

Speech by PF Domestic Abuse at COPFS Conference on Domestic Abuse – “Challenging Abuse Together” - 8 May 2014

I’m delighted to be addressing you here today at this Conference as the first National Procurator Fiscal for Domestic Abuse. The establishment of this new post last September is an absolute indication of how serious we regard the criminality involved in domestic abuse, how devastating the effects and consequences can be on victims and their children and families and how high a priority it is for the Crown Office and Procurator Fiscal Service.

Having had a long-standing interest and involvement in this type of work throughout my entire career as a solicitor, both in private practice and especially as a Procurator Fiscal, including leading a dedicated team of specialist domestic abuse prosecutors in the busiest of our specialist courts at Glasgow, it was a considerable honour to be asked by the Crown Agent and the Law Officers to take on this new role which is entirely focused on enhancing the prosecution response to tackling domestic abuse.

In my role, I have oversight of cases throughout the country and I’m working closely with fiscals and our advocate deputes to provide specialist advice both in relation to individual cases and also more general guidance and direction in relation to our approach, training and policies. By co-ordinating our response to domestic abuse nationally, I aim to bring increased consistency and expertise to our approach as well as improving

awareness, knowledge and understanding amongst prosecutors of the dynamics of domestic abuse.

Upon my appointment I was also asked by the Law Officers to carry out a review of prosecution policy, practice and training and to identify improvements. To do this, as well reviewing our policies, I have been travelling throughout the country speaking with prosecutors and also engaging with Sheriffs and other key stakeholders in the police and victims organisations, including hosting internal focus groups and a really useful multi-agency Round Table discussion event, to listen and find out not just from our own staff but also from others with whom we come into contact, what areas of our policy and practice are working well and what could benefit from improvement. That work is very much ongoing and this Conference today is very much part of the process of listening to others involved in this type of work so we can learn from each other and more effectively tackle and challenge domestic abuse together.

Emerging Findings:

I thought however that it would be useful to share some of the emerging findings from my review and some of the identified areas for ongoing work and improvement.

Progress within short time:

During the review I was struck by the relatively short journey which the Crown Office and Procurator Fiscal Service has had in relation to how we

respond to this type of crime and the fact that so much has been achieved in a relatively short space of time.

It's really only over the last 15 years or so that significant progress has been made in this area. Within that time, we've gone from having a relative scarcity of guidance and understanding of domestic abuse to having a Joint Protocol and approach agreed with the police, to having a dedicated information and advice service for victims, specific domestic abuse guidance and training provision, dedicated domestic abuse prosecutors appearing in a number of specialist courts and also to having a very robust prosecution policy which strongly favours prosecution for domestic abuse crimes.

It's evident that considerable barriers have broken down between prosecutors and those representing victims which has strengthened relationships and significantly increased understanding on both sides, thereby improving our individual contributions to tackling domestic abuse.

As the Solicitor General has said, there has undoubtedly been a culture change over the years in the way in which domestic abuse is viewed in society. I feel proud that by developing our policies and approach to this type of crime so significantly we have undoubtedly contributed to this cultural and attitudinal shift and increased public confidence in the criminal justice response.

It's clear that as an organisation we now have a far greater knowledge

and understanding of the dynamics of domestic abuse. Having travelled around the speaking to many prosecutors across all grades and to VIA staff, it was really encouraging and reassuring to see that there was a good level of understanding of the seriousness of domestic abuse and the need to adopt a robust approach when dealing with this kind of abusive and controlling behaviour.

Policy – robust approach to prosecution

One of the major areas I considered in the review was the appropriateness of our policies and approach. We have in recent years openly described our approach to this type of crime as robust with a strong presumption in favour of prosecution and continuing prosecutions where there is sufficient evidence. Having considered this carefully and having consulted extensively both internally and with external stakeholders I am firmly of the view that our general policies and approach are appropriate.

Our policy is robust and in my view rightly so. Domestic abuse is a serious area of criminality and is a truly significant blight on society and the lives of those directly affected by it. We've heard from the Chief Constable about the robust approach to policing domestic abuse which he is driving forward within Police Scotland. There is undoubtedly a significant and very powerful message which is sent out by the police and the Crown to society which says: this behaviour will not be tolerated and if it occurs it will be treated by the law enforcement agencies seriously and consistently, no matter where you live in Scotland. The response from law enforcement is

only part of the picture in tackling domestic abuse but I believe it can and does over time contribute to cultural and attitudinal changes around what's acceptable in society and what isn't.

Typology

However, while I am satisfied that our general policy favouring prosecution is appropriate, I am also firmly of the view that appropriate and informed discretion must be applied by prosecutors where the individual circumstances in cases merits it and the presumption for prosecution can and should be rebutted in appropriate cases.

The reason I say that is that of the 60,000+ domestic incidents attended by the police, not all of them bear the hallmarks of what we recognise as serious cases of domestic abuse involving elements of coercive control. These sinister elements are absent from a reasonable proportion of incidents, which you might categorise instead as occurring simply within a bad relationship or during a bad time in a relationship. Some of these situations involve conflicts which can still be very serious and may merit prosecution, even in the absence of controlling behaviour, but some do not and in those situations prosecution may be an inappropriate and disproportionate response. Robustness should be informed and considered rather than a blunt approach applied indiscriminately.

I am very interested in further developing our understanding and awareness around what's referred to as the different typology of domestic

incidents so that prosecutors are better equipped to deal with cases appropriately and provide the right response.

We were delighted a couple of months ago to be able to host a joint prosecutors and police event with the renowned American academic, Professor Michael Johnson, an internationally recognised expert on domestic abuse. He has published and spoken extensively all over the world on this topic highlighting the different types of intimate partner violence and abuse. His approach focuses on the dynamics of the relationship and the function the violence and abuse plays within it. He advised us that the causes and consequences of the different types of intimate partner violence differ greatly and therefore do not necessarily require the same prosecutorial response. 2 incidents may look the same on the surface but in one there is a sinister dynamic involving a pattern of controlling tactics, while in the other it may simply be a conflict arising out of a particular situation with no power or control imbalance present. He advised us that we make big mistakes if we don't make distinctions between different types of incident.

Professor Johnson told us that as prosecutors it is crucial for us to understand this and to look beyond the bare details of the incident reported to also find out about the nature and dynamics of the relationship. By doing so we can make more informed decisions as to the appropriate prosecutorial response.

One of the things he stressed though is the importance of appropriately assessing risk. Considerations of risk and safety are definitely much more to the fore in the sphere of domestic abuse than they were 10 years ago, not just for prosecutors but also for those working directly with victims. Accredited risk assessments are now used daily by victim advocates and also some other agencies involved in supporting victims. I'm also delighted that the police have recently rolled out their own risk assessment to be completed by officers attending domestic incidents. While that will undoubtedly take some time to bed in and for officers to become trained and familiar with it, it's a step in the right direction in terms of victim safety. Risk is such a major consideration in domestic abuse and I'm absolutely delighted to have Dr Amanda Robinson and Mhairi McGowan to speak to us later this morning and to share their expertise in this area.

In terms of refining and improving the prosecutorial response and ensuring proper distinctions are made and discretion applied between different types of domestic incidents, it is crucial, as Professor Johnson said for prosecutors to receive information about the nature and dynamics of the relationship, about control and about risk.

Case review

Taking this forward, we're currently embarking on a review of around 400 cases reported to Procurators Fiscal throughout the country earlier this year. We want to:

- To review the quality of information provided by the police in relation to the nature and dynamic of the relationship, eg. details of any previous reported and unreported incidents; any information about safety and risk; any information regarding whether the alleged behaviour is part of a pattern of controlling behaviour and domestic offending as opposed to a more situational conflict.
- To review the quality of reports submitted by the police in terms of evidence in support of the offences - to feedback to the police any issues/learning points re quality of evidence and investigation;
- To review the quality of our own decision-making to ensure both our robust presumption and informed discretion are being applied and that the right cases are going into court.

Following this exercise we will work further with the police, in conjunction with key victims' stakeholders, to agree better and more standardised information which should be sought and provided consistently by the police in every case so prosecutors are better able to make safe and appropriate decisions at the outset (including more confidently taking decisions not to prosecute where this is appropriate).

Training Strategy

During the review I also looked at our current training on domestic abuse. Prosecutors absolutely need to have sound knowledge and understanding of the dynamics but they also need the key skills to prosecute. This is especially important as cases become more complex, with increasing

multiple victims cases and use of more complicated evidence from new technologies and telephony.

On review, it was clear that our present training course and materials, which are predominantly aimed at legal staff, are very focussed on raising awareness of the dynamics of domestic abuse but could also benefit from additional emphasis on practical skills-based training on the challenges of prosecuting domestic abuse crimes.

To deal with this, during the second part of this year, we're going to be devising a new training strategy for domestic abuse, to include delivery through a variety of medium, and to include not just our legal staff but colleagues in VIA and those who deal with solemn precognition and case preparation. This will significantly strengthen and improve the current training resource and will better equip our staff to meet the ongoing challenges of dealing with domestic abuse cases.

Stalking

One area of work which I identified was required at an early stage in the review was improved training on stalking. This is a relatively new crime, only introduced in December 2010. We're seeing not just increasing media interest in stalking cases, but an increase in cases reported over the few years since the law was brought into force. Stalking has its own particular dynamics and its critical that prosecutors understand not just the statutory provisions of the offence but how it can manifest and the impact and effect it can have on those targeted by stalkers. I'm delighted that we

have Ann Moulds from Action Scotland Against Stalking to speak to us this afternoon in relation to this type of criminality.

I'm also delighted to announce that we've now devised a new bespoke training package specifically on stalking, comprising both an e-learning package and a half-day training workshop, which is being delivered to staff across the country over the next 2 months. Given the seriousness of this type of crime and the complexity of behaviours involved, only those who have received this enhanced training will be involved in making marking decisions on stalking cases and prosecuting these cases in court. This is a significant improvement in the armoury of prosecutors tackling this very frightening type of crime.

Structure – enhanced specialism and accreditation

One of the things I've also focussed on during my review has been our structure and whether there is a need for enhanced specialism in domestic abuse.

Receiving cases with more than 27,000 charges annually, it's clear that domestic abuse is very much part of our mainstream work. It represents around 25% of our summary business with increasing numbers and complexity of cases received at solemn level.

All our staff need to be equipped to deal with domestic abuse appropriately – hence the need for a proper training strategy to be

devised and delivered. However, acknowledging the complexity of these cases, prosecutors have also indicated they would welcome access to increased specialist resource at local level.

To achieve this I think there would be merit in having accredited domestic abuse specialists. These will be experienced prosecutors identified as having the right attributes and skills and taking the right approach to these types of cases. Criteria for accreditation involving enhanced training and assessment will be devised as part of our training strategy, providing a more accessible specialist resource for prosecutors at local level throughout the country.

Solemn

One of the criticisms of our approach to domestic abuse from some external stakeholders and on occasions from our own staff is that we have traditionally put a lot of effort in to what happens in domestic abuse cases at summary level but have not done so to the same extent for the more serious solemn level cases.

The profile of our domestic abuse prosecutions over recent years has shown that the overwhelming majority of cases proceed at summary level. The % has generally been in the high 90s but last year but we saw significant increases in solemn prosecutions (up at 9% of prosecutions) with indications already that the 2013-14 figures are showing significant further increases in solemn prosecutions.

With the rollout of the police Domestic Abuse Task Force nationally and the more proactive approach being taken by the local Domestic Abuse Investigation Units, there is no doubt that we are going to continue to receive more complex solemn level domestic abuse cases involving historical incidents and multiple partners. We've also reviewed and improved our own internal guidance on prosecution forum to ensure all relevant factors are considered by prosecutors and the appropriate forum is selected, including considering patterns of abusive behaviour even where individual incidents are not too severe.

We already have a significant degree of specialism in relation to solemn domestic abuse cases involving sexual offences which are dealt with by our Sexual Offences Teams under the direction of our National Sexual Crime Unit. What I think we need to ensure though is that our solemn level domestic abuse cases which don't have a sexual element also receive a suitably specialist response.

We're going to be doing some further work with our Federations to review the volume and profile of their solemn domestic abuse caseload and to consider any further improvements which could be made in their own area to enhance specialism.

But some improvements identified already are:-

- Seeking senior nominated DA leads, not just per Federation as we have at present where they tend to be in Summary/Case

Processing, but also as representatives from each of the business functions, including solemn. They will link in with my role and will improve accountability and drive in relation to our response across our types of business.

- Improved training for solemn prosecutors, precognition staff and case preparers.
- All DATF cases will now be subject to a presumption in favour of commencing prosecution by way of solemn petition proceedings. That presumption can and will be rebutted in appropriate cases but it ensures prosecutors are regarding these cases seriously from the start.
- We also want to ensure that information links with victim advocacy and support agencies are improved in relation to solemn cases to ensure prosecutors have access to critical victim information to assist them in their role and that likewise, those supporting victims have the necessary information about solemn court dates and procedure.

These are just some of the areas identified during the review which would benefit from further investigation and improvement but it's very much a work in progress. This conference today is part of the engagement we need with all of you to listen, discuss and continue to learn and improve our collective response.

Future Challenges

As far as the future is concerned, we need to keep moving forward, meeting the challenges and embracing new opportunities. We've already heard from the Solicitor General and the Chief Constable about new opportunities to be explored in relation to potential new legislation and 'Clare's Law' disclosure provisions.

But, we also have challenges from:-

- **New forms of criminality**

The use of some of new technologies brings a lot of benefits to society but also opens up new ways to commit crimes, which we're seeing in relation to the distribution and displaying of intimate images by previous partners without consent. We need to continuously develop our understanding and approach to tackle crimes committed in new ways and I'm delighted Louise Johnson will be speaking to us this afternoon in relation to this rather worrying type of criminality.

- **Court delays**

Another key priority for the Crown is in relation to the progress of domestic abuse cases through the courts. Whether proceeding through the mainstream courts, or within a specialist domestic abuse court, it is a matter of considerable concern that cases in many courts throughout the country are taking up to around 6 months and in some courts even 9 months for a first trial diet with on occasions a further similar waiting

period if the trial is adjourned. Those time periods are not serving anyone, victims or accused persons.

We're working closely with colleagues in the Scottish Court Service and the Scottish Government to try to address this and improve the timescale and effectiveness of the progress of domestic abuse cases through the courts. Essentially though, given the significant increase in cases reported as a result of the more robust and consistent policing response adopted by Police Scotland, which we've heard about from the Chief Constable, additional court resource will definitely need to be made available in some courts to deal with the increase and to avoid undermining our collective efforts to tackle domestic abuse.

- **Criminal Justice (Scotland) Bill**

Although it's been put on hold for a year, we need to continue to prepare for the potential abolition of corroboration, which the Crown is supportive of. It's critical that we can have confidence, with the introduction of new prosecutorial tests, that our approach and decision-making are reasoned and appropriately robust.

The Bill also has a number of other interesting provisions which will impact on domestic abuse – new police powers, such as investigative liberation – and critically a stated presumption in favour of liberty, which probably isn't wholly in keeping with our current presumption for custody

set out in our Joint Protocol. We need to consider these aspects in preparation for the legislation next year and perhaps look to pilot how we might approach things under the new legislation.

Conclusion

Having highlighted some areas for improvement in the prosecutorial response to domestic abuse, as part of my review of policy, practice and training, the work required to implement these improvements and to undertake further investigations in certain areas is underway. We are, however, in a really strong position to implement changes because of all the good work which has been done in recent years in relation to domestic abuse. The message is out there with our staff regarding the seriousness and importance of domestic abuse; there is a good level of awareness of dynamics; the police are fully on board in regarding it as a priority area of business and we have really effective stakeholder engagement with victim's organisations, which many of you here today represent.

It's not a case of disregarding all we've achieved and starting again but rather about refining and developing our approach so we can further improve our prosecutorial response and the service we provide to victims of domestic abuse.

The crucial part of all of this is that we continue to move forward in an innovative way to challenge domestic abuse - identifying and implementing improvements and, above all, working together. Listening to

each other, acknowledging the different professional skills and expertise we each bring and being open to consider new approaches, will ensure that our collective response to tackling this insidious type of crime is strengthened. Domestic abuse has no place in modern Scotland so lets work together to improve the lives of those suffering abuse, to make people safer and to play our part in trying to reduce domestic abuse in our society.