the need for a non-harassment order;
  - whether children witnessed or were present during the incident;
  - whether in terms of a potential prosecution under the Domestic Abuse (S) Act 2018 section 1, the offence is aggravated by reason of involving a child, by (a) the accused directing behaviour at a child; (b) the accused making use of a child in directing behaviour at the victim; (c) the child witnessing or

being present during an incident of behaviour; or (d) the course of behaviour or an incident of behaviour being likely to adversely affect a child usually residing with the accused or victim;

- The children's views, and the views of their parents/carers (other than the accused) on giving evidence against the accused;
  - Any previous/ongoing involvement by the Children's Reporter or social work department into the child's wellbeing if known;
  - Details of any previous or ongoing civil court proceedings or other concerns relating to child residence or contact.
- **Victim's views** – including views expressed to the police or a specialist support or advocacy service in relation to: court proceedings; liberation or bail conditions; and any views expressed in relation to the need for a non-harassment order and the appropriate conditions to be included within such an order.
  - **Adversity/vulnerability** – information outlining whether an accused; victim; child or any other witness has experienced/is experiencing some form of adversity or situational vulnerability, including those 'deemed' vulnerable under the Victims and Witnesses (Scotland) Act 2014, who have automatic entitlement to standard special measures when giving evidence – (including victims of domestic abuse, stalking, sexual offences, human trafficking and children and young people under 18).
  - **Individual support needs** – including the need for an interpreter with details of the language and dialect required, other communication or support needs and support requirements around a disability or medical condition if disclosed, especially in relation to mobility.
50. The SPR should contain draft charges, which should bear the relevant statutory aggravations where there is evidence to support these, such as aggravations of bail or liberation, hate crime aggravations, and/or the statutory aggravation of domestic abuse in terms of s1(1) of the Abusive Behaviour and Sexual Harm (Scotland) Act 2016. The statutory aggravation of domestic abuse will apply where there is evidence that the accused intended to cause or was reckless about causing their partner or ex-partner to suffer physical or psychological harm.

### **Decision Making**

51. When considering reports of domestic abuse, the Procurator Fiscal must first assess whether there is sufficient corroborative evidence that a crime has been committed by the accused. If there is insufficient evidence in law, no proceedings can be taken.

52. Where there is a sufficiency of evidence, there is a presumption in favour of prosecution in all cases of domestic abuse. In cases involving violence or the threat of violence, there is a further presumption that proceedings will be taken in the Sheriff Court or High Court.
53. Where the police report does not disclose sufficient evidence, but it appears that further investigation by the police may yield additional evidence, the Procurator Fiscal will contact the police and instruct appropriate further inquiries.
54. Where a decision has been made to take no proceedings or where further inquiries are instructed and the Procurator Fiscal requires to liberate the accused from custody or cancel the undertaking, the Procurator Fiscal will contact the police prior to liberation/cancellation of the undertaking to request that notification be given to the victim as soon as possible.

### **Victim's Right to Review**

55. Where a decision is made not to prosecute an accused in a case involving domestic abuse, COPFS will contact the victim to explain the reasons for that decision in terms of section 6 of the Victims and Witnesses (Scotland) Act 2014.
56. Section 4 of the Victims and Witnesses (Scotland) Act 2014 provides that in certain circumstances, victims have the right to ask for a review of a decision not to prosecute.
57. The Victim's Right to Review scheme introduced by COPFS sets out the process by which victims can ask for the review of a decision made on or after 1 July 2015 not to prosecute a case reported to COPFS. This right to review applies to decisions by the prosecutor:
  - to take no action in a criminal case reported by Police Scotland or other reporting agency; and
  - to stop or discontinue a case once court proceedings have been started.
58. Some decisions are not included in the right to review. Further information on the operation of the scheme and how to make an application can be found [here](#).

### **Prosecution**

59. All cases of domestic abuse and cases with child witnesses are referred to the Victim Information and Advice Service (VIA) within COPFS. With the victim's permission and where such services are available, VIA may refer the victim to specialist support or advocacy services and may share information with such services about the progress and outcome of the case. Subject to any express local arrangements with specialist support or advocacy services, VIA will keep the victim updated on the progress of their

case from the point where an initial marking decision has been made by the Procurator Fiscal or the case has first called in court (other than for a hearing to review liberation or undertaking conditions as the police will be responsible for advising the victim of any revocation/amendment to liberation or undertaking conditions).

60. In Scotland there are two types of criminal procedure; summary and solemn procedure. Further information can be obtained from VIA or can be found [here](#).
61. In summary cases, where the accused is granted bail, the court will fix an early date for trial which should, wherever possible, be within ten weeks of the first court appearance. Where the accused is remanded in custody any trial must normally commence within forty days of first appearance. All court dates are set by the Scottish Courts and Tribunals Service and not COPFS.
62. In solemn cases, where the accused is granted bail, a trial must normally commence within twelve months of the accused's first court appearance. Where an accused is remanded in custody, any trial must normally commence within 140 days, although this time limit can sometimes be extended by the courts in limited circumstances. Investigations in solemn cases will be progressed as quickly as possible and VIA will keep victims updated on the progress of the case and dates set for any further procedure.

### **Special Measures**

63. All victims of domestic abuse and all witnesses aged seventeen or under at the date of commencement of proceedings are entitled to use standard special measures to allow them to give their best evidence in court. Standard special measures include any of the following, some of which can be used in combination:
  - giving evidence from behind a screen
  - having a supporter in court
  - giving evidence via a live TV link.
64. In addition to these standard special measures, there are other non-standard special measures that can be applied for in appropriate circumstances. VIA will contact eligible witnesses (or their parents/carers) in advance of the trial to explore appropriate special measures with them.

### **Bail**

65. At the first calling of the case, whether the accused appears from custody or on an undertaking, the Procurator Fiscal will consider the question of bail and oppose bail where appropriate. Regard will be had to information provided by the police in relation to the victim's views and information

received from specialist support or advocacy services. If bail is not to be opposed, the Procurator Fiscal will consider whether it is appropriate to seek additional conditions, usually referred to as special bail conditions, such as requiring the accused to reside at an alternative address and preventing the accused from approaching the home or contacting the victim or particular witnesses. Special conditions of bail are considered on a case by case basis and there may be a variety of conditions that are appropriate depending on the specific circumstances of a case. The Procurator Fiscal will consider opposing bail where a special bail condition is thought appropriate, but the accused does not accept it. While the Procurator Fiscal may make submissions to the court on the question of bail, decisions on whether to grant or refuse bail and the terms of any conditions of bail are entirely a matter for the court. Any decision on bail can be appealed by the accused to the appropriate Appeal Court.

66. VIA will notify the victim of the outcome of the first court appearance, including whether bail is granted and the terms of any special bail conditions. This will be done by telephone that day or within a maximum of 24 hours of the accused appearing in court. If required, interpreting services will be used to convey this information. Where an accused has been released from custody and VIA has been unable to contact the victim that day, the police will be asked to do so and will make every effort to contact the victim as soon as possible.
67. Where an accused is refused bail or is granted bail with conditions, the accused can apply to the court to review its decision on bail or to seek to have bail conditions removed or varied. This can be done if the accused's circumstances have changed materially or if there is material information available which was not available to the court when the original bail decision was made. Where the conditions affect the victim, the views of the victim should be sought and considered by COPFS in deciding whether variation/removal of the condition ought to be opposed. Even where the victim is in favour of the removal or variation of a condition, COPFS must consider whether it is in the public interest to oppose the removal or variation of the condition. The decision as to whether to grant bail on review or whether to remove or vary any bail condition is one for the court. VIA will advise victims where bail conditions affecting them are varied or removed. Where appropriate local specialist domestic abuse support services are available, consideration should be given to a partnership approach.
68. A breach of bail is a serious offence. If there is a complaint made regarding a breach of bail, the police will investigate the matter thoroughly. If there is sufficient evidence of a breach of bail or of a separate criminal offence having been committed, the police will report this to the Procurator Fiscal for a decision to be made on prosecution. The accused may be detained in custody pending appearance at court, or if appropriate, a warrant will be sought for the accused's arrest. There is a presumption that bail will be opposed where an accused is being prosecuted for an alleged breach of bail conditions granted in a case involving domestic abuse.
69. Where there is insufficient corroborative evidence to report an accused for

a breach of bail, but nevertheless there are reasonable grounds to suspect that an accused person has broken or is likely to break any condition of bail imposed, the accused can be arrested and a bail review sought. In these circumstances, corroboration is not required as a bail review is distinct from a prosecution. In such circumstances, the police must consider whether it is appropriate to arrest the accused and report the accused in custody to the Procurator Fiscal.

70. On receipt of any new information about the conduct of the accused towards the victim or any other significant change in circumstances, the Procurator Fiscal will consider the accused's bail status and seek a bail review where it is appropriate to do so.
71. If any change is made to the conditions of bail or an order is granted or revoked, VIA will inform the victim by telephone that day. This includes any decisions on bail made on appeal by the appropriate Appeal Court. If VIA has been unable to contact the victim that day, the police will be asked to do so and will make every effort to contact the victim as soon as possible. Where appropriate local specialist domestic abuse support services are available, consideration should be given to a partnership approach.

### **Discontinuation**

72. Given the particular dynamics of domestic abuse and the risk of repeat victimisation, there is a presumption against the discontinuation of proceedings where a sufficiency of evidence remains. This presumption applies despite requests from victims for proceedings to be brought to an end. There is a public interest in ensuring that perpetrators of domestic abuse are held to account and that they understand that victims do not have the authority to discontinue prosecutions
73. Victims of domestic abuse can sometimes seek to retract their original statements or can be reluctant to give evidence. The dynamics of abuse are such that victims may feel pressurised because of a number of factors such as emotional bonds and loyalty to the accused or fear of recrimination or further abuse. Victims may seek to minimise the conduct of an accused or apportion blame on themselves. Where the police or VIA staff become aware of this, the Procurator Fiscal must be advised immediately. The Procurator Fiscal must consider the particular circumstances of the case carefully and may decide to meet with the victim, or to instruct the police to interview the victim to explore, sensitively, the reasons for their retraction or reluctance. Input may also be sought from a specialist domestic abuse support or advocacy service supporting the victim. It must be established whether this is a result of threats or pressure from the accused or any other person. The victim should be advised of the available support.
74. The final decision to continue or discontinue proceedings is for the Procurator Fiscal alone. In all cases, proceedings will only be discontinued if the Procurator Fiscal considers that, in all the circumstances, it would not be in the public interest to continue the prosecution.



## **Non Harassment Orders**

75. Where an accused person is convicted of an offence under section (1)(1) of the Domestic Abuse (Scotland) Act 2018 ('the 2018 Act;), or is convicted of an offence aggravated as described in S(1)(1)(a) of the Abusive Behaviour and Sexual Harm (Scotland) Act 2016, i.e. an accused has been convicted of intending to cause or being reckless about causing a partner or ex-partner to suffer physical or psychological harm, the Court must consider whether to make a NHO. The purpose of the NHO is to provide protection to the victim and any children usually residing with either the accused, with the victim or with them both or a child in respect of whom a child aggravation under the 2018 Act has been proved as the offence involved the child. After hearing from the Crown and the accused, the court must make a NHO unless satisfied that there is no need for the victim or child to be protected by such an order. A single instance of conduct is sufficient to enable a court to impose a NHO.
76. In all other cases where there is an element of domestic abuse, Prosecutors will, at an early stage, give consideration as to whether a non-harassment order would be appropriate in order to provide ongoing protection to victims after the conclusion of criminal proceedings. The views of the victim will be sought and considered before any application is made. While the Procurator Fiscal may, in appropriate circumstances, make an application to the court for a non-harassment order, the decision on whether to grant or refuse that application and the terms of any order are entirely a matter for the court.

## **Information and Support**

77. The National Domestic Abuse and Forced Marriage Helpline Scotland is 0800 027 1234. There are also a number of agencies that can provide support and advice to victims of domestic abuse. Further information can be found on the Police Scotland website and the [COPFS website](#).
78. Police officers will provide victims with information about the available support agencies and will make onward referrals to specialist services where appropriate and with the explicit consent of the victim. Specialist services may provide COPFS with important information on risk assessment or the victim's views towards the prosecution including, in particular, their views on special conditions of bail and non-harassment orders.
79. The VIA service of COPFS assists victims of domestic abuse and other vulnerable witnesses by:
- providing information about the criminal justice system
  - keeping them up-to-date on key developments in the case that affects them
  - helping them get in touch with organisations that can offer practical and emotional support

- discussing and facilitating any additional support that might help them, for example a separate entrance to the court building
- discussing what special measures might assist them when giving evidence and submitting relevant notices to the court
- where the victim wishes, helping to arrange a visit to court for them so that they know what to expect if the case goes to trial
- referring all victims of domestic abuse to Victim Support Scotland's Witness Service consistent with the terms of the agreement between COPFS, Scottish Courts and Tribunals Service and Victim Support Scotland which can be accessed [here](#); and
- liaising with specialist services working with the victim.

### **Child Witnesses**

80. Where a child is an essential witness in a domestic abuse case, the Procurator Fiscal must give careful consideration to the interests and views of the child and the ability of the child to give evidence. In deciding whether to take proceedings in the case, the Procurator Fiscal must balance the seriousness of the offence and the risk which the accused poses with the effect on the child of giving evidence. Due consideration will be given to information received relating to the wellbeing of the child from a specialist domestic abuse support or advocacy service or other professional.
81. Where a child is required as a witness at court, the Procurator Fiscal must consider which special measures are required to ensure that the matter is dealt with sensitively and to minimise any distress to the child. Witnesses aged seventeen and under at the date of commencement of proceedings are entitled to use standard special measures to assist them in giving their evidence at trial. Children may also benefit from using non-standard special measures and this should also be considered. The Procurator Fiscal will consider which measures are appropriate and will seek and take account of the views of the child and their parents/carers (other than the accused) when making a decision.
82. Further information regarding safeguarding children during the investigative stage of Police enquiries may be found at page 4 above under the heading 'Safeguarding Children During the Investigation'

### **Training**

83. A programme of ongoing training and development will support the principles and standards set out in this protocol including training for prosecutors, police officers and other relevant employees of COPFS and Police Scotland.

## Policy Information

84. Further information is available from:

- COPFS Policy & Engagement Division on [0300 020 3000](tel:03000203000) or at [www.copfs.gov.uk](http://www.copfs.gov.uk)
- Police Scotland Domestic Abuse Coordination Unit on **01786 896150** or **DomesticAbuseCoordinationUnit@scotland.pnn.police.uk** or from your Local Police Station.

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