

## **Centre for Women's Justice briefing – response to super-complaint report on police use of protective measures**

### **Introduction**

The super-complaint was largely upheld, and we welcome this, along with the vast majority of recommendations. However, we are concerned that many of the recommendations do not go far enough and there are multiple missed opportunities.

Many of the recommendations involve future data gathering and inspection, rather than robust and speedy changes in police practice, with the risk that momentum is lost and that the push to address failings disappears into the ether.

We shall address each of the five parts of the super-complaint report (“the report”):

### **1. Pre-charge bail**

- The investigation was superseded by new legislation now going through Parliament in the Police, Crime, Sentencing and Courts Bill, which should address the concerns raised in the super-complaint. This will introduce a new pre-charge bail regime which, if properly implemented, should result in greatly increased use of protective bail conditions. The Home Office review which led to this change in the law took into account the super-complaint and as a result of the super-complaint CWJ had detailed engagement with the Home Office bail review team.
- The report states that the College of Policing will update its guidance to confirm that if bail conditions are needed officers have the power to arrest a suspect, which should reduce the use of voluntary attendance interviews, where bail conditions cannot be imposed. This is very welcome.
- However, the report does not give clear guidance to police forces that voluntary attendance is not appropriate in the majority of domestic abuse cases. This is a very disappointing omission.
- A recommendation on improved risk assessment for bail extensions is positive. However, concerns that we raised about there being no power to extend bail where there are delays in police investigations has been completely ignored.
- We do not support the suggestion of a new offence of breach of pre-charge bail, nor have we ever proposed this. In our view a change in the law which would affect all crime types, not only domestic abuse, would be a potentially oppressive extension of police powers. We propose a bespoke solution for domestic abuse cases, where a breach of pre-charge bail should trigger an application for a Domestic Violence Protection Order (DAPO), and any further breach would then be a criminal offence.

## **2. Arrest for breach of non-molestation orders (NMOs)**

- We welcome recommendations to create improved communication mechanisms between the Family Courts and the police when NMOs are issued, and improved police recording of NMOs.
- We do not accept that police failures to act on breaches of NMOs and ensure robust enforcement are purely the result of problems in recording orders and badly worded orders by Family Court judges. The report dismisses our complaints that officers fail to act on breaches because they do not treat them as a priority. The report asserts that officers told the investigation that they did not “trivialise” breaches and that they were aware of the importance of NMOs. The investigation spoke to only a small sample of officers (no information is given on how many or their roles) and to accept their claims at face value is unwarranted. No meaningful investigation has been carried out on this aspect of the super-complaint and the report should have admitted that the investigation was not in a position to get to the bottom of this issue. The data cited in the report is clearly deeply concerning: there was a 48% increase in NMOs during 2010-2019 but a 3% drop in convictions for breaches over the same period, despite an increase of 37% in breaches in 2017-2019. Clearly there is a problem with enforcement of breaches. However the report fails to enter into a discussion or grapple with issues beyond the mechanics of recording orders and difficulties with wording of orders. This is a missed opportunity to address a serious problem, especially given that NMOs are the most common type of protective order.
- The report rejected our complaint that officers inappropriately suggest to victims, when they report domestic abuse to the police, that they should obtain NMOs. Our concern was that police officers were directing victims to civil remedies rather than taking criminal justice action. This outcome is disappointing, especially given that officers told the investigation that victims are commonly signposted to third parties to get help to apply for NMOs. There is no exploration or discussion in the report of why this is happening, and why officers are not arresting and using bail conditions or applying for Domestic Violence Protection Orders in such situations. This would be expected as part of a positive action response to domestic abuse, when an officer believes that a protective order is needed.

## **3. Use of Domestic Violence Protection Notices and Orders**

- The report contains an interesting exploration of why some police forces have much higher levels of use of these orders than others, with data showing that their use is 5 or 6 times higher in some forces than others. The summary sensibly suggests that forces which use them very little could learn from those who use them more frequently. We support the suggestions of more specialist staff, use of legal support and using orders in parallel with an investigation.

- We are disappointed that the actual recommendations are phrased in very general terms, for example that Chief Constables should ensure there is “clear governance and communication”, but the report does not break down the specifics of what police forces need to do to change practice on the ground. We are concerned that vague calls for improvements will be ineffective and that more stringent measures are needed for a clear framework and the steps that must be taken to bring about change.
- The report states that the number of DVPN/Os is very low, however it makes no attempt to convey just how negligible a mere 1% of cases really is. Even the best performing forces are only using these orders in around 2.5% of domestic abuse crimes, an extremely low number. There is no sense of urgency and a lack of robust actions to get to grips with practice that is falling far short of providing widespread protection.
- The recommendation that lessons learnt from DVPN/Os should inform the new DAPN/O orders to be introduced in the next few years is important. We are concerned that just as DVPOs are grossly underused, the new orders will also make little difference to the lived experience of survivors of abuse if they are not implemented effectively.

#### **4. Use of restraining orders**

- The action and recommendation for robust processes to ensure that restraining orders are applied for in all suitable cases is positive.
- However, the action only states that the Inspectorate bodies should “consider” future inspection and a review, rather than requiring them to do so. Such proposals can easily disappear into the ether.
- The report states that fieldwork found evidence that officers are not in general overlooking requests for restraining orders, based on the fact that officers told the investigation that such orders were routinely considered. Again, the number of officers and their roles is not given, but we know it is a small sample. This is not a suitable conclusion to reach from assertions by a few officers. The report fails to address the fact that the statistics quoted indicate that only around a quarter of domestic abuse prosecutions result in a restraining order. This is a worryingly low number that does not support the conclusion that officers are not overlooking these orders. The lack of discussion around this is extremely disappointing.
- The report discusses problems with the “slip rule” which could enable a prosecutor to go back to court and request a restraining order where this was previously missed. It states that CPS advice is that this is not possible. However, there is no recommendation of any sort about the slip rule. This is a grave missed opportunity to take some action, for example proposing a change to the court procedure rules, to ensure that protective orders can be put in place in such situations.

## 5. Overarching recommendations

- The overarching recommendations are clearly needed, and we support these. For example, Chief Constables clearly need to ensure that their officers understand the suite of protective measures available, otherwise the law will not fulfil the purpose for which it was intended.
- We are concerned however that these recommendations are at such a generalised level that they may not translate into real change on the ground. It will be easy for Chief Constables to do little in response and for business as usual to continue. Without clear steps and goals there is little guarantee that real improvements will be seen and these recommendations, like those within earlier sections of the report, are a severe missed opportunity.
- In an earlier section, the report claims that training all frontline officers in every aspect of responding to all threats to female victims is not feasible. If so, the report does not address how Chief Constables are to achieve the overarching recommendations. For example, it does not recommend that specialist domestic abuse units should deal with all domestic abuse cases, so that the relevant officers will have the relevant knowledge. Many forces have disbanded specialist domestic abuse units over the last decade, or these units are small and only deal with the most serious cases, leaving the majority of cases to generalist officers who do not have the right training. The report fails to grapple with how protection can actually be delivered to victims.
- The elephant in the room within this report is under-resourcing. Under-trained and over-stretched officers will not deliver the proactive response that is needed. The report does not address this, nor does it propose any ring-fencing of resources to ensure that adequate protections are provided to victims and survivors of domestic abuse.
- We sincerely hope that the further data gathering, improvements and monitoring recommended in this report will raise the profile of this issue within the criminal justice system and make a difference to victims and survivors. However, we are concerned that a lack of robustness in the report's recommendations may mean little substantive change on the ground. Last month the Government published its draft Domestic Abuse Statutory Guidance. The executive summary states that "we intend to shine twice as much light on the issue of violence against women and girls". Such rhetoric is unlikely to change the realities for women and girls unless robust and properly resourced changes take place.