



# **Proposed Civil Protection Orders and Access to Justice (Scotland) Bill: Consultation**

The UNISON Scotland Response to Rhoda Grant MSP's consultation on her proposed Civil Protection Orders and Access to Justice (Scotland) Bill.

**February 2010**

## **Introduction**

This paper constitutes UNISON Scotland's response to Rhoda Grant MSP's consultation on her proposed Civil Protection Orders and Access to Justice (Scotland) Bill.

UNISON is Scotland's largest trade union representing more than 160,000 members working in the public sector in Scotland.

UNISON Scotland welcomes the opportunity to respond to this consultation.

## **Background**

UNISON Scotland has long supported strong and effective legal protections for those who experience domestic violence, within an overall policy framework that recognises the gendered context of these crimes. Therefore we very much welcome the objectives of the proposed Bill. Too many women and children live in terrifying fear of a violent man and are severely let down by the system. This Bill will dramatically improve access to justice for them, access that has been intended by previous legislation but which has failed to deliver.

UNISON believes there should be zero tolerance of domestic violence and properly resourced services for those experiencing abuse. More than 85% of incidents recorded by police involve a female victim and male perpetrator. This fact must inform the shaping of policy and legislation. However, anyone can be a victim – regardless of gender, culture, age, ethnic origin, disability or sexual orientation. All those affected deserve equal treatment and protection under the law.

Many UNISON members in health, police and local government work with the adults and children affected by domestic violence. Also, with a union membership that is predominantly female, many members unfortunately have direct personal experience of abuse.

UNISON has been instrumental in negotiating workplace policies to support and assist workers suffering domestic violence. Perpetrators have been known to threaten, harass and/or assault women at their work and it is essential that employers take proper steps to protect staff and to ensure they are not discriminated against if this leads to increased sickness or other absences.

This strong awareness of the issues involved and commitment to action is shared across the union, with new policy passed at UNISON National Delegate

Conference in 2009 covering legal consistency, workplace policies and proper resourcing of support services.

UNISON Scotland fully backs Rhoda Grant's proposed Bill, which has also received overwhelming support from our Scottish Women's Committee and our Lesbian, Gay, Bisexual and Transgender Committee.

## **Response to Consultation Questions**

### **1. What advantages or problems might arise as a result of removing the course of conduct requirement?**

UNISON sees only advantages in removing the course of conduct requirement. We see it as a major obstacle to women seeking protection and we agree that the need to have two incidents of abuse proven before a protection order can be granted by a civil court may breach the European Convention on Human Rights, Article 3: 'no one shall be subjected to torture or to inhuman or degrading treatment or punishment'. We also note that the requirement acts as a *de facto* corroboration requirement, which is out of step with other civil orders.

### **2. What do you see as the main benefits of making it easier to obtain a non-harassment order?**

The main benefit would be the enhanced safety for victims who could obtain the order and the protections it offers after one incident. In reality many victims often suffer repeated abuse before seeking help and this would mean they could access help more quickly and without having to wait in fear for a second incident, which could potentially involve severe violence, before being able to access justice.

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

The advantage of removing means testing is that Legal Aid would be free to all where there is an application to a civil court for an interdict with a power of arrest or a non-harassment order where domestic abuse is involved. We support Rhoda Grant's objective that victims should not have to pay for their own protection.

Some might argue that the increased cost to the public purse is a problem. However, domestic violence has a great cost to society and we believe that legal protections which offer victims increased safety will in fact be cost effective.

#### **4. What do you see as the main benefits of removing means testing?**

The main benefit is access to justice for all. Research has shown that many victims do not proceed with seeking a protection order due to the costs being prohibitive for them.

Means testing can be very problematic for women living in fear, fleeing violence and often in a position of having left their home, starting to apply for welfare benefits and with no agreement secured about their right to the shared assets of their relationship. Their financial position in such circumstances is precarious and the added worry about the costs of protecting themselves compounds the major psychological stress they are under.

We also find it appalling that a 2003 evaluation of all Scottish civil protection orders (*Cavanagh, K., Connelly, C., Scoular, J., (2003), An Evaluation of the Protection from Abuse (Scotland) Act 2001, (Edinburgh, Scottish Executive Social Research)*) found anecdotal evidence from solicitors that perpetrators of abuse manage to access Legal Aid more often than victims do. This is unfair in the extreme and, we would argue, discriminatory.

#### **5. What are the advantages and problems that might arise from making it a criminal offence to breach an interdict with a power of arrest?**

We support making it a criminal offence to breach an interdict with a power of arrest, for all the reasons laid out in the consultation document. It is unacceptable that perpetrators can show utter contempt for the law and are rarely punished via criminal proceedings for breaching such an interdict. The effect on victims is to leave them feeling even more at risk, abandoned by the law and left helpless against an abusive and unpredictable perpetrator. It is wrong that the onus is put on them to pay for an action for breach of interdict, which can be lengthy, complicated and expensive.

#### **6. What do you see as the main benefits of making it a criminal offence to breach an interdict with a power of arrest?**

Making this a crime will strengthen the hand of police and prosecutors and will act as a deterrent. Above all, it will afford increased protection for victims of domestic violence. We agree with Rhoda Grant's point in the consultation document that: *The failure to criminalise breach of interdict with power of arrest diminishes the perceived importance of the court order itself and undermines the seriousness of the domestic abuse the interdict was intended to prohibit.*

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

UNISON Scotland does not have an estimate of the associated costs. However, we would strongly argue that the principle of proper access to effective justice for victims is paramount here. We also note that, as stated in our answer to Question 3, the cost to society of domestic violence is enormous. Various research studies have shown that there are major cost benefits in investing in domestic abuse housing support services such as provided by Scottish Women's Aid. We would argue there will be similar cost benefits from providing non means tested Legal Aid and from the other proposals in the Bill.

## **Conclusion**

Domestic violence affects far too many people in Scotland. A record number of 53,681 cases were reported in 2008-09. This was 8% more than the previous year. More than half of female homicide victims in Scotland in the last ten years were killed by a current or former partner.

UNISON Scotland believes that the measures in this Bill are essential in building on the important work already under way to tackle domestic abuse. The deterrent effect in demonstrating practically that society will not tolerate domestic violence is very important. The proposals in the Bill are necessary to ensure that some of the objectives of previous legislation are properly met.

We are confident that the proposed Bill would make a major difference in offering greater legal protections and access to justice for victims of domestic violence. The benefits for individuals are immense and potentially life-saving. We urge cross-party support for the Bill.

## **For further information please contact:**

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