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Criminal Justice Committee

Post-legislative scrutiny of the Domestic Abuse (Scotland) Act 2018



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Criminal Justice Committee

To consider and report on matters relating to criminal justice falling within the responsibility of the Cabinet Secretary for Justice and Veterans, and functions of the Lord Advocate other than as head of the systems of criminal prosecution and investigation of deaths in Scotland.



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Introduction

Background

1. The [Domestic Abuse \(Scotland\) Bill](#) was passed by the Scottish Parliament in February 2018. The main provisions of the resulting [Domestic Abuse \(Scotland\) Act 2018](#) (the 2018 Act) were brought into force in April 2019.
2. The 2018 Act created a new offence of engaging in an abusive course of conduct against a current partner or an ex-partner. It also provided that the new offence may be aggravated where a child is involved. For example, when a child sees, hears or is present during a domestic abuse incident.
3. Further changes included-
 - creating a standard condition of bail for domestic abuse cases prohibiting an accused from obtaining a statement from a complainer other than through a solicitor;
 - placing a restriction on granting bail in some domestic abuse cases;
 - banning an accused person in a domestic abuse case from conducting their own defence in court;
 - allowing certain expert evidence relating to the behaviour of victims of domestic abuse;
 - applying certain special measures aimed at protecting child witnesses during trials;
 - requiring the court to consider the future protection of the victim when sentencing an offender in a domestic abuse case; and
 - telling the court to always consider making a non-harassment order (NHO) against a person convicted of a domestic abuse offence.
4. The Criminal Justice Committee agreed to a process of post-legislative scrutiny to review how the 2018 Act has been implemented, to determine whether any issues have arisen and, if so, how these might be resolved. The Committee held a one-off evidence session on 8 March 2023.
5. This short report summarises the evidence we heard and the main issues that arose and includes our conclusions and recommendations at this stage. According to official statistics¹, Police Scotland recorded 64,807 incidents of domestic abuse in 2021-22, a decrease of 1% compared to the previous year. These are incidents of domestic abuse more generally, not just offences connected to the 2018 Act.

Domestic abuse – an overview

Domestic abuse in general

6. According to official statistics ¹, Police Scotland recorded 64,807 incidents of domestic abuse in 2021-22, a decrease of 1% compared to the previous year. These are incidents of domestic abuse more generally, not just offences connected to the 2018 Act
7. This is the first year that figures for incidents of domestic abuse have shown a decrease since 2015-16. In 2021-22, 39% of incidents of domestic abuse recorded by the police in Scotland included the recording of at least one crime or offence.
8. The type of crime or offence that was most frequently recorded as part of a domestic abuse incident in 2021-22 was common assault, accounting for 32% of all crimes and offences recorded. This was followed by threatening and abusive behaviour, accounting for 21% of recorded crimes and offences.
9. There were 118 incidents of domestic abuse recorded by the police in Scotland per 10,000 population in 2021-22. At a local authority level, Dundee City (172), West Dunbartonshire (161) and Glasgow City (147) recorded the highest incident rates per 10,000 population.
10. Where gender information was recorded, around four-in-five (81%) incidents of domestic abuse in 2021-22 involved a female victim (or complainer) and a male suspected perpetrator.
11. In 2021-22, the 31 to 35 years old age group had the highest incident rate for both victims (261 incidents recorded per 10,000 population) and suspected perpetrators (243 incidents recorded per 10,000 population).
12. In 2021-22, just under nine-in-ten (89%) of all domestic abuse incidents occurred in a home or dwelling.
13. According to media reports citing Police Scotland statistics, there were 30 deaths between 2018 and 2022 attributed to domestic abusers, although some academics believe the figure to be around 4 times higher. ²

Offences under the Domestic Abuse (Scotland) 2018 Act

14. The 2018 Act is a relatively new piece of legislation. As noted above, its main provisions were brought into force in April 2019. Therefore, there are limitations on the amount of data available about offences committed under the Act, as opposed to domestic abuse cases prosecuted under other more general offences.
15. There were 252 people proceeded against in 2019-20 for the specific domestic abuse offence set out in the 2018 Act of engaging in an abusive course of conduct,

of which 212 (84%) resulted in a conviction. The number of people proceeded against under the Act increased by two thirds to 420 in 2020-21, with 383 of these (91%) resulting in a conviction.

16. The specific offence created by the 2018 Act was the only crime type to show an increase in the number of proceedings in 2020-21, when the COVID-19 pandemic and subsequent court closures impacted significantly on the delay to trials.
17. Most proceedings for the new offence took place in sheriff summary courts. This was 92% of all proceedings in 2019-20 and 89% in 2020-21.
18. There was a 5% increase in convictions for the prosecution of domestic abuse using more general offences between 2018-19 and 2019-20, an increase from 7,751 in 2018-19 to 8,174 in 2019-20. This was followed by a 20% decrease to 6,515 convictions in 2020-21, where there were widespread decreases across proceedings and convictions for almost all crime types owing to reductions in court capacity during the pandemic.
19. There were 90 people with a conviction under the 2018 Act with a statutory aggravation in relation to a child in 2020-21, compared to 39 in 2019-20. The child aggravation was proven in around a quarter (23%) of all convictions under the 2018 Act in 2020-21, an increase from 18% in 2019-20.
20. Table 1 below sets out data for 2020-21 for people convicted of the offence created by the 2018 Act, engaging in an abusive course of conduct, and the outcome of those cases.ⁱ

Table 1: people convicted under section 1 of the 2018 Act

Penalty	Persons convicted
Prison	61
Young Offenders' Institution	1
Supervised release order	9
Extended sentence	1
Order for lifelong restriction	-
Community payback order	175
Restriction of liberty order	41
Fine	49
Admonition	46
Total	383

21. As Table 1 shows, the main penalty for those convicted under the 2018 Act is a community payback order (175 out of 383 cases in 2020-21). For those receiving a custodial sentence, the average length of a custodial sentence under the 2018 Act was 438 days in 2020-21 (see Table 2 below).

ⁱ Extracted from the [Scottish Government's statistical bulletin Criminal Proceedings in Scotland 2020-21](#) (published on 21 June 2022).

Sentencing under the 2018 Act

22. As indicated above, most proceedings for the domestic abuse offence under the 2018 Act took place in sheriff summary courts (around 90%).
23. In terms of sentencing for domestic abuse more generally, as part of its current review in this area, the Scottish Sentencing Council have noted that domestic abuse encompasses various and complex types of offending behaviour, including both physical violence and non-physical abuse, such as coercive and controlling behaviour.
24. The Scottish Sentencing Council noted that the harms perpetrated against victims are equally diverse and range from the physical to the psychological and can be substantial and long-lasting.
25. Currently, a person who commits an offence under the 2018 Act is liable to imprisonment for a term not exceeding 12 months or a fine not exceeding the statutory maximum (or both) when convicted under summary procedure. Where there is a conviction under indictment, the person is liable for a term not exceeding 14 years' imprisonment or a fine (or both).
26. Table 2 provides statistics for the length of sentences for those receiving custodial sentences under the 2018 Act in 2020-21.

Table 2: Sentence length for those receiving custodial sentences in 2020-21¹

Sentence length	Number of people receiving sentence
Up to 3 months	7
3-6 months	12
6 months to 1 year	20
1-2 years	21
2-4 years	11
Over 4 years	1

Evidence taken by the Committee

27. The Committee's post-legislative scrutiny of the 2018 Act comprised of one [evidence session](#), where we took evidence from the following two panels of witnesses-
 - **Dr Claire Houghton**, Lecturer in Social Policy and Qualitative Research, University of Edinburgh
 - **Professor Michele Burman**, Professor of Criminology, Scottish Centre for Crime and Justice Research, University of Glasgow
 - **Amanda Masson**, Partner, Harper Macleod LLP
 - **Dr Marsha Scott**, Chief Executive Officer, Scottish Women's Aid

and then from-

- **Moira Price**, National Procurator Fiscal for Domestic Abuse and Head of Victims and Witnesses Policy Team, Crown Office and Procurator Fiscal Service
- **Craig Naylor**, Chief Inspector, HM Inspectorate of Constabulary in Scotland
- **Detective Chief Superintendent Sam Faulds**, Head of Public Protection, Specialist Crime Division, Police Scotland.

Key issues

28. The following is a summary of the key issues that emerged during our evidence-taking.

Implementation of the 2018 Act

29. Many of the witnesses stated that there was little intrinsically wrong with the drafting of the 2018 Act. Dr Claire Houghton welcomed the “huge shift to recognise psychological abuse and on-going abuse over time”, a definition of which is at the core of the Act. However, she argued, “implementation of that definition still has a long way to go”. She stated that her research with victims indicated that the new focus on psychological abuse and on-going abuse was “not fully represented in their cases,” and that “there was still a focus on specific physical incidents”.
30. Similarly, Professor Michele Burman told us that, “there is clarity in the legislation about what is sought, but the issue is the implementation and application of the legislation”. For her, “it comes back to the implementation of the legislation and the degree to which the police are equipped to interpret and implement it at the point of discussion.”³
31. For Amanda Masson, one of the challenges with the practical implementation of the 2018 Act is a reluctance on the part of some of the victims and survivors to report incidents of psychological abuse and on-going abuse. She said that—
- ” ... although there is certainly much greater understanding of what is meant by coercive control, there is still a reluctance on the part of clients who might consult me in a family law capacity to accept that that is something that is happening to them. They might well be reluctant to accept that behaviour does not necessarily have to be violent to be coercive, controlling or abusive, and I suspect that there is also a perception that domestic abuse does not affect certain socio-economic groups.”⁴
32. Professor Burman explained that even when a victim or survivor was prepared come forward initially, building a case was challenging. She said—
- ” Evidencing things such as emotional or psychological abuse can be very difficult. It comes back to the interaction between the police and the survivor to determine the wider context—how the different incidents and the history might be linked. It relies on the development of a different sort of relationship between the police and the survivor to elicit that information and support the survivor and gain her trust so that she—it is usually she—feels able to talk about it.”⁵
33. This is an issue which was also raised by Craig Naylor. He said that in his experience, victims and survivors often wait until multiple occasions of abuse have occurred rather than report it on the first occasion or speak about what is happening to a family member or friend.⁶
34. As a result of the challenges identified above, Dr Scott said she was confident that

published figures represent an under-identification of cases. She noted that of all the cases of domestic abuse reported to the Crown Office in 2020-2021 and 2021-2022, only 4.7% and 5.5% respectively were prosecuted under section 1 of the 2018 Act. For Dr Scott, “the most critical issue is evidence gathering and front-line policing.”⁷

Policing

35. Citing research she had undertaken when the 2018 Act was first introduced, Professor Burman noted that “the operation and the effectiveness of the legislation is dependent on police interpretation and implementation”. In her view, “the ability of the police to identify coercive, controlling behaviour and elicit information on a series of abusive behaviours is crucial”. Based on her research, she concluded that “we are still some way off getting to the point at which there is recognition of some of the subtle and quite nuanced behaviours that are addressed through the legislation.”⁸ For her, a greater understanding and implementation of the powers in the 2018 Act required a “different way of thinking”.
36. Professor Burman also commented on some of the practical challenges faced by frontline officers (referred to as tier 1 officers) when it comes to investigating suspected cases of domestic abuse. She noted that tier 1 officers who are the first to be called out to the scene are not specialists in domestic abuse matters. They are also subjected to numerous calls to attend different incidents, making it difficult in her view to always provide the amount of time necessary for protracted and lengthy investigations.⁹
37. Dr Scott also commented on the use of the DASH risk assessment toolⁱⁱ used by frontline officers when called out to a scene. She thought that this tool was being used in most cases but that “the way that officers use those assessments is often to characterise an incident as unfortunate, minimise it and discount evidence around coercive control”.¹⁰
38. In her evidence, Detective Chief Superintendent Sam Faulds provided details of the reality of the day-to-day challenges for frontline, tier 1 officers. DCS Faulds explained that there could be around 140 to 150 calls to Police Scotland a night about domestic abuse, and more than 400 calls about missing persons. She said it was “unfair not to recognise that they [the police] do not always get the time to sit down and build enough of a relationship with victims.”¹¹
39. DCS Faulds noted that in circumstances where a crime has been established but it was not yet clear if coercive control had been evidenced then specialist tier 2 officers would take over. She noted that there were insufficient resources within Police Scotland for all tier 1 officers to be specialists and that Police Scotland could not “send a specialist officer out to 150 calls a night.”¹²

ii The DASH tool (Domestic Abuse, Stalking, Harassment and Honour Based Violence Assessment) is part of the Multi Agency Risk Assessment Co-ordinator (MARAC) referral. It is a risk assessment form to help the user work out the risk level for the victim.

Training within Police Scotland

40. In its written submission to the Committee ¹³, Police Scotland noted that since the 2018 Act was in place, 18,496 officers and staff had completed its e-learning programme which was developed to give officers and staff a baseline understanding of the legislation ahead of implementation, and they had subsequently developed a train-the-trainer package. Police Scotland had also ensured that 13,510 officers and staff from a wide range of roles relevant to investigating reports of domestic abuse had attended its one-day 'core' training.
41. In addition, Police Scotland has established 600 Domestic Abuse Champions who were "given additional skills via a second day-long training event to sustain the change in skills, behaviour and attitudes of their peers; challenging inappropriate language and behaviour, checking service delivery, giving constructive feedback and congratulating good practice". ¹⁴
42. Despite this early progress, DCS Faulds noted that the recent demands placed on Police Scotland due to the COVID pandemic and policing of the COP26 climate change conference had had a "significant impact on training". ¹⁵ She said that the retirement of a number of experienced officers and the recruitment of replacements had also meant that training had been "significantly impacted across the board".
43. The critical importance of on-going police training to the effectiveness of investigating and prosecuting cases under the 2018 Act was highlighted by Professor Burman. She said—
- ” I therefore think that there needs to be more time for more enhanced specialist training; indeed, trauma-informed training will be very important. Training on domestic abuse matters has been rolled out to many thousands of police officers. That was a wonderful feat, but it needs to be continued and reviewed, because one-off training is not as effective as having something that happens at regular intervals. ¹⁶
44. Similarly, Dr Scott cited research from the College of Policing which showed that "things can be done better" and that "one-off training does not work." ¹⁷
45. As part of his Thematic Review of Domestic Abuse, Craig Naylor noted that HM Inspectorate of Constabulary in Scotland (HMICS) would be "expecting an updated plan on what the training involves from Police Scotland" by April 2023 and he would expect to see details of the nature of future training plans for tackling domestic abuse, including the domestic abuse champions training. ¹⁸

Prosecuting and sentencing issues

46. Another key element in our review of the 2018 Act is how offences are prosecuted, the sentences passed, and the experiences of the accused, complainer, witnesses and victims throughout the court process.
47. In relation to the latter, Dr Claire Houghton cited evidence she had conducted on

the 2018 Act with victims and survivors about their experiences of criminal proceedings in domestic abuse cases which she described as “unremittingly grim”. She highlighted that some victims reported a view that the final sentence in their case did “not reflect their whole experience” and that there was a need for greater emphasis to be placed on the use of victim impact statements and more focus on the impact of such cases and the prosecution process on any children involved.¹⁹

48. In her evidence to the Committee, Dr Houghton cited her conversations with victims and survivors who had reported that, where their abuse had been mainly psychological, their views indicated that a conviction was even more difficult. In their experiences, it was more likely to lead to either a very minor sentence or a not guilty verdict.²⁰
49. Dr Houghton also commented that some victims felt that building a case against an accused where the abuse had been non-physical was difficult to evidence and hard for some victims to speak about, and often they felt that this type of psychological abuse and control was not taken fully on board in court and that only a small piece of their jigsaw was revealed during their trials.²¹
50. Dr Scott was also critical of sentencing in domestic abuse cases more generally (i.e. not just under the 2018 Act). She stated that “the vast majority of sentences in such cases are community disposals” and that there was “no evidence in Scotland that that has a protective effect for women and children”.²² In her view, “more effective sanctioning should be considered”, which “would probably require a significant expansion of the use of electronic monitoring and other kinds of mechanisms, and perhaps the use of more custodial sentences.”²³
51. It may be worthwhile noting that the Scottish Sentencing Council is currently undertaking work to review sentencing guidelines in domestic abuse cases.
52. Moira Price of the COPFS explained some of the challenges in prosecuting cases under the 2018 Act. She noted that “for a course-of-behaviour offence to take place, there has to be a start point, and it may take time before there is sufficient evidence to establish a course of behaviour”.²⁴
53. She stated that the COPFS did apply a presumption in favour of prosecuting in all cases of domestic abuse whether under the 2018 Act or any other statutory or common law offence.²⁵ She also sought to reassure the Committee that the Crown does not have to wait for a course-of-behaviour offence to be evidenced and that prosecutors will seek prosecutions for individual incidents under existing common law or statutory provisions.²⁶ She also noted that a recent appeal case (CA v HM Advocate) in the High Court provides evidence of the Crown’s approach, as it “confirms the approach that the Crown has always taken to the interpretation” of the 2018 Act”.²⁷
54. Ms Price also outlined some of the training on the 2018 Act that had been provided to the COPFS staff, including in advance of the Act coming into force. This consisted of face-to-face training for all prosecutors and a specifically designed e-learning package. All new members of the COPFS undertake training and it is also provided to victim information and advice staff.²⁸

55. It is worth noting that the Committee has been made aware that Laura Paton, HM Inspector of Prosecution at the COPFS, plans to undertake a review of the COPFS's handling of cases involving domestic abuse, with a particular focus on cases at summary level. Terms of reference are expected to be available from April/ May 2023.²⁹

Impact of the 2018 Act on children

56. The 2018 Act contains an aggravator which is intended to better reflect the impact of domestic abuse on children. It provides that the new offence is aggravated if it involves a child. Examples of this could include situations where a child is used as a means of coercing the victim. The aggravation seeks to reflect the harm that can be caused to a child who grows up in an environment where domestic abuse is taking place by providing that the offence is aggravated where a child sees, hears or is present during an incident that happens as part of the abuse.
57. In her evidence to the Committee, Amanda Masson noted that, in her experience as a private practitioner, there is “a lack of understanding of how these behaviours can affect children” and that from her involvement in child welfare report practice for the court, “very little is said about the effect on children of witnessing such behaviours”.³⁰ She also commented on the difficult challenges that the police and the courts have in involving children, noting that efforts could be made to make it safer for them to do so and changing the perception of their role.³¹
58. Dr Houghton stated that there was a need to examine whether there is a legislative issue with the 2018 Act in relation to children. She said, “we must take a much closer look at the use of the child aggravator, as well as any associated children who have been harmed and impacted by domestic abuse.”³²
59. Similarly, Dr Scott said—
- ” We are really concerned that, even if the aggravator were applied in all the cases in which it could be used—and we cannot get data on that because the Crown Office does not collect data in that way—it would not do the trick. It is clear to us, from multiple sources of evidence, that civil cases that follow criminal cases of domestic abuse are not reflecting the much broader understanding that we now have of the impact, harm and trauma that domestic abuse visits on children. We were unhappy about that issue when the bill was passed, and I think that it is really critical that it is taken up, possibly through an amendment process.³³
60. In subsequent correspondence³⁴, Dr Scott explained that they had been expecting, given what they know about domestic abuse, that Police Scotland would gather appropriate evidence and the COPFS would ask for an aggravation in very close to 100% of cases where there are children. She told us that “COPFS does not hold data on what percentage of their section 1 cases involve children, so it is not possible to know what percentage of possible aggravations are asked for and granted”. Scottish Women's Aid believes that “co-victim status for children would ensure that civil cases would require consideration that person asking for contact

had been convicted of abusing said child". They said their "concerns about the alternative of using an aggravator had been borne out".

The use of non-harassment orders

61. The 2018 Act contains a provision requiring a criminal court to consider making a non-harassment order (NHO) when sentencing an offender in a domestic abuse case (not just those prosecuted using the offence in the 2018 Act).
62. NHOs can be granted by a civil court on application by the person suffering harassment, or by a criminal court following conviction for a criminal offence involving misconduct towards another person. An NHO can require a person to refrain from such conduct in relation to the victim, for example to desist all contact with the victim, for a period of time as laid down by the court within the terms of the order. Breach of the terms of an NHO is a criminal offence.
63. In her evidence to the Committee, Dr Scott welcomed this provision. She said that her organisation, Scottish Women's Aid, heard "pretty consistently from women and children that the NHO is the element that provides them with some breathing space and makes them feel safe." Whilst not all perpetrators pay attention to NHOs, she felt "the majority do, and when they do, there is a demonstrable improvement in how people feel about the application of the law."³⁵ One of the key issues for her, however, is how breaches of NHOs are responded to.
64. For Dr Houghton, the length of NHOs is a "real issue". She said that she'd asked how those could be lengthened without recourse to civil law, but "that does not seem to be easy". In her view, "the victims were in fear and had not received the mental health and trauma support that they needed during those two years [the period of the NHO]."³⁶ She also cited some of her research which showed that some victims and survivors were considering taking quite significant steps such as moving location when the NHO was due to come to an end because they "felt utter fear"³⁷.
65. Professor Burman noted, however, that even when victims and survivors took such measures such as applying for an NHO, "there are still ways in which perpetrators can continue or restart abuse" and warned that "we must be realistic about the inventiveness of perpetrators".³⁸

Links between criminal and civil cases

66. One of the wider issues raised in evidence was the concern that some perpetrators of domestic abuse seek to use the civil courts (e.g. through child custody and contact rights) to further the abuse of their victims.
67. One of the challenges with this issue was highlighted by Professor Burman who noted that where there is a civil case that takes place after a criminal case involving domestic abuse, there is no mechanism for information about domestic abuse from the criminal cases to feed into the process. It is entirely up to the parties to inform

the lawyers that there is a background of domestic abuse. The way in which that information is fed from one system through to another is, in her view, “purely serendipitous, which is problematic”.³⁹

68. Calls were made by some of the witnesses – Professor Burman⁴⁰ and Amanda Masson⁴¹ – for consideration to be given as to whether it was possible to amalgamate civil and criminal cases, or for measures to be introduced to ensure that there is better information sharing. Dr Scott thought that there could be a ‘one-sheriff-one case model’, similar to a model used in the New York Supreme Court.⁴²
69. DCS Faulds responded to a question from the Committee about Police Scotland's involvement with the civil side of domestic abuse cases. She said she “wholeheartedly agreed that the civil process is often used as a manipulative tool to continue to perpetrate abuse against victims” but was “not aware of any structured feedback process, information-sharing protocol or memorandum between us [Police Scotland] and the civil courts or the Scottish Legal Aid Board.”⁴³

Male victims of domestic abuse

70. In terms of domestic abuse more generally (i.e. not restricted to the offence in the 2018 Act), Police Scotland recorded 65,251 incidents of domestic abuse in 2020-21. Where gender was recorded 18% of victims of reported domestic abuse were male (8,325). In incidents leading to the recording of a crime or offence, 4,118 had a male victim and 21,512 had a female victim. Where both the gender of the victim and the accused is known, 16% involved a male victim and a female accused (80% had a female victim and a male accused). This increased slightly from 15% in 2019-20.
71. In relation to the offence under the 2018 Act, in 2020-21, 383 people were convicted, up by 81% from 212 in 2019-20. Of the total number of people convicted under the 2018 Act in 2020-21, 96% were male (369), compared to 14 females. Most people convicted of an offence with a domestic abuse statutory aggravation were male (5,765 convictions or 89%).
72. It is clear from the above that, whilst proportionally much smaller, domestic abuse against males is an issue which must be addressed.
73. In her evidence to the Committee, Dr Houghton cited a small number of cases where she had been able to speak to a male victim. In one of these cases, the victim felt that his gender impacted on the response from relevant services including the police, particularly because it was on-going psychological abuse. He felt that people “thought that he should “man up”—that was the response of his friends and family, but also the police—and he felt that it was not taken seriously even though there was a considerable amount of abuse over a long period of time.” Dr Houghton noted that the alleged offences were conducted mainly online, which made it “tricky in terms of evidence.”⁴⁴
74. DCS Faulds stated that, for Police Scotland, their definition of abuse was “inclusive” and “not gender specific”, albeit that they recognise the disproportionate impact on female victims. She said that the training of officers does not exclude male victims

of domestic abuse; it is inclusive of them.⁴⁵ She added that part of Police Scotland's engagement work in this area had been with the organisation Abused Men in Scotland.

The importance of awareness-raising

75. The final issue raised during our evidence-taking was of the importance of public awareness-raising efforts and campaigns to promote better understanding of the 2018 Act and to encourage people to report offences.
76. As stated above, Amanda Masson thought that victim impact statements can go a long way in helping survivors feel heard. She also thought that, in turn, they can help raise public awareness of what constitutes a course of conduct, and that people may hear such statements reported in the media and be encouraged to report offences against them.⁴⁶
77. In her evidence, Dr Houghton welcomed the public awareness raising campaign that the Scottish Government undertook at the time of the introduction of the 2018 Act but said it was “not sustained for long enough” and more needed to be done now to target public messaging at children in any new campaign.⁴⁷ She called for more advertising and more campaigns in schools and places of education.⁴⁸ This was a view shared by DCS Faulds.⁴⁹
78. In her evidence, Moira Price said—
 - ” The more that victims have confidence to come forward and see that they can achieve justice, and the more that that is reported, the more the general public will understand how seriously criminal justice agencies treat this type of offending. People will then have the confidence to report what happens to them if they are the victims, or to report what they see happening to friends, neighbours or relatives, so that the organisations that can take action are able to take action.⁵⁰

Conclusions and recommendations

79. The Domestic Abuse (Scotland) Act 2018 is an important part of efforts to tackle all forms of domestic abuse in Scotland. Its key provision which created a new offence is a valuable tool in the investigation and prosecution of abuse. This enables the prosecution of non-physical forms of abuse such as coercive control.
80. The Committee agrees that tackling domestic abuse as well as violence against women and girls more generally is a key priority for the Parliament, and that this Act provides an important component in achieving that aim.
81. That is why the Committee was keen to look back – through a process of post-legislative scrutiny – at how the 2018 Act is functioning to determine whether it is achieving the objectives set out by the Scottish Government.
82. It is clear to the Committee that there is strong support for the 2018 Act amongst prosecutors, law enforcement, and women's groups. The Act is beginning to have an impact and prosecutions under section 1 are increasing, albeit slowly. There are, however, several challenges which remain despite this progress.

83. One of these challenges is that of the use of the statutory aggravator included in the 2018 Act which relates to the involvement of a child in domestic abuse cases. We understand that this is an area where some stakeholders would like to see the Act looked at again in terms of how the aggravator is being used in practice. **We recommend the Scottish Government reviews the functioning of this part of the 2018 Act with relevant bodies so that a range of views on this issue are heard.**

84. A key area where there are issues is that of the practical implementation of the 2018 Act, particularly within the police service, the Crown Office and the courts. **We recommend that the Scottish Government considers establishing a short-life implementation group for this Act to consider the issues raised in this report, and include the courts, Crown Office and the police service, as well as academics and those providing support to victims of domestic abuse.**

85. In terms of Police Scotland, the Committee does not doubt the service's commitment to tackling domestic abuse nor that the COVID pandemic has had an impact on its operations. In relation to the 2018 Act, we note that there have been delays in training and that the HM Inspectorate of Constabulary in Scotland is seeking an update from Police Scotland on its new training plans by April 2023. **We recommend that HMICS reports to the Committee upon its consideration of this matter after receipt of the new plans from Police Scotland.**

86. Furthermore, whilst we welcome Police Scotland's efforts to train specialist officers (known as tier 2 and 3 staff), we do have concerns about its efforts to provide sustained, ongoing training on domestic abuse to all frontline officers (tier 1). In our view, any training needs to be detailed and ongoing, not just a one-off introductory session. Achieving this may be a question of resources, but it is vital that any officer called to the scene of a domestic abuse incident has received relevant training and is able to recognise the types of situations covered by the 2018 Act, particularly those of a non-physical nature. **We recommend Police Scotland and HMICS consider the current training provision for police officers and the use of the DASHⁱⁱⁱ risk assessment tools by tier 1 officers and whether this is adequate. Allegations of emotional and non-physical abuse must be investigated by police officers at the first point of contact.**

87. In her research, Dr Claire Houghton cited evidence she had conducted with victims and survivors from which she described the process of reporting domestic abuse more generally and participating in court trials as “unremittingly grim”. Whilst we know that a new bill⁵¹ to reform criminal law has been introduced, this is still disappointing to hear. **We will scrutinise the newly introduced bill to see what further reforms for victims and survivors of domestic abuse can be brought forward.** We also look forward to considering the outcome of the review by HM Inspector of Prosecution at COPFS on the COPFS's handling of cases involving domestic abuse.

88. We also heard criticism of the current sentencing regime for crimes of domestic abuse and whether more can be done in relation to breaches of non-harassment orders. **Whilst we welcome the review of sentencing guidelines for domestic abuse by the Scottish Sentencing Council, we ask the Cabinet Secretary for her views on whether current sentencing policy for offences and for breaches is providing adequate protection for victims of domestic abuse.**

89. The Committee heard evidence that some perpetrators of domestic abuse seek to use the civil courts (e.g. through child custody and contact disputes) to further the abuse of their victims. We also heard calls for consideration to be given to a single court/judge model when cases involve both civil and criminal matters. **We believe there may be merit in such an approach and further work with stakeholders would be required before anything could be taken forward, and we ask the Cabinet Secretary for her views on such a proposal.**

90. In any case, there needs to be far greater information sharing between the criminal justice and civil justice processes for such crimes.

iii The DASH tool (Domestic Abuse, Stalking, Harassment and Honour Based Violence Assessment) is part of the Multi Agency Risk Assessment Co-ordinator (MARAC) referral. It is a risk assessment form to help the user work out the risk level for the victim.

91. Finally, it is clear to the Committee that the early public awareness-raising campaigns around the 2018 Act brought some success, but that was some years ago. **We think there is merit in running updated public awareness campaigns, with consideration given to a campaign which targets children, and we recommend that the Scottish Government considers this as part of wider public education campaigns to tackle violence against women and girls.**

- 1 Scottish Government, Domestic abuse: statistics recorded by the police in Scotland - 2021/22. <https://www.gov.scot/publications/domestic-abuse-recorded-police-scotland-2021-22/pages/2/>
- 2 *Sunday Post*, 19 February 2023. <https://www.sundaypost.com/fp/the-hiddenrevealed-30-scots-women-have-been-killed-by-their-partners-in-four-years-but-experts-warn-official-toll-is-only-tip-of-the-iceberg/>
- 3 Official Report, Criminal Justice Committee, 8 March 2023, c14: <https://www.parliament.scot/chamber-and-committees/official-report/search-what-was-said-in-parliament/%20CJ-08-03-2023?meeting=15193>
- 4 Ibid, c12.
- 5 Ibid, c14.
- 6 Ibid, c36.
- 7 Ibid, c11.
- 8 Ibid c10.
- 9 Ibid c14.
- 10 Official Report, Criminal Justice Committee, 8 March 2023, c16 <https://www.parliament.scot/chamber-and-committees/official-report/search-what-was-said-in-parliament/%20CJ-08-03-2023?meeting=15193>
- 11 Ibid c48.
- 12 Ibid c48-49.
- 13 Police Scotland, written evidence to the Committee. Paper 3, Annex, 8 March 2023. Available at: <https://www.parliament.scot/~media/committ/5408>
- 14 Ibid.
- 15 Official Report, Criminal Justice Committee, 8 March 2023, c33 <https://www.parliament.scot/chamber-and-committees/official-report/search-what-was-said-in-parliament/%20CJ-08-03-2023?meeting=15193>
- 16 Ibid, c19-20.
- 17 Ibid, c21.
- 18 Ibid, c45.
- 19 Ibid, c24.
- 20 Ibid, c31-32.
- 21 Ibid, c13.
- 22 Ibid, c16.
- 23 Ibid, c27.

- 24 Ibid, c37.
- 25 Ibid, c38.
- 26 Ibid, c48.
- 27 Ibid, c44
- 28 Ibid, c34.
- 29 Email correspondence received by the Committee from HM Chief Inspector of Prosecution.
- 30 Official Report, Criminal Justice Committee, 8 March 2023, c12
<https://www.parliament.scot/chamber-and-committees/official-report/search-what-was-said-in-parliament/%20CJ-08-03-2023?meeting=15193>
- 31 Ibid, c17.
- 32 Ibid, c24.
- 33 Ibid, c15.
- 34 Email from Dr Marsha Scott, 27 April 2023. Not published.
- 35 Ibid, c17.
- 36 Ibid, c18.
- 37 Ibid, c19.
- 38 Ibid.
- 39 Ibid, c18.
- 40 Ibid, c25.
- 41 Ibid, c26.
- 42 Ibid.
- 43 Ibid, c46.
- 44 Ibid, c28.
- 45 Ibid, c54.
- 46 Ibid, c22.
- 47 Ibid, c23.
- 48 Ibid, c30.
- 49 Ibid, c53.
- 50 Ibid, c51.

51 Victims, Witnesses, and Justice Reform (Scotland) Bill.

