

Reporting domestic abuse to the Police: Your rights

REPORTING DOMESTIC ABUSE TO THE POLICE - YOUR RIGHTS

The police take reports of gender based violence such as domestic abuse, sexual assault, rape, stalking, forced marriage and honour crime very seriously. They have specially trained staff to deal with these offences and they work closely with partners to ensure that victim- survivors are provided with support throughout the process. Anyone who reports such incidents should expect to be treated with dignity, empathy and respect.

This leaflet will provide you with some information about what to expect if you report an incident to the police and outlines some of your basic rights. Many of these rights have been set out in the [Scottish Government Victim's Code for Scotland](#).

All citizens are entitled to certain rights as outlined in the Human Rights Act 1998. These rights are based on the principles of equality, dignity, fairness and respect. The Act not only protects the rights of individuals but it influences the actions of public organisations including police, Procurator Fiscal, NHS etc., who are required to adhere to these principles and to the legislation.

WHAT IS DOMESTIC ABUSE?

Domestic abuse can be any form of physical, sexual or mental and emotional abuse which might amount to criminal behaviour and which takes place within a relationship. The term relationship means partners or ex-partners and includes those who are married, cohabiting or in a civil partnership.

The Domestic Abuse (Scotland) Act 2018 created a new criminal offence of domestic abuse. This means that a wide range of abusive behaviours are now recognised as a criminal offence in Scotland. As well as physical and sexual abuse, domestic abuse can include coercive controlling behaviours such as; isolating you from family and friends, monitoring and regulating your activities, controlling your money and/or activities, frightening, humiliating or degrading you, among other things.

The new law also recognises the impact that domestic abuse has on children (any person under 18 years of age). If a child was adversely affected when the abuse happened —even if they were not the focus of the abuse, then the offence is automatically considered worse and it can result in a longer sentence.

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GENERAL GUIDANCE

When you report a gender based crime, the police then have responsibilities and certain things they then have to do which relate to your complaint. Broadly speaking this can include:

- Taking a statement from you and any other witnesses
- Examining any crime scenes
- If the crime relates to sexual violence, asking you to have a forensic medical examination
- Taking items of yours for evidence or for further examination. If you refuse this, they might be able to obtain a warrant to seize them without your permission
- Asking you to sign a permission form to access your personal files, for example medical or social work records. If you refuse this, they might consult the Procurator Fiscal and ask for a warrant
- Linking you with support services and ensuring your wellbeing
- Identifying and managing risk to others
- Providing you with a Victim Care Card that has details of the investigating officer, the incident reference number and the crime reported. If the crime is rape, the point of contact will be a specially trained Sexual Offences Liaison Officer (SOLO).

This is a process, and the time taken to complete these activities will depend on the individual circumstances, but the investigating officer has a responsibility to update you with their progress. Within this process it is important that you know that **you have rights**.

The rights you have can sometimes depend on what your crime relates to, but if it relates to sexual crime, domestic abuse, stalking or human trafficking then you can:

- Request a male or a female officer. This should always be respected unless there are exceptional circumstances
- If you are asked to have a forensic medical examination, you may also specify the gender of the doctor that you want. There is a shortage of specially trained female doctors, so this might not be possible
- Give your statement somewhere you feel comfortable
- Have someone with you for support when you give your statement, as long as they are not a potential witness
- Ask the Police if they can return certain items that are taken for evidence as a priority to minimise the inconvenience caused, for example your mobile phone
- Ask the police to explain the necessity of accessing any of your personal records, and make sure that the form is specific and only requesting access to files that are relevant to the investigation, not the whole file. The COPFS leaflet 'Sensitive and Personal Records; Information for Victims of Sexual Crimes' gives full guidelines.

The Police have a responsibility to explain what is happening to you in language that you

understand, and to keep you up to date with any investigation they are undertaking after you report. Sometimes, as part of an ongoing investigation the police might contact you without you having reported anything to them. This is particularly relevant with rape, sexual crime and domestic abuse investigators. It is entirely up to you whether you choose to provide a statement; if you do, you may be called to court to give evidence.

IF I REPORT DOMESTIC ABUSE TO THE POLICE WHAT SHOULD I EXPECT?

Domestic abuse is a priority for Police Scotland and a significant amount of training and guidance has been invested in all police staff in an effort to enhance the service. The priority for officers in attendance at a domestic incident is the safety and wellbeing of the victim-survivor and any children within that home. It is recognised that victims often find it difficult to report domestic abuse and police are especially aware that there may be threats or undue pressure applied to victim-survivors and that can impact on how they respond.

When they attend, the police will ask for an initial verbal account of what you're reporting. If a crime has occurred and the suspect is present or nearby, they may be detained and removed to a police station while initial investigations continue. You will then be asked to provide a full statement. The police will also ask you to provide information to allow them to complete a questionnaire. You are entitled to refuse to answer these questions however the purpose of the questionnaire is solely to assist police in accurately assessing your risk, and ensuring you are provided with the right level of support.

When providing your full statement, you can request the preferred gender of your interviewing officer and have someone with you to support you, provided that person is not likely to be a witness in any future criminal investigation. If you have a specific request about where you want the statement taken then ask the police and, where possible they should honour the request.

The police investigation will be thorough and, depending on the circumstances, may include for example, interviewing neighbours, family members or even work colleagues, if appropriate. This should be done with the utmost sensitivity with your safety the paramount concern throughout.

Items of evidential value may be seized by the police and, if you have sustained injuries, you may be asked to undergo a medical examination by a specially trained doctor. Please see the introductory section for guidance on both these issues.

There are a number of specialist Independent Domestic Abuse Advocacy services across Scotland who can provide support and advice. They are also specially trained to carry out risk assessments and assist with safety planning. The police will, with your agreement, refer you to these agencies. They have vast experience and are there to help and support you.

It may be that you have experienced sexual abuse within your relationship. Please see the separate leaflet that relates to rape and sexual crime.

THE POLICE WANT TO SPEAK TO MY CHILDREN

The care and wellbeing of children is a priority for police and agencies such as Social Work and Procurator Fiscal. Therefore, if children are within a household where abuse is present, this may also mean that child protection procedures are considered by police and agencies. This would involve relevant information being shared with social services. Whether this occurs will depend on the seriousness of the incident and the apparent impact on the child or children.

If the incident is witnessed by your child/children the police may request to interview them. This is only done in exceptional circumstances and a number of issues are considered before making such a request, for example the age of the child, the seriousness of the incident or the risk of further harm to you or the child/children.

The Victim and Witnesses (Scotland) Act 2014 requires that such an interview must be done in accordance with national guidelines in relation to interviewing children. This Act specifies a child as being below the age of 18. As a parent, you have the right to refuse permission for your child to be interviewed. Other than in exceptional circumstances (such as where there is significant risk to the child or other individuals) this will be accepted. The most important consideration will always be the safety and wellbeing of a child and any decisions will be made with that at the forefront. Similarly, your child can decline a request from the police to be interviewed, but if he/she is comfortable being interviewed then they can be supported during the process. The supporting adult cannot be a witness in the investigation.

Child witnesses (under 18) are regarded as 'vulnerable witnesses' therefore special measures such as screens or CCTV evidence will be used if they are required to give evidence at court.

I HAVE REPORTED TO THE POLICE BUT NOW I'M NOT SURE IF I WANT TO CONTINUE

In general terms, in the interests of your safety and wellbeing, and to ensure that you are not being influenced or pressurised, if you report domestic abuse to the police there will be a presumption to continue with a thorough investigation to a conclusion. If you do make an initial report and then decide against it for whatever reason, the police will listen to your request and reasons; however this may not result in the end of their investigation. This is particularly relevant if there has been violence or where they assess that there is a risk to the safety of you or others.

WHAT HAPPENS AFTER THE POLICE INVESTIGATION?

The investigation will be carried out by either uniform or detective officers. Details of the circumstances will also be passed to dedicated officers from the Domestic Abuse Unit who will provide a follow up contact with you. Together with the investigating officers, they will provide you with safety advice, details of support services and discuss any specific concerns or issues you may have.

If there is enough evidence to charge the offender, he/she will be arrested and they will either be

kept in police custody until they appear in court on the next lawful day, or they will be released from police custody but be required to attend court on a specified day. The police will advise you which one applies in your case.

If the offender is released from custody awaiting a future court appearance, the police should impose instructions and restrictions on them until their court appearance, known as police or bail conditions. This will depend on the circumstances but will typically include a ban on the offender coming within a specified distance from you or from making, or attempting to make contact with you. If the accused fails to follow these instructions then they can be arrested.

Following this initial appearance at court the offender can be detained in custody until a trial, released from custody on bail or released from custody with no further action. The decision around this is based on issues including the risk presented by the offender, their previous criminal history and how strong the evidence is against them. Therefore, in general terms the strongest cases in which the offender poses greatest risk and/or have a considerable history of offending are more likely to result in the offender being detained in custody.

You should be informed as soon as possible of the decision of the court and of any bail conditions by either the police or VIA (Victim Information and Advice). If the offender has been released on bail the police may make contact with you. This is simply to ensure that you're safe and well, and to provide you with additional information about keeping safe.

Similar to police bail, where the offender has been released from court on bail, as standard they will be prohibited from any act to influence or attempt to influence witnesses in the case (including the victim-survivor) and must not reoffend. Depending on the circumstances they may also impose special bail conditions such as preventing them from contacting, or attempting to contact you or other witnesses; or from coming within a stated distance of you, your children or other witnesses.

If the offender breaches the conditions of bail, then this is a further offence. Where there is sufficient evidence in law, he/she will be arrested, charged and kept in custody until a further court appearance. Where there is not enough evidence however to charge, the circumstances may be reported to the Procurator Fiscal who in turn can apply to the courts to review the conditions of bail and amend them if appropriate. You should contact police if there is any breach of bail conditions, even if there are no witnesses.

If, following an investigation, there is not enough evidence to charge the suspect then you will be advised of this and the reasons.

If it is considered that there is sufficient evidence for the case to proceed through the criminal court process, there will be various court hearings, where the offender will require to appear. This process can take some time and you can seek updates from the Victim Information and Advice Service or the Crown Office and Procurator Fiscal Service.

At the conclusion of the criminal case, if the offender is found guilty under the Domestic Abuse (Scotland) Act 2018, depending on how serious the offences are, the offender can get a sentence of between 12 months and 14 years in prison and/or a fine. Under the Domestic Abuse (Scotland) Act 2018, the court must consider whether to issue a non-harassment order (that is, a court order preventing the perpetrator from doing certain things) to protect the victim/survivor.

If the court decides not to issue this protection, they must explain why they think this order is not necessary.

WHAT OTHER OPTIONS DO I HAVE TO KEEP MYSELF SAFE?

There may be other, alternative courses of action open to you that will help provide you with security and reassurance, and the police should discuss these with you. This includes various legal measures, known as protective orders, including Exclusion Orders, Non-Harassment orders and Domestic Abuse Interdicts.

A Non-Harassment order is an order that the court can make to help protect you from someone who is harassing you. This order can prevent a person from approaching or contacting you, threatening or abusing you, using physical violence against you or damaging your property.

Applications are made to the court by a solicitor on your behalf. If an order is granted and the person to who the order applies breaches it, then they will be committing a criminal offence for which they can be arrested.

The Scottish Women's Rights Centre [Stopping Harassment Guide](#) contains a clear and useful guide to Non-Harassment orders. Similarly, the Scottish Women's Rights Centre can provide further information in relation to the various protective orders that are available.

A COUNTER ALLEGATION HAS BEEN MADE AGAINST ME, WHAT DOES THIS MEAN?

It is not uncommon for counter allegations to be made during police investigations and when this happens the police have a duty to investigate them. However, guidelines on how to deal with counter allegations are contained within the Domestic Abuse Joint Protocol between Police Scotland and Crown Office and Procurator Fiscal Service.

In considering whether the counter allegation is malicious the police are instructed to take into account the previous history of domestic abuse (including non-reported abuse), the circumstances of the incident, if there are any injuries to either party and any previous criminal history of both parties, including bail conditions previously imposed. For example, the Protocol specifically highlights that injuries to the offender that occurred while the victim-survivor was defending her/himself or her/his children should not normally result in the victim-survivor's arrest.

Similarly, it instructs that, where a counter allegation is deemed to be malicious, ordinarily there should be no requirement to detain or arrest the victim-survivor. If you are either detained or arrested by police you will be provided with the opportunity to consult with a solicitor and it is strongly advised that you accept this facility. You can nominate a solicitor of your choice or alternatively the police will contact a duty solicitor on your behalf. You have the right to have a private consultation with a solicitor before you are interviewed by the police (this may be by telephone). This can only be denied in exceptional circumstances and the police have to justify

their decision for refusal. Refusing access to a solicitor is not typical. You are entitled to solicitor access at all times during this process so, if you initially don't want to consult a solicitor you can change your mind at any time during the detention and interview process.

I AM NOT SATISFIED WITH THE POLICE ACTION, WHAT SHOULD I DO?

If there are aspects of the police investigation that you are not satisfied with, or are unsure of, it may be useful in the first instance to ask for an explanation or for more details from the police. If for whatever reason that is not an option or, having done that you are still unsatisfied, you can make a formal complaint against the police.

Your support worker can help you with this or you can make a complaint directly to [Police Scotland](#).

If, following the conclusion of your complaint to the police, you are still not satisfied, you can refer your complaint to the Police Investigation and Review Commissioner (PIRC). PIRC are independent of the police and will review the police's handling of your complaint.

CRIMINAL INJURIES COMPENSATION AUTHORITY (CICA)

Victim-survivors of crimes of violence, sexual abuse or physical abuse can apply to the Criminal Injuries Compensation Authority for compensation where they have been physically or mentally injured as a result of the crime. If the victim-survivor was an adult (aged 18 and over) at the time, the claim must be made within 2 years of the incident (unless in exceptional circumstances).

The two-year rule does not apply where the victim-survivor was below the age of 18. All crimes must be reported to the police before a compensation claim will be considered.

Your support worker can help you with any application, or full details of the application process can be found on the [CICA website](#).

GLOSSARY OF TERMS

| | |
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| CICA | Criminal Injuries Compensation Authority |
| COPFS | Crown Office and Procurator Fiscal Service |
| DAU | Domestic Abuse Unit |
| PIRC | Police Investigation and Review Commissioner |
| SIO | Senior Investigating Officer |
| SOLO | Sexual Offences Liaison Officer |
| VCC | Victim Contact Card |
| VIA | Victim Information and Advice |

ABOUT US

The Scottish Women's Rights Centre (SWRC) is a collaborative project that provides free legal information, advice, advocacy and representation to women affected by violence and abuse.

Who is involved?

We are a collaboration between Rape Crisis Scotland, JustRight Scotland and the University of Strathclyde Law Clinic.

Need more information?

To learn more about us, visit our website and follow us on our social media channels.

www.scottishwomensrightscentre.org.uk

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SUPPORT AGENCIES AND USEFUL CONTACTS

Scottish Women's Rights Centre

Helpline: 08088 010 789 (opening times available on website)

Website: www.scottishwomensrightscentre.org.uk/helpline

Rape Crisis Scotland

Helpline: 08088 01 03 02 (everyday 6pm-midnight)

Website: www.rapecrisisscotland.org.uk

Scottish Women's Aid

Website: www.womensaid.scot

Local specialist groups: www.womensaid.scot/find-nearest-swa-group

Scotland's Domestic Abuse and Forced Marriage Helpline

Helpline: 0800 027 1234 (24 hour)

Website: www.sdafmh.org.uk

Email: helpline@sdafmh.org.uk

Police Scotland

Telephone: 101 (non-emergency)

999 (emergency only)

Website: www.scotland.police.uk

ASSIST – for victims in West and Central Scotland

Phone: 0141 276 7710

Website: www.assistscotland.org.uk

National Stalking Helpline

Helpline: 0808 802 0300 (daily 9.30am-4pm except Wednesday 1pm-4pm)

Website: www.suzylamplugh.org

Shelter Scotland

Helpline: 0808 800 4444 (9am to 5pm, Monday to Friday)

Website: www.scotland.shelter.org.uk

For information on local services please visit: www.scottishwomensrightscentre.org.uk.