

Joint briefing on Domestic Abuse Protection Orders (DAPOs)

‘Victims voices need to be at the centre’

14 June 2019

The report published today by the Joint Committee scrutinising the draft Domestic Abuse Bill has raised important questions about the introduction of a proposed new domestic abuse injunction regime called Domestic Abuse Protections Orders (DAPOs).

Our organisations share growing concerns that the proposed new regime is completely unworkable unless fundamental problems are addressed about how the framework and resources will genuinely support victim-survivors. We support the call for a review of the existing injunction regime before implementing the proposed orders.

This briefing from specialist organisations with expertise in providing legal advice to victims and working with perpetrators summarises the key problems with the proposed regime and highlights the issues that must be addressed to ensure it becomes victim-centred. This briefing has been produced to assist all those involved in shaping the Bill at the next stages.

1. PRE-APPLICATION AND RESPONSIBILITY FOR MAKING THE APPLICATION

This section covers problems with the proposed application process.

What the Government is proposing

- DAPOS will replace Domestic Violence Protection Orders (DVPOs) which, currently, can only be obtained by the police. Other injunctions such as non-molestation orders will remain in place.
- Anyone can decide to apply for a DAPO including the victim, the police, specified third parties, or any other person with leave of the court. After the application is made the court is required to consider the victim’s views when deciding whether to make the order, but only if the court is made aware of those views.
- The Government is currently considering local authorities and probation services as potential specified third parties who can apply.
- Anyone can apply for an order with permission from the court.
- The applicant has responsibility for costs and the administrative burden of the application.

Our concerns about these proposals

The victim's voice does not have to be considered by the applicant in the decision to apply for an order. Where the police or third parties make applications, there are no clear obligations on the applicant to consider the views of the victim, and no provisions setting out how the court will obtain the victim's views. There is no mention of support that will be provided to the victim to understand and be a part of the legal proceedings.

The number of applications the police make for DVPOs currently is very low – they are used in only 1% of all domestic abuse crimes¹. Suggested reasons include poor training, lack of knowledge of the existence of orders, expensive court fees and lack of knowledge of the application process. These problems are not only likely to continue under the DAPOs regime but will get worse due to the confusion of the various options available.

Agencies may shift responsibility onto victims to apply for orders to avoid the cost and resource implications on their own agencies. The costs and administrative burden currently act as a disincentive to the police in applying for DVPOs. Agencies' responses to domestic abuse is often to place responsibility on the victim to protect herself by telling them to apply for a non-molestation order. The DAPO regime carries the same risk.

Many victims will be ineligible for legal aid leaving them to navigate the legal process alone. Without legal advice, there is a risk that victims will apply for the wrong type of order for their circumstances.

Recommendations

Safeguards are needed to ensure victim's views and needs are central to decision making.

The victim's views must be properly advocated for in any professional decision about their case. The crucial role played by Independent Domestic Violence Advocates (IDVAs) must be appropriately resourced to enable this.

Appropriate information sharing and multi-agency working is put into practice that includes keeping the victim informed of what is happening and ensuring they have access to an IDVA.

If the police believe that a DAPO is appropriate, they should maintain responsibility to apply for the order rather than leaving it to the victim.

The means assessment for legal aid is reviewed to ensure those who cannot afford representation are eligible for legal aid.

2. NOTIFICATION REQUIREMENTS

This section covers the requirements that will be placed on perpetrators once a DAPO has been ordered against them.

¹ Office of National Statistics data for the year ending 31 March 2018, cited on p5 of [Centre for Women's Justice Super-complaint, Police failure to use protective measures in cases involving violence against women and girls](#), 19 March 2019

What the Government is proposing

- For all orders made, the perpetrator is required to notify the police of their name and address within 3 days of the order being made. This is a new requirement that does not exist under the current regime.

Our concerns about this proposal

When deciding whether to make an order, the court must assess how proportionate the order is in light of the infringement on the perpetrator's rights. The notification requirement makes the order more draconian and, therefore, judges may be less likely to make the order compared to current injunctive orders such as non-molestation orders and restraining orders leaving victims without protection.

There is no monitoring of a perpetrator's compliance nor any mechanism to ensure the information provided is accurate.

If the applicant is unable to serve the perpetrator with the order, the perpetrator will commit a criminal offence by failing to notify even though they are not aware of the order being in force. This jeopardises the robustness of the framework, which risks ultimately impacting on victims.

Recommendations

The Government needs to set out how this condition will be monitored and how the data will be used to provide additional protection in order to justify its inclusion in every DAPO made.

Re-consideration of the notification requirement (depending on the intended use of the data) so that judges who feel notification is unnecessary can make an injunction to protect the victim without the notification requirement.

3. POSITIVE REQUIREMENTS

Positive requirements refers to conditions attached to a DAPO which require the perpetrator to actively engage in treatment or programmes of some form.

What the Government is proposing

- The court has the power to order positive requirements in a DAPO. There appear to be no limits on the type of positive requirements that can be included but the response suggests these may include perpetrator programmes, parenting programmes, drug or alcohol treatment.
- The Bill proposes a "specified person" who will be responsible for the arrangements for, suitability and enforceability of and compliance with the programme. They will also be responsible for notifying the police of any failure to comply with the programme. The Government proposes this person is the applicant.

- When the court imposes a positive requirement, the perpetrator is required to “keep in touch” with the specified person as required by them and notify the specified person of any change in home address.

Our concerns about these proposals

There is no practical mechanism to ensure the victim’s views and needs will be considered. Victims will often be unrepresented in civil proceedings and in criminal proceedings are not a party to the case.

The scheme relies heavily on the ability of police/other agencies to identify the appropriate intervention for a particular individual. Assessment of appropriate referrals for perpetrators requires specialist skills that many professionals are not trained in as part of their role.

The police or third party applying for an order do not have the capacity or expertise to appropriately monitor compliance with a positive requirement. It is also not clear who will monitor compliance if the victim has applied for the DAPO.

There is no mechanism to provide feedback on the outcome of the positive requirement to the court, other agencies or the victim potentially leaving the option of the perpetrator self-reporting on their success to the victim and other professionals. The victim will therefore be unaware of the level of risk still posed by the perpetrator.

Provision for programmes or treatment of the type envisioned are unevenly distributed geographically with many areas that have no provision or oversubscribed provision.

The risk to victims can increase if perpetrators engage in programmes that are unsuitable. The Government’s impact assessment assesses costs using estimates from “low cost” perpetrator programmes. Prioritising money-saving over quality may have dangerous and unintended consequences for victims.

Recommendations

The role of the “specified person” should be a specialist role within each court and is appointed in each application with the following responsibilities:

- requesting information about the case from various statutory agencies and, if appropriate, referring to other agencies or MARAC;
- ensuring the voice of the victim is heard in the proceedings, possibly through close working with the victim’s IDVA or directly with the victim
- they must be a domestic violence specialist and able to assess the perpetrator’s suitability for positive requirements;
- making recommendations to the court about suitable positive requirements;
- monitoring compliance with the positive requirement and, where there is a breach, reporting it to the police or returning the case to court themselves for enforcement;
- monitoring outcomes of positive requirements and ensuring those outcomes are shared with other agencies as is appropriate and with the victim and her IDVA.

Positive requirements need to be properly resourced to ensure they are available for those perpetrators who are suitable for programmes.

Perpetrator programmes must be accredited by RESPECT to ensure a consistent high-quality approach.