

Domestic violence protection law

Domestic violence accounts for 15% of all violent incidents reported to the police in England and Wales, and frequently affects the same victim more than once (Strickland, 2013). Of the 1.2 million women who were the victims of domestic abuse in 2012–13, some 63% were involved in repeat incidents (Office for National Statistics, 2014).

Midwives are often one of the first professionals to become aware of domestic abuse within the family. Violence is a public health issue as it damages physical and emotional health and can have a long-lasting negative impact on the individual and their family. Identification of need and early intervention with women can greatly reduce the risk of ongoing harm.

One of the enduring difficulties in cases of domestic violence is that only a minority of reported incidents result in a charge and prosecution of the offender, who is often free to return to the family home within hours of the incident—leaving the victim vulnerable, once again, to a repeat of the abuse (Home Office, 2011). That gap in protection is being closed by two further protective provisions, the domestic violence protection order and the domestic violence protection notice, under the Crime and Security Act 2010, sections 24–33.

Domestic violence protection notice

Domestic violence protection notices are used where there is a decision that no further action will be taken by the police, or where the perpetrator agrees to a caution or is bailed without conditions (Home Office, 2011). To ensure the notices are only issued following proper consideration of the circumstances, only a police officer of the rank of superintendent and above is entitled to issue the notice. The authorising officer must:

- Consider the welfare of any relevant minors

- Take reasonable steps to obtain the opinion of the person whom the notice is intended to protect (although the notice can still be issued without the victim's consent)
- Consider representations made by the perpetrator
- Consider the opinion of any other relevant person living in the family home.

That authorising officer must be satisfied the notice will be issued to an adult and that there are reasonable grounds for believing that:

- The perpetrator has been violent towards or threatened an associated person
- The notice is necessary to protect the victim from violence or the threat of violence by the perpetrator.

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Non-molestation provision

Where issued, domestic violence protection notices must contain a provision requiring the perpetrator to refrain from molesting the person subject to its protection. Molestation is widely defined and the provision can apply to acts that amount to molestation in general or to specific acts, or both of these.

Ouster provision

The authorising officer may also include a provision in the notice that effectively ousts the perpetrator from the family home. The notice may therefore require that the perpetrator:

- Leaves the premises
- Does not enter the premises
- Does not evict or exclude a protected person from the premises
- Does not come within a specified distance of the premises.

The notice must be issued in writing and must be personally served by a police officer on the perpetrator, who is then required to provide the officer with a contact address.

Effect and duration

The effect of the notice is to prevent the perpetrator from molesting the person protected for up to 48 hours while a hearing

in a magistrate court is sought by the police for a domestic violence protection order. The perpetrator may also be ousted from the family home for that period (Crime and Security Act 2010, section 25).

Police may arrest without warrant a person who is in breach of the requirements of a domestic violence protection notice that has been issued against them. They may be held in custody for up to 24 hours and brought before magistrates who may order a further period of remand (Crime and Security Act 2010, section 26).

Domestic violence protection order

Where the police issue a domestic violence protection notice, they are then required to apply to a magistrate's court for a domestic violence protection order (Crime and Security Act 2010, section 27).

Magistrates are required to hear the application within 48 hours of the notice being issued but can adjourn the proceedings, with the domestic violence protection notice continuing until the matter has been dealt with by the court.

If the court decides, on the balance of probability, that the perpetrator has been violent or threatened violence to an associated person and a domestic violence protection order is required to protect that person from violence, it can issue the order to run for a period between 14 and 28 days.

During this time, the perpetrator must obey the requirements of the order not to molest the person being protected and to comply with any requirements related to access to the family home. The order contains a notice allowing a police officer to detain the perpetrator in custody if they breach the order.

The 28-day safe period allowed by the domestic violence protection order will give the victim the opportunity to access the services, support and legal measures they may require for their continued protection.

Increased protection from stalking behaviour

Both the Department of Health (2013) and the Home Office have identified intimate

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stalking behaviour as presenting a high risk of domestic violence. Stalking is now a discrete offence under amendments to the Protection from Harassment Act 1997, sections 2A and 4A. Stalking is not legally defined, but the Protection from Harassment Act, section 2A(3) lists a number of examples of behaviours associated with stalking. The list is not exhaustive, but includes:

- Following a person
- Contacting, or attempting to contact, a person by any means
- Publishing any statement or other material relating or purporting to relate to a person, or purporting to originate from a person
- Monitoring the use by a person of the internet, email or any other form of electronic communication
- Loitering in any place (whether public or private)
- Interfering with any property in the possession of a person
- Watching or spying on a person.

A more serious offence of stalking involving fear of violence or serious alarm or distress is set out in the Protection from Harassment Act, section 4A. This occurs either where the person undertakes a course of conduct that amounts to stalking and causes the victim to fear that violence will be used against them on at least two occasions, or the course of action causes the other person serious alarm or distress that has a substantial adverse effect on their usual day-to-day activities.

Substantial adverse effect on the person's usual day-to-day activities is not defined in

the 1997 Act, but the guidelines issued by the Home Office (2012) suggest it would include:

- The victim changing their routes to work, work patterns, or employment
- The victim arranging for friends or family to pick up children from school (to avoid contact with the stalker)
- The victim putting in place additional security measures in their home
- The victim moving home
- Physical or mental ill health
- Deterioration in the victim's performance at work due to stress
- The victim stopping and/or changing the way they socialise.

This list is not exhaustive, and some victims will try to continue their lives as usual in defiance of a stalker. Stalking involving fear of violence or serious alarm or distress is an either-way offence and, on conviction, the person may be fined, or imprisoned for up to 5 years, or both.

Conclusion

Domestic violence continues to be a significant problem in the UK and its effects give real concern for public health. The Department of Health recognises that midwives are well placed to help identify and offer services to victims of domestic violence. To be able to do this effectively, midwives must remain abreast of the developments in the laws designed to combat domestic violence so that they can give up-to-date information and advice to those who need it.

Stalking—particularly by a former intimate partner—has been highlighted

as a risk factor in domestic violence, and to combat its effect the Government has amended the Protection from Harassment Act 1997 and created the offences of stalking and stalking involving fear of violence or serious alarm or distress.

The domestic violence protection scheme provides a safe period of time for a victim of domestic violence to consider their safety and their relationship. Under the scheme, a domestic violence protection notice allows the police to issue a notice preventing a perpetrator from molesting their victim, which can include restrictions on entry to the family home for some 48 hours. The domestic violence protection order allows the magistrate's court to extend that safe time period by up to 28 days. Breach of either provision will result in arrest.

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Strickland P (2013) *Domestic violence. Standard Note: SN/HA/6337*. <http://tinyurl.com/gt85w6t> (accessed 19 April 2016)