



**Children 1<sup>st</sup> response to the  
Creation of a Specific Offence  
of Domestic Abuse –  
Proposed Associated Reforms  
to Criminal Procedure**

***A new standard condition of bail that prohibits an accused when they are charged with domestic abuse offences from obtaining precognitions or statements from a complainer except through a solicitor.***

Children 1st support this proposal. The very personal nature of domestic abuse offences means that should a perpetrator obtain precognition themselves, they have the opportunity to perpetrate further abuse by intimidating victims and witnesses. Prohibiting precognition from a complainer except through a solicitor will reduce pressure on complainers and other witnesses whilst supporting fair administration of justice.

***A ban on the accused conducting their own defence when they are charged with domestic abuse offences.***

Children 1st support this proposal for similar reasons to the above. Giving evidence, within our current court system is re-traumatising for many victims and witnesses. Much wider reform is urgently needed, for example through piloting a Scottish version of the Scandinavian Barnhus model for child victims and witnesses, which includes children experiencing domestic abuse. At the same time an outright ban on the accused conducting their own defence in domestic abuse cases will lessen the level of trauma experienced by victims and witnesses in Scottish courts.

***The introduction of expert evidence relating to the behaviour of the complainer in domestic abuse offence cases.***

We support the introduction of expert evidence relating to the behaviour of the complainer, but are clear that it must be accompanied by several other changes, most importantly training and development for all those working in the criminal justice system; including the judiciary.

Domestic abuse is extremely complex and nuanced and in order for cases to receive a fair hearing, it is essential that jurors, judges and court officials understand: the nature of coercive control, survivor strategies/coping mechanisms, and how in many cases the courts themselves are used by perpetrators to continue to perpetuate abuse. Expert evidence can help the courts view cases through a 'gendered lens' to understand the ways in which control can be exerted that would not normally be visible. In addition to the introduction of expert evidence, judges should be better equipped to be able to give the jury clear directions which address these issues.

The appointment of "expert" witnesses will require some discussion and development of criteria for appointment. It will be essential that expert witnesses are drawn from a range of disciplines in order that victim responses are not pathologised or medicalised.

***The court will be required to always consider whether to impose a criminal non harassment order following an offender being convicted of domestic abuse offences.***

Children 1<sup>st</sup> recognise the intent behind this proposal to give a survivor protection from ongoing abuse following conclusion of a criminal court case. However, we have concerns about the potential impact of unintended consequences in cases where children are also victims of domestic abuse.

We are extremely concerned that despite the recognition in the *National Guidance for Child Protection in Scotland (2014)* that children are victims of domestic abuse<sup>i</sup>, the draft bill to create a specific offence of domestic abuse (as shared with us to-date) does not recognise children as victims of domestic abuse in their own right. If a non harassment order (NHO) were to be imposed on a perpetrator only in relation to his former partner and a subsequent order for contact between the perpetrator and his children were to be made by the civil court, this could enable the domestic abuse to continue. Through our work supporting children and families experiencing domestic abuse, we have often seen contact with an abusive parent result in continued coercion and control. This has included pressure on the child to persuade the other parent to bring the family back together. It has also increased the likelihood that families who have moved for safety reasons have their whereabouts shared, leading to an increased risk of ongoing threats and abuse.

It is not uncommon for civil courts to impose contact where a NHO has already been imposed on a perpetrator. This put a huge strain on families, who are in direct contravention of a court order if they don't uphold the contact, but risk further abuse if they allow contact to take place.

Given this broader context, Children 1st are concerned that the intent behind this proposed associated reform to criminal procedure will not be achieved in cases where children are involved.

It should not be assumed that contact with a parent is always in the best interests of the child. Under the United Nations Convention on the Rights of the Child children have rights to have their views taken into account (Article 12) and rights to stay in contact with their parent, unless it is not in their best interests (Article 9). They also have a right to be protected from harm (Article 19). Children 1<sup>st</sup> would therefore urge the Scottish Government to ensure that a Child Rights and Wellbeing Impact Assessment is carried out not only on the domestic abuse bill, as proposed but also on this proposed reform to criminal procedure.

We would also urge the Scottish Government to reconsider whether the domestic abuse offence should recognise children as direct victims of domestic abuse. This would ensure that, having heard the full case, the court would consider whether to impose a NHO that includes the perpetrator's children as well as the perpetrator's former partner.

Through the Equally Safe delivery plan, the Scottish Government and partners must prioritise closer working and sharing of information to better join up the Scottish criminal courts, civil courts and the children's hearing system to avoid the sort of contradictory decision making described above. In addition to domestic abuse training, justice professionals must also be trauma-informed so that they understand the risks of re-traumatisation and are able to make decisions that are first and foremost in the best interests of the child.

For more information about this response please contact Harriet Hall, Policy Manager:  
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<sup>i</sup> National Guidance for Child Protection in Scotland 2014 (<http://www.gov.scot/Resource/0045/00450733.pdf>) p113 states: "Children and young people living with domestic abuse are at increased risk of significant harm, both as a result of witnessing the abuse and being abused themselves. Children can also be affected by abuse even when they are not witnessing it or being subjected to abuse themselves. Domestic abuse can profoundly disrupt a child's environment, undermining their stability and damaging their physical, mental and emotional health."