

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 (PSoS) 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 the PSoS 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 and ethical manner. 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 while others will involve isolated incidents of conflict provoked by situational factors.

### **Initial Action**

5. 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 will be made to provide attending officers with relevant background information.
6. 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**

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 detention 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 detained for interview or arrested.
8. Whether or not the victim makes a complaint, the police will take appropriate action including the detention or arrest of the suspect. 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, 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, suitably trained officers will provide follow-on contact with the victim. Where appropriate local specialist domestic abuse support services are available, consideration will be given to a partnership approach in relation to victim safety.
10. Every effort will be made by attending officers to see and speak with children who are present at a domestic abuse incident to confirm they are unharmed and to support and safeguard their wellbeing. Attending officers will also carry out an interview with them to establish the facts surrounding the incident.

11. In some cases, in addition to speaking with children as set out in paragraph ten above, it may also be appropriate for suitably trained officers to initiate an inter-agency referral discussion to determine the requirement for a single agency or Joint Investigative Interview (JII).
12. When carrying out a further interview beyond the initial approach in paragraph ten, the police will follow Scottish Government guidance [Joint Investigative Interviewing of Child Witnesses in Scotland](#) and any other relevant guidance. The police will also have regard 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.
13. 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. 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**

14. 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:
  - (1) A crime was committed; and
  - (2) The accused was the perpetrator.
15. 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.
16. 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

17. 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.
18. 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
  - officers' professional judgement; and
  - any other relevant information.
19. 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.
20. 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.

21. 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**

22. 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.

23. 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 or any other member of the public and regard should be had to any formal 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, bail orders or other court orders in place; including any history of non-compliance with 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 PSoS.

24. 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 or other witnesses 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.
25. 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.
26. 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 directly or indirectly and not to enter the street on which the victim resides. It is important that the appropriateness of special conditions of undertaking is considered on a case by case basis; there may be a variety of conditions that are appropriate in the specific circumstances of a case.
27. Victims will be notified by the police as soon as possible after a decision has been made to liberate an accused on an undertaking. The conditions of that undertaking, including the terms of any special conditions, must be carefully explained to the victim.
28. There may be further investigations to be carried out following the liberation of an accused on an undertaking. These should be carried out expeditiously and their outcome included within the report to the Procurator Fiscal.
29. 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. In such circumstances, where there is sufficient evidence, the accused will be arrested and detained in custody pending appearance at court on the next lawful day.
30. 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

31. All cases involving an element of domestic abuse will be reported to the Procurator Fiscal in the form of a Standard Prosecution Report. 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.
- **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.
- **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.
- **Children** – including whether there are children from the relationship and where they reside; whether there are any concerns or issues around child contact and the safety of the victim and children; whether children were present during the incident; their views, and the views of their parents/carers (other than the accused) on giving evidence against the accused.
- **Victim's views** – including views expressed to the police or a specialist support or advocacy service in relation to: court proceedings; special conditions of bail; 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.

- **Vulnerability** – information on the vulnerability of the accused, victim, children and other witnesses, 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.

## Decision Making

32. 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.
33. 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.
34. 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.
35. 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

36. 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.
37. 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.

38. 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.

39. 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**

40. All cases of domestic abuse and cases with child witnesses are referred to the Victim Information and Advice Service (VIA) within COPFS. Subject to any express local arrangements with specialist support or advocacy services, VIA will keep the victim updated on the progress of their case and in particular will notify the victim of the outcome of the first court appearance, 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.

41. 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](#).

42. 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.

43. 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 110 days in cases before a Sheriff and Jury and within 140 days in cases in the High Court, although these time limits 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

44. 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.

45. 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

46. At the first calling of the case, whether the accused is to appear 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 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 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; 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 on the question of bail, the decision on whether to grant or refuse bail and the terms of any conditions of bail are entirely a matter for the court.

47. 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.

48. 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.

49. 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.
50. 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 where the accused has been granted bail by the High 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.

### **Discontinuation**

51. 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
52. 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 retribution 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.
53. 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

54. Prosecutors will, at an early stage, give consideration as to whether a non-harassment order would be appropriate in all cases involving domestic abuse 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

55. 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 COPFS website [here](#).

56. 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.

57. 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.

## **Children**

58. 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.
59. 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. (Reference is made to the terms of paragraphs 10-12 above).
60. 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.
61. 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 welfare of the child from a specialist domestic abuse support or advocacy service or other professional.
62. 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.

## **Training**

63. A programme of ongoing training and development will support the principles and standards set out in this protocol.

## Policy Information

64. Further information is available from:

- COPFS Policy & Engagement Division on **0131 226 2626** or at [www.crownoffice.gov.uk](http://www.crownoffice.gov.uk)
- Police Scotland Domestic Abuse Coordination Unit on **01786 896150** or **DomesticAbuseCoordinationUnit@scotland.pnn.police.uk** or from your Local Police Headquarters.

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