

in partnership, challenging

DOMESTIC ABUSE

**Joint Protocol Between
Association Of Chief Police Officers
In Scotland (ACPOS)
and
Crown Office And Procurator Fiscal Service
(COPFS)**



DOMESTIC ABUSE

PURPOSE

This Protocol outlines the procedures and practices that will be followed by the Scottish Police Service and the Crown Office and Procurator Fiscal Service.

Having regard to the seriousness of domestic abuse, this Protocol has been agreed in order to:

Identify best practice and obtain consistency of approach in the investigation, reporting and prosecution of these cases, with a view to improving the service we provide to the public, and in particular to victims, in dealing with criminal conduct arising from domestic abuse incidents.

In dealing with these cases, we will treat all victims and their families in a fair, sensitive and ethical manner and we will strive to ensure that there is consistency in our approach, whilst taking into account the needs of individuals. To meet the needs of the communities that we serve, we recognise that this includes consideration of the diversity of cultures, religions, ethnicity and sexual orientation that comprise our society

DEFINITION

For the purposes of this Protocol, domestic abuse is defined as:

- ➔ Any form of physical, sexual or mental and emotional abuse which might amount to criminal conduct and which takes place within the context of a close relationship. The relationship will be between partners (married, cohabiting or otherwise) or ex-partners. The abuse can be committed in the home or elsewhere.
- ➔ While available evidence suggests that the most prevalent instances of domestic abuse are male violence towards women, this definition acknowledges and includes female violence towards men and violence between partners or ex-partners in close, same-sex relationships.

INITIAL ACTION

1. 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.
2. 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

3. 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 appropriate, consideration will be given to the detention and interview of alleged perpetrators in order to secure further evidence. Where the accused is not traced and is at large, he will be actively pursued until detained for interview or arrested.
4. In incidents where the victim is making no complaint, but there is otherwise sufficient evidence available, the police will take appropriate action, arrest the offender and report the circumstances forthwith to the Procurator Fiscal for consideration of prosecution.
5. The police will record full details of all allegations made, provide appropriate safety advice and provide the victim with information regarding other support agencies. In addition, dedicated Domestic Abuse Liaison Officers will provide follow-on contact with the victim.
6. The police will have regard to the Scottish Executive guidance on Supporting Child Witnesses, on the Interviewing of Child Witnesses in Scotland.

REPORTING OF CASES

7. In all cases of domestic abuse where there is sufficient corroborative evidence of a crime – that is, evidence from at least two separate sources (not necessarily two eye witnesses) to establish that a crime was committed and the accused was the perpetrator – the case will be reported to the Procurator Fiscal.
8. The accused will either be detained in custody pending appearance at court, or, in exceptional circumstances, released on an undertaking to appear at court at an early diet. Where the accused is not traced at the time of the incident, the police will report the circumstances to the Procurator Fiscal within the same timescales as if the accused was detained in custody and, if appropriate, a warrant will be sought for the apprehension of the offender. The Procurator Fiscal will deal with any requests for warrants as a matter of priority.
9. The police will ensure that any domestic abuse case reported to the Procurator Fiscal will include all pertinent information, including full details of any previous incidents of domestic abuse, whether or not the subject of a previous report to the PF; a contact telephone number for the victim; information about children resident in the household; injuries sustained; bail conditions pertinent to the accused in respect of previous court proceedings; any interdicts or other court orders; any special risks which have been identified which impact on the victim and any children; any views expressed by the victim, including in relation to bail; and the results of all inquiries made, regardless of whether they yield additional evidence. The report will consider how child and vulnerable witnesses may be best able to give evidence, should proceedings be taken.

DECISION MAKING



- 10.** 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. Where there does not appear to be sufficient evidence in the report, but other evidence may be available, the Procurator Fiscal will contact an agreed police point of contact to co-ordinate the instruction of further inquiries.
- 11.** If there is insufficient evidence in law, no proceedings can be taken. Where there is insufficient evidence to prosecute and the Procurator Fiscal requires to liberate the accused from custody, the Procurator Fiscal will contact the police prior to liberation to request that the victim is notified as soon as possible.
- 12.** If there is sufficient evidence in domestic abuse cases involving violence against the victim, there is a presumption in favour of prosecution and, where the decision is to prosecute, such cases will proceed in the Sheriff or High Court.
- 13.** In non-violent cases, the Procurator Fiscal, in accordance with departmental policy, must give careful consideration to the whole circumstances of the case before deciding whether it is in the public interest to prosecute or to adopt an alternative disposal to prosecution.

PROSECUTION

14. Where there is a prosecution and the accused is reported as a custody or undertaking, the Procurator Fiscal will, where considered appropriate, oppose bail. If bail is not to be opposed, the Procurator Fiscal will consider whether it is appropriate to seek special bail conditions requiring the accused to reside at an alternative address and preventing the accused from approaching the home or contacting the victim or particular witnesses.
15. Where bail is granted, an officer from Victim Information and Advice (VIA, a part of the Crown Office and Procurator Fiscal Service) or the Scottish Police Service will as soon as possible after the accused appears at court, or within a maximum of 24 hours thereafter, notify the victim of the grant of bail and the terms of any special bail conditions. All cases of domestic abuse and cases with child witnesses are referred to VIA, once a decision is made to take proceedings.
16. Where the accused is granted bail, in summary cases the Procurator Fiscal will ask the court to provide an early date for trial. Investigations and any subsequent proceedings in solemn cases will be expedited.
17. Where 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. There does not require to be corroboration of the conduct giving rise to the arrest. In such circumstances, the police will consider whether it is appropriate to invoke this power of arrest and report the accused in custody to the Procurator Fiscal.

- 18.** If there is a complaint made regarding a breach of bail, the police will investigate the matter thoroughly and, if there is corroborative evidence of a separate criminal offence having been committed, will report this to the Procurator Fiscal. All breaches of bail will be viewed seriously.
- 19.** On receipt of any new information about the conduct of the accused towards the victim or any other material change in circumstances, the Procurator Fiscal will consider the accused's bail status and seek a bail review where to do so is necessary for the protection of the victim.
- 20.** If any alteration is made to the conditions of bail or an order is granted or revoked, VIA or the police will report the outcome to the victim.
- 21.** Where the accused is remanded in custody, the law states that any trial must commence within 40 days in summary cases, and within 110 days in solemn cases.
- 22.** Victims of domestic abuse can sometimes retract their original statements or can be reluctant to give evidence for a number of reasons, including previous experience of the accused's conduct. Where this happens, 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. Importantly, it must be established whether the reason for the retraction is a result of threats or pressure from the accused or any other person.
- 23.** The final decision to continue or discontinue proceedings is for the Procurator Fiscal alone. Where the alleged incident involves violence or where there is a history of violence between the parties, the presumption shall be in favour of continuing the prosecution. In all cases, the 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. Such decisions will only be taken by a senior member of the Procurator Fiscal's legal staff.

INFORMATION AND SUPPORT

- 24.** There are a number of external agencies that can provide support and advice to victims of domestic abuse. The police Domestic Abuse Liaison Officers and VIA officers will provide victims with information about such agencies and make onward referrals where appropriate.

CHILDREN

- 25.** It is recognised that children can be traumatised and affected by the abuse of their parent/carer, even if not an eye witness. They may hear the abuse, live with its after effects upon their parent/carer and may themselves be at risk of abuse.
- 26.** Consequently, on all occasions when children are present during domestic abuse incidents or ordinarily reside in the household, the police in attending an incident will have concern for the welfare of the children.
- 27.** 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 in relation to the child's welfare.
- 28.** Where a child is an essential witness in a domestic abuse case, the Procurator Fiscal must give careful consideration to the interests of the child and, in deciding whether to take proceedings in the case, must balance the seriousness of the offence and the risk which the accused poses with the effect on the child of giving evidence.
- 29.** Where a child has to be interviewed as a potential witness or is required as a witness at court, the police and Procurator Fiscal must consider what special measures are required to ensure the matter is dealt with sensitively and to minimise any distress to the child. Notice must be taken of the Scottish Executive guidance on Supporting Child Witnesses - Interviewing Child Witnesses and Questioning Children in Court.

TRAINING

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

POLICY INFORMATION

31. Further information is available from
Crown Office Policy Group on **0131 226 2626**
or
at **www.crownoffice.gov.uk**
ACPOS Secretariat on **0141 532 2057**
or
at **acpos.secretariat@strathclyde.pnn.police.uk**
or
from you local police headquarters.

