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Submitted to Enhancing Legal Protections for Victims of Domestic Abuse
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About you

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The Law Society of Northern Ireland

Sections 1 - 3

Section 4

Question 1: Do you agree that we should introduce Domestic Abuse Protection Notices and Domestic Abuse Protection Orders?

Not Answered

Please advise and give reasons for your response.:

The Law Society views Domestic Abuse Notices and Protection Orders (DAPN and DAPO) as a supportive tool for victims of domestic abuse which should be readily available and robust in preventing and dealing with incidents of domestic abuse. The Society is mindful that not all victims are in a position to seek protection under the current civil justice legislation (the Family Homes and Domestic Violence (NI) Order 1998).

Introducing DAPN and DAPOs should facilitate the PSNI/third parties and the courts to bring an alternative method of protection for victims. However, this must not be at the expense of the current Non-Molestation and Occupation Order remedies but rather should complement them. As DAPN and DAPOs are not within the control, power or custody of the victim to seek, but rather in the sole control of the PSNI and the courts, there is a concern that different evidential standards and burden of proof may be applied to what might be deemed a criminal process brought by the PSNI which may attract a higher threshold than a Non-Molestation application - which is a civil process and brought by the victim of the abuse directly.

Question 2: Do you agree that the proposed Domestic Abuse Protection Notices and Orders should apply to not only physical violence and threats of violence but also non-physical abusive behaviour?

Yes

Please advise and give reasons for your response.:

The definition of domestic violence has extended to now include psychological, sexual, financial, emotional abuse. Therefore, any limitation which restricts the proposed DAPN and DAPOs to acts of physical aggression will defeat the overarching principle to protect victims of domestic abuse and potentially create a situation whereby acts of physical violence attracts the greatest degree of protection to victims under law. This would be both discriminatory and contrary to fairness and justice.

Question 3: What length of time should a Domestic Abuse Protection Notice be valid for before the police have to apply to a magistrates' court for a Domestic Abuse Protection Order, the suggestion being up to four days?

Other (please specify)

Please advise and give reasons for your response.:

The issuing of a DAPN may have potential draconian implications as it may remove a person from their home and as a result adversely impact on family life and livelihood without a legal finding of fact. At the same time the notice must protect the vulnerable from ongoing abuse. A fine balance must therefore be made when considering the duration of a DAPN. It is worthwhile to look to similar provisions under the Children Order 1995 whereby the PSNI have power to issue emergency protection orders known as a Police Protection Order which are limited to up to 72 hours in operation, before requiring further applications to Court. This timeframe permits access to legal representation by an alleged offender within a realistic timeframe. If the DAPN were to last any longer this may be seen as unfair and prejudicial to the accused as no evidence has been tested independently. The Society would

suggest that a balance of rights may be met with a 72-hour time limit for DAPNs.

Question 4: Do you agree that there should be multiple routes via which an application for a Domestic Abuse Protection Order can be made?

Not Answered

Please advise give reasons for your response.:

The Society believes that there may be merit in having multiple routes via which an application for DAPOs may be made. The wider group of applicants that may apply, in particular the police, empowers those at the coalface of dealing with domestic violence to take commensurate steps to protect victims, however some of our members are very concerned that such a move might potentially incur a multiplicity of applications some of which may be weak or spurious. The oversight by a court is intrinsic in ensuring the rights of alleged perpetrators and due process.

The broader scope of family, civil and criminal courts to intervene, allows greater flexibility and protection for victims.

Question 5: Do you agree that regulations should specify the 'relevant third parties' who potentially would be able to apply for a Domestic Abuse Protection Order?

Yes

Please advise and give reasons for your response.:

The Society agrees that regulations should specify the "relevant third parties" who would potentially be able to apply for a DAPO. These should be clear and unambiguous. The process of consultation of third parties in both the public and private sectors having knowledge and experience of domestic abuse and its consequences, will better inform the cultivation of regulations and in particular:

- a. the appropriateness of potential third parties who may apply, and
- b. the capacity for any potential agencies to apply for DAVOs.

The means of identified agencies to deliver programmes as part of positive obligations on perpetrators to redress their behaviour, is symbiotic with the powers of such agencies to instigate steps in protecting victims in the first instance. The grant of such powers to third parties, should be piloted, evaluated and reviewed to promote the best outcomes in preventing domestic abuse.

Question 6: Which individuals/organisations should be identified as potential 'relevant third parties'?

Please advise and provide reasons for your response.:

There are concerns that organisations other than PSNI should be identified as 'relevant third parties' to apply for a DAPO. Allowing third parties to take such applications may well interfere with the alleged victim making their own decisions. A third party will not necessarily be aware of all of the facts and may believe there is a greater risk to the individual than there actually is – resulting in a breach the human rights of the accused party. There is no knowing who the third party receives their information from. Concerns were also raised that if third parties are identified there could be a situation whereby the courts are overrun with ill-founded or weak applications that would not be granted. This might result in delays for the genuine applications. If third parties were to be identified then there would have to be considerable consultation with victims' groups/representatives and other representatives (legal, Human Rights) to have a proper conversation on who should be included. It is interesting that the suggestion for third party intervention was considered at the time of the Family Homes and Domestic Violence (N.I) Order 1998. However, the relevant provisions did not become operative, then or since. A safer and fairer prospect may be that the PSNI bring an application when a complaint is made and if granted a short term DAPO, then the victim will have an opportunity to decide if they wish to continue with an application for a full order. The Police can also use a DAPN if a complaint is made and serve it on the alleged perpetrator. The potential for a breach of human rights of an accused must not be forgotten.

Question 7: Do you agree that courts should be able to make Domestic Abuse Protection Orders of their own volition during other proceedings, including in criminal trials?

Yes

Please advise and give reasons for your response.:

The Society would support Family Courts at all tiers having the power to make Domestic Abuse Protection Orders. Those courts will have had sight of statements of evidence from the parties, and usually a variety of reports which set out the history and background of the individuals. The Court will have had the opportunity to consider all of the evidence and make an informed decision as to whether or not a DAPO should be made. In respect of the Criminal Proceedings, the Court at all tiers dealing with a case involving allegations of domestic violence will have had sight/heard evidence in the case and been able to determine on the evidence whether or not a DAPO should be made.

Question 8: Following the introduction of Domestic Abuse Protection Orders across Northern Ireland more generally, and in the longer term, do you agree that courts should be able to impose positive requirements as well as prohibitions as part of the conditions attached to the proposed order?

Yes

Please advise and give reasons for your response.:

The Society agrees with this approach. It is important to offer assistance to convicted abusers to break the cycle of re-offending. Behavioural change programmes should be made available and incorporated into orders. Conditions to prohibit certain behaviour or encourage attendance at support programmes should be available to the courts.

Question 9: Do you agree that courts should be able to require individuals subject to a Domestic Abuse Protection Order to notify personal details to the police?

Not Answered

Please advise and give reasons for your response.:

The legislature would have to provide such a power for the Courts to implement.

Question 10: If so, what personal details should the courts be able to require individuals to provide to the police?

Please advise and give reasons for your response.:

This is something for the legislature to consider, but might include an up to date address and contact telephone number.

Question 11: As well as enabling conditions to protect the victim, should it be open to the courts to impose conditions within the Domestic Abuse Protection Order requiring the alleged perpetrator not to approach or contact any associated children?

Yes

Please advise and give reasons for your response.:

The Society agrees that courts should have such powers. Although children may apply for their own protection under a non-molestation order, this is not common and they usually rely upon the protection afforded to the parent. To give a power to the family courts to make protective orders for children subject to on-going family proceedings would be beneficial.

Question 12: Should provision be made that would, in the longer term, enable courts to be given an express power to impose electronic monitoring as a condition of a Domestic Abuse Protection Order?

Not Answered

Please advise and give reasons for your response.:

The Society believes that such a power would raise human rights issues for the accused. A pilot of such a scheme may uncover issues and benefits which could be evaluated before a permanent power is introduced. New arrangements under DAPOs would need time to bed in advance of such a scheme being trialled. A question of resources for the PSNI to effectively implement and monitor electronically tagged persons would also need to be considered.

Question 13: What safeguards should be put in place relating to any use of electronic monitoring with Domestic Abuse Protection Orders?

Please advise and give reasons for your response.:

Safeguards relating to the use of electronic monitoring with Domestic Abuse Protection Orders would be essential given the very severe ramifications to liberty and ability to conduct day to day routines if an individual is to be monitored or tagged. There needs to be clear guidance on when electronic monitoring should be applied. There would have to be a schedule or check list to include, the type and severity of the offence, the number of times the offence has taken place or whether there is consistent behaviour from the perpetrator in relation to domestic violence and domestic abuse, is the perpetrator a repeat offender. Similarly, consideration should be given to linking in with other organisations such as social services and MARAC to see if there was previous offending against others by the perpetrator. It will be important to identify who will carry out the assessment. Another important consideration will be the geography of the victim's and perpetrator's areas. All of these considerations are important and therefore guidance would be critical to effectiveness. Resources for monitoring persons who have been tagged must also be considered.

Question 14: Do you agree that breach of the proposed order should be a criminal offence?

Not Answered

Please advise and give reasons for your response.:

The Society submits that the Assembly might consider it is important that a criminal sanction be imposed for breach of either a DAPN or a DAPO. To do otherwise not only undermines the principle of the new statutory orders but retreats from the now well-established practice that breaches of orders in domestic violence cases warrant societal disapproval by way of criminal penalty. It is central to the task of dealing with domestic abuse that the serious conduct it encompasses should be punished and that those who are subject to orders restraining their conduct and who then break those orders must confront the consequence of their actions. To remove a criminal penalty might well send out the wrong message and as paragraph 4.41 of the paper observes " the proportion of non- molestation orders breached may be higher than the number of cases prosecuted implies ". If there was absent from the new orders appropriate criminal penalty for breach then their effectiveness is axiomatically undermined.

Question 15: If you do agree that breach of the proposed order should be a criminal offence, should it be possible for breach to alternatively be punished as a contempt of court?

Not Answered

Please advise and give reasons for your response.:

The proposed alternative sanction for breach of a DAPN or DAPO by way of a contempt of court finding is potentially problematic. Paragraph 4.44 suggests the contempt option could apply if the victim requests this approach and the court considers it is in the victim's interests. Will the victim's consent be freely given? Will a victim through fear, implied coercion, misplaced or confused emotional feelings for the perpetrator agree to such a course so that the perpetrator avoids a criminal conviction?

Paragraph 4.40 references how it is not a criminal offence to breach an occupation order unless a power of arrest is attached to the order. There is no commentary as to how this has operated in practice and it may be of benefit to have further information on the present position before adopting a similar type of solution to the new orders. Finally, for the sake of clarity and certainty, the Society would suggest that it may be easier to simply establish that breach of a DAPN or DAPO is a criminal offence period.

Question 16: Do you agree that courts should have flexibility in determining how long to impose a Domestic Abuse Protection Order for?

Not Answered

Please advise and give reasons for your response.:

The current system of Non-Molestation Orders in this jurisdiction allows the Court flexibility on the duration of an order. A lot of different factors are weighted up by the judge when deciding this issue. Certain circumstances may dictate an order lasting longer due to the circumstances of the parties. The aim should be to have a sphere in which both parties feel protected.

The legislation should give clear and unambiguous guidance for the making and duration of orders so that there is consistency of approach by the judiciary.

Question 17: Do you agree that courts should be able to vary or discharge Domestic Abuse Protection Orders either of their own volition or at the request of the victim, or alleged perpetrator, or the applicant?

Yes

Please advise and give reasons for your response.:

orders with a discretion to apply to vary or discharge as is currently the practice. Currently if a variation or discharge is required this is usually made by a solicitor acting on behalf of the victim and advice can be provided in relation to the options available. It is unclear from the information provided whether there will be designated officer in each division who will have responsibility for the implementation and monitoring of the DVPO. Many victims have been in controlling and abusive relationships, throughout which have left them feeling powerless. It is important that they do not feel that these orders are imposed upon them against their will as appears can be the situation in certain circumstances. It is also important in the interests of justice and balancing the rights of the alleged perpetrator, that there is a facility to challenge the implementation of the orders at the earliest opportunity particularly if the order results in an individual being removed from their home and potentially could be in circumstances where they are not facing a criminal charge. It cannot be ruled out that allegations could be made maliciously and the implementation of the orders could have a serious impact on an alleged perpetrator. It is therefore important that an early date is set in proceedings to allow an interparty review of the order and the need for the order to remain in place, adjustments to an order may be directed by the judge as a result of hearing from the accused. Manoeuvring the workings of the order will require victims to have a high level of support and guidance. It is unclear from the information how this will be achieved. The current structure whereby one solicitor acts for the victim in Non-molestation order proceedings offers a supported environment for victims to pursue protection. It is unclear where such orders will sit alongside the new orders.

Question 18: What safeguards should be put in place to ensure that the Domestic Abuse Protection Order is not varied or discharged because the victim is being pressurised by the alleged perpetrator?

Please advise and give reasons for your response.:

This is a significant problem currently in criminal cases where victims, whether under direct or perceived pressure, often decide not to proceed with a criminal complaint against alleged perpetrators. It can also be the case that victims feel pressurised to withdraw orders however this is something that Solicitors can be cognizant of given that they will have built up a relationship with the victim if they have been acting in the proceedings. It is not clear if there will be the same level of interaction with the officer dealing with the proposed orders and therefore pressure may not be explicit in those circumstances. Victims may also face difficulties in organising child contact arrangements if they do not have an appropriate third party and may see that the negatives of the order outweigh the positives. It is likely that victims will have a solicitor instructed in any related family case and they could assist by discussing and trying to understand the reasons for discharge and to advise in circumstances where this may not be appropriate. Again, it is important that a balance is struck between robust implementation of the order and the victim's voice being at the centre of decision making.

Question 19: Do you have any views about how the Domestic Abuse Protection Notice/Order process can contribute to better perpetrator management?

Not Answered

Please advise and give reasons for your response.:

The issue for many cases traditionally has been that even where perpetrators have been inclined to learn from their behaviours there is no service available. If the court is able to impose conditions on perpetrators there may be more monitoring and control of their behaviours. Ultimately, if the department want the use of the Notices and Orders to lead to better perpetrator management they need to have a range of services available which are properly resourced.

Question 20: How can we ensure that the alleged perpetrator is not able to use the DAPN/DAPO process to further abuse a victim?

Please advise and give reasons for your response.:

The way of trying to ensure the alleged perpetrator cannot use the DAPN/DAPQ to further abuse a victim is to ensure all involved in the granting and monitoring of the orders are well trained to be able to spot signs of manipulation of the system. As we all know the dynamic of domestic abuse is very powerful and often missed/misunderstood by those seeking to protect victims.

Rigorous and ongoing training is essential and indeed statutory periodical review of the legislation would be important to ensure it continues to meet the needs of victims.

Question 21: It is intended to pilot DAPNs and DAPOs in two geographical locations. Do you have any views on this?

Yes

Please advise and give reasons for your response.:

The areas need to be chosen with care and should involve close discussions with the PSNI so that the local Area Commander and all his Officers are well briefed and fully understand the circumstances, criteria and the people against whom such orders could be used. Some Officers on the ground merely refer individuals to a Solicitor to seek a Non-Molestation Order, yet there have been inconsistencies in the enforcement of Non-Molestation Orders across Northern Ireland.

Due to diversity of populations across this jurisdiction it would be prudent to consider piloting this new process over 3 different areas to give a better reflection of effectiveness.

Question 22: Do you have any views as to the two locations that Domestic Abuse Protection Orders could be piloted in, possibly Belfast and one 'more rural' area (dependant on numbers)?

Yes

Please advise and give reasons for your response.:

Perhaps the pilot should be in Derry/Londonderry and one in Craigavon or Newry Areas. These together with a pilot in Belfast have both urban and rural makeup and would spread the knowledge and information about the DAPOS more widely. The effectiveness in rural areas must be properly tested.

Question 23: Do you have any other comments you wish to make regarding the introduction of Domestic Abuse Protection Notices and Orders?

Yes

Please advise and give reasons for your response.:

The Society believes that it is essential that these new Orders and Notices are dovetailed into the Non-Molestation Orders, and there should not be confusion as to when they should be used or how they should be used. Clear unambiguous guidance and training is required. Most PSNI Officers attending a Domestic Abuse situation or receiving contact from a potential victim tend to refer them to solicitors unless there is obvious evidence of violence. Resources for training is imperative. Also, the PPS should as a standard direction in all cases of violence look into the defendants domestic and family circumstances to assess whether they should draw to the Courts attention the Courts powers under the existing legislation namely the Protection of Harassment (NI) Order 1997 – Restraining Orders and on the introduction of these new Orders, that power also. It is noticeable that during criminal proceedings it is necessary for the Prosecutor to specifically refer the Judge to the powers under the Protection from Harassment (NI) Order 1997 namely Restraining Orders. This has not always been done in cases that clearly warranted it. Society members have acted for victims of serious domestic abuse whose perpetrators served a sentence for the abuse and on release from custody a restraining order had not been considered at the Trial and due to a time lapse from the event, a Non-Molestation Order could not be sought. This had adverse implications for the victim as well as carers for the children. A joined-up approach is crucial in such instances. The Restraining Order is a very powerful tool and is vigorously enforced by the PSNI.

Section 5

Question 24: Do you have any comments to make on the potential implications the introduction of Domestic Abuse Protection Notices and Orders may have on equality, in terms of the impact of the proposals for different groups?

Yes

Please advise and give reasons for your response.:

Currently the majority of applicants for Non-Molestation Orders are women. It will be interesting to see if this statistic changes when this new system is introduced.

There is potential to widen the category of applicants who may benefit from the new Notices and Orders. The evidence referred to in England and Wales suggests disabled and marginalised people could benefit. This will be a positive step if access to justice and safety is increased.

It is also to be welcomed that children could benefit with the new proposals in that applications could be made on their behalf. There is a counter argument though that children could be adversely affected by misuse of the proposals therefore serious scrutiny will be required of 3rd party applications in this regard. Education and information about the Notices and Orders will have to be carefully planned and executed to ensure equality.

Question 25: Is there an opportunity to better promote equality of opportunity or good relations as part of the proposals?

Not Answered

Please advise and give reasons for response.:

as part of the proposals?

There is the opportunity for police and designated third parties to apply on behalf of victims not able to do so themselves. This would have to be an exception not the rule and serious Judicial scrutiny would be required in such cases as well as a respondent's rights to challenge.

In terms of promoting good relations – more evidence is needed about the outcome of the positive requirements side of the proposals.

There is the possibility that a widespread awareness campaign of the proposals could lead to a better outcome for families. An evaluative process will assist in analysing the effectiveness of the Notices and Orders in terms of equality of opportunity.

Question 26: Do you have any comments on the potential implications the introduction of Domestic Abuse Protection Notices and Orders may have on human rights?

Yes

Please advise and give reasons for your response.:

The Consultation paper refers to article 6 and 8 rights arising from the introduction of the Notices and Orders. The Notices and Orders will have an impact upon family proceedings and the issues are likely to be tested throughout the Courts. It appears sensible that positive obligations are being considered in the longer term via secondary Legislation after a review period. There are potentially a range of issues that could arise regarding Human Rights when progressing this issue into a working reality. These include the following:

CHILDREN UNDER 16 YEARS – are the human rights of children under 16 years adversely affected by an inferior protection as a result of the age limitation? If the thrust of the intention here is to enhance protections for victims of domestic abuse and widen responsibility beyond victims to multiple third parties, is there an important human rights issue to consider and address in tandem whilst progressing this legislation as to how this age limitation is to be mitigated in practice? Should the Department of Justice ensure that a policy is developed and implemented in tandem with these proposals to ensure parity of rights for all victims of domestic abuse, regardless of age?

RELUCTANT/UNCOOPERATIVE VICTIMS – there may be issues and practicalities to be further considered and explored regarding Article 8 and public entities essentially making decisions and taking actions on behalf of an individual who has full capacity of his/her own personal affairs. Also is there a GDPR/Art 8 issue regarding the processing and release of a reluctant or unwilling victim's personal information for the purposes of use by the Police and/or a third party in obtaining a Notice and/or Order? If so, are there any steps/practicalities that need to be considered to address this? It may be the case that these matters may need to be brought before a Court sooner than 7 days to ensure appropriate scrutiny, consideration and balancing of the human rights of everyone involved in these situations.

Question 27: Do you have any comments on the potential implications the introduction of Domestic Abuse Protection Notices and Orders may have in rural areas?

Yes

Please advise and give reasons for your response.:

Call out response times in rural areas will be an important consideration along with the fact that there may have been a reduction of operational Police Stations in those areas. It will be important to pilot the new scheme in a rural area.

Question 28: Do you have any comments you wish to make regarding the financial impact of the introduction of Domestic Abuse Protection Notices and Orders?

Yes

Please advise and give reasons for your response.:

Would other third parties receive remuneration if they apply on behalf of a victim? What are the resource implications for the Notices and Orders? A carefully planned pilot may provide the information on costs implications so that a successful roll out can follow. A full evaluation of the pilot will have to be considered before roll out.

Sections 6 and 7