



RESPONSE FOR THE FACULTY OF ADVOCATES

ON

The Creation of A Specific Offence of Domestic Abuse – Proposed Associated Reforms to Criminal Procedure

[1] The Faculty of Advocates welcomes the opportunity to comment on the four areas of proposed reform to criminal procedure which relate to the creation of a specific offence of domestic abuse. We would draw the Criminal Justice Division's attention to the Faculty's responses to the Scottish Government's Consultation Paper: [Equally Safe – Reforming the Criminal Law to Address Domestic Abuse and Sexual Offences](#) and to the Scottish Government's Consultation on [a Criminal Offence of Domestic Abuse](#).

NEW STANDARD BAIL CONDITION

[2] The Faculty notes that the proposed additional condition has the effect of prohibiting persons charged with domestic abuse offences from obtaining precognitions or statements from a complainer except through a solicitor. The introduction of this additional bail condition in domestic abuse cases would mirror the position in respect of the standard bail conditions imposed in respect of sexual offences which are designed to prevent an accused from seeking to use the processes of the justice system to re-victimise the complainer. The Faculty agrees that there is force in adopting this approach bearing in mind the common characteristics of the offences of domestic abuse and sexual abuse.

[3] The Faculty would add that at present the courts regularly impose additional special conditions of bail designed to prevent the accused from contacting, approaching and attempting to contact or approach the complainer. The imposition of special conditions of bail in respect of domestic abuse cases was considered recently and found to be ECHR compliant in the recently reported case of *HM Advocate v Poch* 2016 Scots Law Times 149.

ACCUSED PERSONS CONDUCTING THEIR OWN DEFENCE

[4] The Faculty notes that it is proposed to introduce a provision to ban the accused persons from conducting their own defence when they are charged with domestic abuse offences. The introduction of such a ban in domestic abuse cases would mirror the ban in respect of sexual offences. The Faculty agrees that the risk of the trial process in domestic abuse cases being misused by the accused to further intimidate and control the complainer would be similar to the risk in sexual cases. The Faculty agrees that similar considerations as noted in the proposal to prohibit precognition taking apply in this area. The Faculty agrees that there is force in adopting this approach bearing in mind the common characteristics of the offences of domestic abuse and sexual abuse.

EXPERT EVIDENCE RELATING TO THE BEHAVIOUR OF THE COMPLAINER

[5] The Faculty notes that it is proposed to introduce a provision to allow expert evidence to be led in relation to the behaviour of the complainer in domestic abuse cases. The introduction of such a provision in domestic abuse cases would mirror the provision [contained in section 275C of the Criminal Procedure (Scotland) Act 1995] in respect of sexual offences. The Faculty believes that in appropriate cases relevant expert evidence may assist the court in its assessment of the credibility and reliability of the complainer.

MANDATORY CONSIDERATION BY THE COURT OF IMPOSITION OF A NON-

HARASSMENT ORDER

[6] The Faculty notes that it is proposed to require the court to always consider whether to impose a criminal non-harassment order [NHO] following an offender being convicted of domestic abuse offences. The Faculty observes that it is not proposed that the sentencing judge is required to impose an NHO, rather it must be considered as part of the sentencing process. The Faculty also notes that it is proposed that the court should provide reasons for its decision to make or refuse to make an NHO. The Faculty believes that the proposed reforms will add transparency to the sentencing of persons convicted of domestic abuse offences.