



**THE CREATION OF A SPECIFIC OFFENCE OF DOMESTIC ABUSE –
PROPOSED ASSOCIATED REFORMS TO CRIMINAL PROCEDURE**

VSS RESPONSE

Victim Support Scotland (VSS) is a national charity supporting people affected by crime in Scotland through the provision of practical help, emotional support and essential information. VSS welcomes the opportunity to provide a response to the Scottish Government's consultation on proposed associated reforms to criminal procedure regarding the creation of a specific offence of domestic abuse.

Bail conditions

VSS welcomes the proposed new standard condition of bail that would prohibit an accused person charged with domestic abuse offences from obtaining precognitions or statements from a victim except through a solicitor. We agree that this would prevent offenders of domestic abuse from using the criminal justice system as a means of further abuse of the victim and would bring the system further in line with the protections available to victims of sexual offences.

Accused persons conducting their own defence

In situations of domestic abuse, the perpetrator constantly seeks to exert control over the victim through any means at their disposal. When a case calls to court, it can be particularly traumatic and distressing for victims of domestic abuse to give evidence and take part in the process. Anxiety may stem from the possibility of the accused being able to conduct their own defence, which would mean being confronted and questioned by them in court. We therefore see great benefit in establishing an automatic ban on an accused person conducting their own defence in domestic abuse cases, a move which would be reflective of the measures currently in place for victims of sexual offences.

Expert evidence relating to the behaviour of the complainer

Myths abound within the general population as to the 'normal' responses that would be expected from a victim of domestic abuse. Such misconceptions as to how a victim of domestic abuse would or should behave could undermine the credibility of the witness, especially in cases which involve a jury. In certain cases, an increased level of understanding as to the range of reactions and decision-making typical of victims of domestic abuse is required to ensure that the court or jury is fully able to reach a just decision.

Mandatory consideration by the court of imposition of a non-harassment order upon conviction

Victim Support Scotland warmly welcomes the proposal that the court will be required to always consider whether to impose a criminal non-harassment order following an offender being convicted of a domestic abuse offence.

It is vital that the criminal justice system recognises the need to protect victims from repeat victimisation, retaliation and intimidation, as reflected in the general principles of the Victims and Witnesses (Scotland) Act 2014. This is particularly important at the point of sentencing; with the removal of bail conditions, the period directly after an offender has been convicted of domestic abuse can be especially dangerous. It is unfair for victims of domestic abuse to be expected to pursue protection from their abuser through the civil courts when there are means to do so through the criminal courts, at a time when victims are at most need of such protection. VSS believes the proposed reform to be a step forward in ensuring that protection of victims of domestic abuse is embedded in criminal justice.

Placing a duty on courts to consider making a non-harassment order in every domestic abuse case and providing reasons for the decisions made in each case will add to the transparency of the courts. Victims very often look for answers as to the outcome of their case, and find these answers difficult to find. Although there is now the opportunity for victims to obtain the reasons for the final outcome in their case through section 6 of the 2014 Act, the proposed reform would make this bureaucratic process unnecessary by making the reasons available at the time of sentencing. In cases in which a non-harassment order has not been given, providing reasons for this decision at time of sentencing will help the victim understand why this decision was made, rather than being left in the dark or extending their contact with the criminal justice system through application for this information.

Moreover, the recording of these reasons will be invaluable in providing a catalogue of information on which the Scottish Sentencing Council can base any future analysis as to the consistency of such decisions, and help inform possible future sentencing guidelines in this area.