

NOT PROTECTIVELY MARKED

Hi Philip,

I am writing to say how much I welcome the proposed Associated Provisions published last week. Our views on each specific associated provision is detailed below.

Standard condition of bail to prohibit an accused obtaining precognitions or statements from the complainer except via a solicitor - This is most welcome. We have had occasions when the accused has tried to contact the complainer about the case and has used the fact that he has a question about the case as a way of 'getting round' the bail conditions. Victims feel under pressure to respond as it involves the court case, are not sure if they'll get into trouble if they don't respond and are then retraumatised. Some accused persons use this provision as an excuse to continue the abuse or as a lever to put pressure on the complainer not to appear in court. Ensuring any precognition or statement be taken by a solicitor will provide a level of protection and comfort to victims whilst still allowing the legal process to continue.

Ban on accused persons conducting their own defence – this is, in my opinion, absolutely crucial for the proper administration of justice. We have had a number of clients aghast at the prospect of their abuser conducting his own defence. We have witnessed situations where the accused during the questioning of the victim, has gone over and over specific details that we know are particularly distressing for the complainer. Sheriffs are aware that the accused does not have a legal background and therefore allow some leeway in terms of how the complainer is questioned, while at the same time, the complainer can't understand why the accused is allowed to question her in that way. In essence, clients do not understand why accuseds are allowed to conduct their own defence in situations of domestic abuse. I agree with the briefing that there are parallels with sexual offences and as such I would totally agree that this associated provision be included.

Expert evidence – the introduction of this would be a very welcome step indeed. Juries and some Sheriffs do not understand the intricacies of domestic abuse in all its complexity and can therefore be confused at the complainer's presentation or actions. Questions are regularly asked during examination or cross-examination about why a complainer did or did not do something and the introduction of this would ensure the full circumstances could be explored. For example, people regularly don't understand why victims want to remain in their local area as they see that as being a statement of their level of fear, while the victim may be making a judgement based on the support she has in that area, which may be part of a legitimate safety plan.

Mandatory consideration by the court of an NHO following a conviction – this is very welcome as it will increase the protection for victims. We always ask clients if they would want consideration by the court of an NHO and many clients are appreciative that there is something that can be put in place when the case closes and special conditions of bail are lost. We have noticed an increase in the amount of Sheriffs who consider awarding NHO's at the conclusion of criminal proceedings, however, there are some courts where Sheriffs have said that they do not agree with such disposals and refuse to consider the award of an NHO and there is therefore a postcode lottery in operation. Introducing such a provision will also ensure that victims are also not reliant on the PF to actively ask for consideration of an NHO, if a Sheriff isn't already considering such an award.

Further provision

I wonder if consideration could be given to extending the provisions of the consideration of any NHO to include children who have been affected by the abuse. Currently the position is that if children are witnesses in the case, then an NHO could be considered and if the above provision is accepted, consideration would be given to all witnesses in the case. However, wherever possible children are not used as witnesses in court but they may have been witness to the incident or indeed other aspects of the abuse. This will become even more important if the specific offence is agreed. If we accept that children are victims per se if they live in a house where there is domestic abuse, then we should consider what level of protection they require to be safe. In ASSIST, we have had to explain to children why the court believes that Dad can't contact Mum because of the incident and she has an NHO, yet they are not covered and are then under pressure to have contact with someone who was/is violent. I think we need to be a bit more creative and understand the extent of domestic abuse and the effects on children in their own right.

Thanks again for the opportunity to comment and for bringing forward these provisions,

Kind Regards,

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