

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

In partnership challenging domestic abuse



Crown Office and  
Procurator Fiscal  
Service

## **Purpose**

This Protocol outlines the procedures and practices that will be followed by the Police Service of Scotland and the Crown Office and Procurator Fiscal Service.

Having regard to the seriousness of domestic abuse, this Protocol has been agreed in order to:

Identify best practice and obtain consistency of approach in the investigation, reporting and prosecution of these cases, with a view to improving the service we provide to the public, and in particular to victims, in dealing with criminal conduct arising from domestic abuse incidents.

In dealing with these cases, we will treat all victims and their families in a fair, sensitive and ethical manner and we will strive to ensure that there is consistency in our approach, whilst taking into account the needs of individuals. To meet the needs of the communities that we serve, we recognise that this includes consideration of the diversity of cultures, religions, ethnicity and sexual orientation that comprise our society and any other special requirements 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 and the best interests of any child witnesses when investigating and prosecuting domestic abuse cases will be a paramount consideration.

## **Definition**

For the purposes of this Protocol, domestic abuse is defined as:

- Any form of physical, sexual or mental and emotional 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.
- While available evidence suggests that the most prevalent instances of domestic abuse are male abuse towards women, this definition acknowledges and includes female abuse towards men and abuse between partners or ex-partners in same-sex relationships.

## **Initial Action**

1. The police will treat all incidents of domestic abuse as high priority and will prioritise incidents to ensure that, as far as possible, any incident reported is met with an immediate response by police officers. Every effort should be made to provide attending officers with relevant background information.

2. The initial priority for police officers attending a domestic abuse incident is the safety and well-being of the victim, their family and any other person present.

## **Investigation**

3. 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 appropriate, consideration will be given to the detention and interview of alleged perpetrators in order to secure further evidence. Where the perpetrator is not traced and is at large, he/she will be actively pursued until detained for interview or arrested.

4. Where there is sufficient evidence available, the Police will take appropriate action, whether or not the victim makes a complaint, and will arrest the perpetrator and report the circumstances without delay to the Procurator Fiscal for consideration of prosecution.

5. The Police will record full details of all allegations made, consider any risk to the victim, provide appropriate safety advice and provide the victim with information regarding other support agencies whether or not the case is reported to the Procurator Fiscal. In addition, dedicated Domestic Abuse Investigation Unit Officers will provide follow-on contact with the victim. Where appropriate local specialist domestic abuse advocacy services are available, consideration should be given to a partnership approach in relation to victim safety.

6. The Police will have regard to the Scottish Government guidance on Supporting Child Witnesses, on the Interviewing of Child Witnesses in Scotland and to the special measures available to child and vulnerable adult witnesses under the Vulnerable Witnesses legislation to assist them in giving their evidence in court.

6a. When investigating allegations of domestic abuse the Police will have regard to the individual needs of victims and witnesses and will be aware that diversity of culture, religion, ethnicity, sexual orientation, gender 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 appropriate adult and independent interpreting services will be considered. Officers should also be mindful that domestic abuse can be perpetrated as a form of so called 'honour' based violence 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.

## **Reporting of Cases**

7. In all cases of domestic abuse where there is sufficient corroborative evidence of a crime – that is, evidence from at least two separate sources (not necessarily two eye witnesses) to establish that a crime was committed and the person accused was the perpetrator – the case will be reported to the Procurator Fiscal.

## **Counter Allegations**

8. However, in cases where the alleged perpetrator makes a counter allegation, it will not always be necessary for a full report to be submitted to the Procurator Fiscal in respect of that counter allegation. In particular, where the circumstances of

the offence, history of the relationship and criminal history of the parties suggest that the counter complaint may be without substance, it will be sufficient, following investigation for full details of the counter allegation to be contained within the report submitted against the alleged perpetrator, who should be remanded in custody or released on undertaking in accordance with this protocol. If it is required, the Procurator Fiscal can then request a full report in respect of the counter allegation.

**9.** Officers should bear in mind that where a counter allegation is made which appears to have no substance there is not always need to detain and arrest both parties. When determining whether a counter allegation has substance, officers should have regard to the following factors:

- the nature and circumstances of the offence, including evidence of injury to either party;
- 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 (including unreported incidents);
- the criminal history of both parties, including any bail conditions which have previously been imposed; and
- any other relevant information

### **Custody/Undertaking**

**10.** The accused will either be detained in custody pending appearance at court, or, in exceptional circumstances, released on an undertaking to appear at court at an early diet. Any further investigations which are required prior to reporting a case involving domestic abuse should be carried out expeditiously and the report to the Procurator Fiscal submitted without delay.

**11.** Release in terms of s22 is not competent in cases in which the High Court has exclusive jurisdiction, namely murder, rape and treason. In addition, in accordance with the terms of the Lord Advocate's Guidelines to Chief Constables on Liberation where the officer believes that petition proceedings are likely, a s22 undertaking is not appropriate.

**12.** 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.

### **SPRs**

**13.** The Police will ensure that any domestic abuse case reported to the Procurator Fiscal will include all pertinent information, including:

- the nature and circumstances of the offence including any injuries sustained and full details of any medical treatment received;
- the results of all inquiries made, regardless of whether they yield additional evidence;

- full details of the relationship between the victim/accused and any witnesses;
- full details of any previous incidents of domestic abuse, whether or not the subject of a previous report to the Procurator Fiscal;
- details of similar previous convictions;
- any interdicts or other court orders;
- bail conditions imposed on the accused in respect of previous court proceedings;
- any special risks which have been identified which impact on the victim and any children;
- any diversity requirements pertaining to the victim or witnesses, such as need for an interpreter, or other communication needs, any physical disability or any relevant cultural information;
- any views expressed by the victim, to the police or a specialist domestic abuse advocacy service including in relation to bail and/or, special conditions of bail;
- where appropriate, any views expressed by the victim in relation to (a) the need for a non-harrasment order and (b) the appropriate conditions to be included.
- information about children resident in the household, including their views, and the views of their parents/carers (other than the accused) on the effect of giving evidence on the child;
- any relevant additional information submitted on behalf of the victim by specialist domestic abuse advocacy services; and
- address and contact telephone number for the victim.

The report will consider how child and vulnerable witnesses may be best able to give evidence, should proceedings be taken, consistent with the directions in the Lord Advocate's Guidelines to the Police on Providing Information on Vulnerable Adult Witnesses and consider alternative forms of identifying the accused where possible.

### **Decision Making**

**14.** 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. Where there does not appear to be sufficient evidence in the report, but other evidence may be available, the Procurator Fiscal will contact an agreed police point of contact to co-ordinate the instruction of further inquiries.

**15.** If there is insufficient evidence in law, no proceedings can be taken. Where there is insufficient evidence to prosecute 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.

**16.** 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.

## **Prosecution**

**17.** Where there is a prosecution and the accused is to appear from custody or on an undertaking, the Procurator Fiscal will oppose bail where appropriate. If bail is not to be opposed, the Procurator Fiscal will consider whether it is appropriate to seek special bail conditions requiring the accused to reside at an alternative address and preventing the accused from approaching the home or contacting the victim or particular witnesses. The Procurator Fiscal will consider opposing bail where a special bail condition is thought appropriate but the accused does not accept it.

**18.** All cases of domestic abuse and cases with child witnesses are referred to Victim Information and Advice (VIA). Subject to any express local arrangements with specialist advocacy services, VIA will notify the victim of the outcome of the case, the grant of any bail 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. Where an accused has been released from custody and VIA has been unable to contact the victim, the Police will be asked to do so.

**19.** Where the accused is granted bail, in summary cases the Procurator Fiscal will ask the court to provide an early date for trial. Investigations and any subsequent proceedings in solemn cases will be progressed as quickly as possible.

**20.** 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 separate criminal offence having been committed the police will report this to the Procurator Fiscal. The accused may be detained in custody pending appearance at court, or if appropriate, a warrant will be sought for the accused's arrest.

**21.** Where 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. There does not require to be corroboration of the conduct to arrest the accused. 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.

**22.** 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 to do so is necessary for the protection of the victim.

**23.** If any significant change is made to the conditions of bail or an order is granted or revoked, VIA will inform the victim by telephone that day or within a maximum of 24 hours thereafter. This includes where the accused has been granted bail by the High Court. If VIA has been unable to contact the victim, the Police will be asked to do so.

**24.** Where the accused is remanded in custody the law states that any trial must commence within 40 days in summary cases, within 110 days in cases before a Sheriff and Jury and within 140 days in cases in the High Court.

**25.** Victims of domestic abuse can sometimes retract their original statements or can be reluctant to give evidence for a number of reasons, including previous experience of the accused's conduct. 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. 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.

**26.** The final decision to continue or discontinue proceedings is for the Procurator Fiscal alone. Where the reported incident involves violence, threats of violence or where there is a history of violence or abuse between the parties, the presumption shall be in favour of continuing the prosecution. In all cases, the 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. Such decisions will only be taken by a senior member of the Procurator Fiscal's legal staff.

### **Information and Support**

**27.** VIA helps victims of domestic abuse and 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 any additional support that might help them, for example special measures when giving evidence; and
- 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.

**28.** There are a number of external agencies that can provide support and advice to victims of domestic abuse. The National Domestic Abuse Helpline is 0808 200 0247. The Scottish Government Website provides useful information on the available support.

**29.** Police Domestic Abuse Investigation Unit Officers and VIA Officers will provide victims with information about the available support agencies and will make onward referrals where appropriate. VIA staff will also refer vulnerable and child witnesses to Victim Support's Witness Service, consistent with the terms of the agreement between COPFS, Scottish Court Service and Victim Support Scotland.

### **Children**

**30.** It is recognised that children are affected by domestic abuse. They may hear or see the abuse, live with the consequences of domestic abuse and may themselves suffer various types of abuse by the perpetrator..

**31.** Consequently, on all occasions when children are present during domestic abuse incidents or ordinarily form part of the household, the police in attendance will have concern for the welfare of the children.

**32.** In these cases, when appropriate, referral details of the incident will be passed to the Children's Reporter. Where possible, the police report to the Procurator Fiscal will highlight any previous/ongoing involvement by the Reporter or social work department into the child's welfare.

**33.** 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. 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.

**34.** Where a child has to be interviewed as a potential witness or is required as a witness at court, the police and 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. In terms of the Vulnerable Witnesses (Scotland) Act 2004 children are entitled to special measures to assist them in giving their evidence at trial. The Police and the Procurator Fiscal will consider which measures are appropriate and will ask the views of the child when making a decision. Consideration must also be given to the Scottish Executive guidance on Supporting Child Witnesses -Interviewing Child Witnesses and Questioning Children in Court.

### **Training**

**35.** A programme of training will support the principles and standards set out in this protocol.

### **Policy Information**

**36.** Further information is available from:

Crown Office Policy Division on **0131 226 2626** or at [www.crownoffice.gov.uk](http://www.crownoffice.gov.uk)

Police Scotland Domestic Abuse Coordination Unit on **0141 532 6854** or **DomesticAbuseCoordinationUnit@scotland.pnn.police.uk**

or from your Local Police Headquarters.

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