



CROWN OFFICE
& PROCURATOR
FISCAL SERVICE

SCOTLAND'S PROSECUTION SERVICE

ANNE MARIE HICKS
NATIONAL PROCURATOR FISCAL
FOR DOMESTIC ABUSE
IN SCOTLAND

TRANSFORMING THE JUSTICE RESPONSE

- Robust prosecution critical in preventing abuse
- Creation of National Domestic Abuse Prosecutor
- Strategic leadership, specialism and service improvements
- Collaborative multi-agency approach essential to effect meaningful change

TRANSFORMING THE JUSTICE RESPONSE

- Domestic Abuse (Scotland) Act 2018
- Criminalises a course of abusive behaviour between partners or ex-partners where:
 - (a) a reasonable person would consider this likely to cause physical or psychological harm, and
 - (b) accused intended to or was reckless about causing physical or psychological harm

TRANSFORMING THE JUSTICE RESPONSE

- Key innovations:-
 - Move away from incident-based approach
 - Criminalises coercive and controlling behaviours
 - Focus on perpetrator's behaviour – no evidence of actual harm required
 - Recognition of harm to children – child aggravation
 - Enhanced victim safety provisions

MOVE AWAY FROM INCIDENT-BASED APPROACH

- Course of conduct offence
- Behaviour on at least 2 occasions
- Can include uncorroborated conduct
- Sufficient underlying nexus between the behaviours

DEFINITION OF ABUSIVE BEHAVIOUR

- (a) Violent, threatening or intimidating; or
- (b) Has as its purpose or likely to have the relevant effect(s) of:
 - Making B dependant on, or subordinate to A
 - Isolating B from friends, relatives or other sources of support
 - Controlling, regulating or monitoring B's day-to-day activities
 - Depriving or restricting B's freedom of action
 - Frightening, humiliating, degrading or punishing B

NO PROOF OF HARM REQUIRED

- Objective reasonable person test of likelihood of harm
- Focuses on perpetrator's behaviour rather than victim impact
- Psychological harm includes fear, alarm and distress

CHILD AGGRAVATION

- The aggravation applies if at any time in the commission of the offence:
 - (a) The accused directs behaviour at a child, or
 - (b) The accused makes use of a child in directing behaviour at the victim, or
 - (c) If a child sees or hears, or is present during an incident of behaviour or
 - (d) if a reasonable person would consider the behaviour to be likely to adversely affect a child usually residing with either the accused or the complainer.

ENHANCED VICTIM SAFETY PROVISIONS

- Aim of preventing reoffending
- Non-harassment orders (NHOs)
 - Mandatory consideration by the court on sentencing
 - NHO must be granted unless the court decides that there is no need for the victim or children to be protected by such an order.
 - If no order made the court must explain the basis for this decision.

TRANSFORMING THE JUSTICE RESPONSE

Story so far



Contact: annemarie.hicks@copfs.gov.uk