

J. DOMESTIC ABUSE AND THE CRIMINAL JUSTICE SYSTEM

While Christians often display a reluctance to make recourse to agencies outside the church for support, it must be recognized that domestic abuse is a crime that may require intervention from law enforcement agencies and the courts systems. Biblical counsel urging fellow believers to avoid taking each other to court is sound in principle (1 Cor 6:1). However, in cases of abuse, perpetrators must forfeit the rights of a true believer (Matt 18:15-17).

Church membership is a privilege that demonstrates that an individual is committed to living in accordance with the beliefs of the Church. One such belief is the respectful treatment of others. Where it is proven that a member, regardless of office, is rejecting this belief through their ill treatment of others the matter should be referred to the local church board or Pastor for action. To bear the name 'Christian' is to profess that we seek to follow Jesus and as such local churches should ensure that through the programmes of the church, members are made aware of the Church's beliefs in this area. Victims deserve the protection that the legal system affords, and abusers should be subject to the penalties that the law provides. The goal of redemption for perpetrators should guide our dealings with them. However, this does not preclude accountability for their actions or suffering the consequences of their crimes (see 1 Corinthians 5:5).

Section 76 of the [Serious Crimes Act 2015](#) has made the successful prosecution and punishment of domestic abuse more achievable by changing the focus from individual incidences of violence to repeated and continuous behaviour towards another person that is controlling or coercive. In the UK, courts provide comprehensive provisions for responding to domestic violence. These cover matters dealt with in the criminal, civil and family courts. Advice about any of these matters should be without charge from solicitors, using public funding. Detailed information can be supplied by many of the agencies listed in the appendices.

Adults at Risk?

Providing pastoral care to victims of abuse is far from an exact science. Risk assessment requires that the best judgement is exercised. Carers must balance the privacy of the victim against the threat to their safety. A statutory duty of care is owed to those who fall under the definition of an 'adult at risk'. The statutory guidance issued under the [Care Act 2014](#) states that adult safeguarding means "protecting an adult's right to live in safety, free from abuse and neglect". The Act defines an adult at risk as someone aged 18 or over who is, or may be, in need of community services due to age, illness or a mental or physical disability. They are people who are, or may be, unable to take care of themselves, or unable to protect themselves against significant harm or exploitation. Whether victims of domestic abuse fall under this definition is often a judgement call that must be made in assessing the risk they face and their capacity to protect themselves or seek help. As a general principle, any action should be taken with the consent of the victim. However, the most serious cases of abuse may necessitate unilateral action for their safety or the safety of children. Where children are considered to be at risk the Designated Safeguarding Officer takes the lead in addressing such concerns.

Legal Protection through Criminal and Civil Proceedings

While the legal system can provide remedies for victims of domestic abuse, it is important to recognise that reporting domestic abuse within a relationship does not necessarily mean that the victim wishes to involve the law. In some instances, simply disclosing the matter to responsible church leaders may be sufficient bring about an end to abuse. In any event, those who provide support to victims should always be guided by what the victim wants, not necessarily what the carer thinks should happen. Proper assessment of the situation is necessary to determine the best course of action. This will depend on the nature of the abuse and how entrenched it has become.

Criminal Proceedings

The first route a victim can use, is by making a complaint to the police, which could result in a criminal prosecution. Most cases can be categorised as an offence against the person and the police can make arrests for offences such as assault, battery, actual bodily harm, grievous bodily harm or one of a number of sexual offences. They can also make arrests for harassment under the [Protection from Harassment Act 1997](#), which includes a stalking offence, (e.g. which could encompass behaviour such as watching or spying on a person; interfering with a person's possessions). A person does not have to be the victim of a physical assault in order to be subjected to harassment

(or stalking). This legislation provides both civil and criminal remedies. These include non-harassment and restraining orders. Section 12 of the [Domestic Violence, Crime and Victims Act 2004](#) amended the [Protection from Harassment Act 1997](#), to extend the availability of restraining orders to all offences, and also to give the court the power to make a restraining order even when a person has been acquitted, where the court considers it necessary to do so to protect a person from harassment by the defendant. There is also the “revenge porn” offence contained in section 33 of the [Criminal Justice and Courts Act 2015](#), which creates an offence of disclosing private sexual photographs and films with intent to cause distress, which could equally be viewed, in some cases, as a form of domestic abuse.

A further criminal offence was introduced in 2015 which closed the gap in the law around patterns of controlling or coercive behaviour in an intimate or family relationship (Section 76 of the Serious Crime Act 2015). This offence criminalises patterns of coercive behaviour where they are perpetrated against a family member or between individuals who are or used to be in an intimate personal relationship. The offence carries a maximum sentence of 5 years’ imprisonment, a fine, or both.

The behaviour, when viewed in isolation, may appear innocuous, but the cumulative effect on a victim may be significant, causing damage and distress. Although there is no statutory definition of controlling or coercive behaviour, the Government has issued statutory guidance under section 77 of the [Serious Crime Act 2015](#). This guidance contains the following cross-Government definitions of “controlling behaviour” and “coercive behaviour”:

“Controlling behaviour is: A range of acts designed to make a person subordinate and/or dependent by isolating them from sources of support, exploiting their resources and capacities for personal gain, depriving them of the means needed for independence, resistance and escape and regulating their everyday behaviour.” The Act stipulates that, “Coercive behaviour is: A continuing act or pattern of acts of assault, threats, humiliation and intimidation or other abuse that is used to harm, punish, or frighten their victim.”

The guidance also gives a non-exhaustive list of the types of behaviour that may be associated with coercion or control.¹⁸ A person investigating offences with regard to controlling or coercive behaviour must have regard to this guidance.

Civil Proceedings

A victim may pursue a claim for damages and/or other remedies through the civil courts. It is possible to pursue a civil claim where the conduct does not constitute a criminal offence or there is insufficient evidence to convict or where a person does not want to involve the police. The standard of proof in civil courts is lower than in criminal courts, (i.e. “balance of probabilities” rather than “beyond all reasonable doubt”). A civil claim for domestic abuse would usually take the form of an action for negligence, battery, or trespass to the person, depending on the circumstances of the case. Examples of remedies in the civil court are damages, injunctions, non-molestation orders and occupation orders under the [Family Law Act 1996](#) (as amended by Part 1 of the [Domestic Violence Crime and Victims Act 2004](#)).

Domestic Violence Disclosure Scheme

Since March 2014 there has been the [Domestic Violence Disclosure Scheme](#) (colloquially known as “Clare’s law”), which contains two specific rights. That is a “right to ask”, which allows an individual to ask police to check whether a new or existing partner has a violent past and a “right to know”, which enables an agency (e.g. a statutory agency or a charity) or an individual to ask the police to release information concerning an individual being at risk of domestic violence. The police will consider whether to release the information to the individual involved or to the person that is best placed to protect that individual.

Anyone can apply for a disclosure by visiting their local police station or calling 101. The police will ask for an overview of your concerns and take your contact details. You may be invited to a face to face discussion where you will require two forms of ID. The police will undertake a risk assessment and will make a disclosure to the person

¹⁸ [Controlling or coercive behaviour: statutory guidance and framework](#)

affected if they believe that abuse is likely. They will then help any potential victim to put together a safety plan. You may not hear the outcome of your request if the police do not deem this to be necessary.

Government guidance in relation to domestic violence and abuse can be found on the website listed below, in particular there is guidance on the [Domestic Violence Disclosure Scheme](#), as well as further information about how to report domestic abuse and where to get help: <https://www.gov.uk/guidance/domestic-violence-and-abuse>

Domestic Violence Notices and Orders

The initial period of response to domestic abuse is critical. [Domestic Violence Protection Notices and Orders](#) (DVPN and DVPO) are part of a scheme introduced in March 2014 that provides protection to victims in the immediate aftermath of domestic violence. The scheme comprises an initial temporary notice (the DVPN), authorised by a senior police officer and issued to the perpetrator by the police, followed by a DVPO that can last from 14 to 28 days, imposed at the magistrates' court. Under the DVPO scheme, the police and magistrates can, in the immediate aftermath of a domestic violence incident, ban the alleged perpetrator from the family home or victim's residence or to have any contact with the victim for up to 28 days. This is important as, often due to lack of evidence or the victim's reluctance to pursue a prosecution, the perpetrator may not be charged and therefore cannot be bailed with any conditions to stay away. DVPOs are designed to help victims who may otherwise have had to flee their home, giving them time to access support and consider their options.

Restraining Orders

Restraining orders can be made on conviction or acquittal for any criminal offence. These orders are intended to be preventative and protective. The guiding principle is that there must be a need for the order to protect a person or persons. The test to be applied by the court before making an order is whether an order is necessary to protect the persons named in it from harassment or conduct that will put them in fear of violence. This necessitates an evaluation by the court of the evidence before it. It will require the court to determine whether there is sufficient evidence in front of it to enable it to form a view that an order is necessary. Restraining orders are civil behaviour orders and therefore the standard of proof is a civil one.

Other Civil Court Orders

There are also two main Orders which the Courts can make. These are called the [Non-Molestation Order](#) and an [Occupation Order](#). Secular legal aid may be available for an application for a Non-Molestation order and/or Occupation Order. This is means and merit tested. An Occupation Order controls who can live in a property. It can also restrict the respondent from entering a certain area. If you do not feel safe living with the respondent and you have left because of violence or intimidation and want to return without the respondent being there, the order you would apply for is an Occupation Order. A Non-Molestation Order prevents the respondent from using or threatening violence against you (and if applicable your child/children) or intimidating, harassing or pestering you. This is to ensure the health, safety and well-being of yourself (and if applicable your child/children). A breach of a Non-Molestation Order is an arrestable offence and now carries a maximum sentence of 5 years imprisonment. A breach of an Occupation Order is not a criminal offence but will be regarded as "contempt of court" in a civil court. That said, a power of arrest can be attached to an Occupation Order, which means that an individual can be arrested if the Occupation Order is breached.

The Probation Service

Where individuals have been convicted of domestic abuse, the Probation Service is the lead statutory agency responsible for the assessment and supervision of offenders in the community is committed to working towards safer communities and fewer victims through offender rehabilitation. The focus of Probation Service interventions with domestic abuse perpetrators is on risk management and the safety of victims, present and future. This strategy sets out four key goals:

- The assessment and supervision of perpetrators of domestic violence
- Liaison and collaboration in the delivery of perpetrator programmes
- Supporting victims of domestic violence

- Awareness – raising on domestic violence issues

The Probation Service runs an accredited program for convicted perpetrators called [Building Better Relationships](#). These are mandated through community orders or as part of the perpetrators licence condition if they received a prison sentence. In high-risk cases female victims of abuse are assigned a Women Safety Worker (WSW) while the perpetrator completes the programme.