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## **Working Ethically and Legally with Domestic Abuse**

### **COSCA's Guideline**

#### **Introduction**

Members of COSCA are encouraged to follow this guideline on domestic abuse. This will help to ensure consistency and equity of implementation of the domestic abuse legislation across members of COSCA. This guideline is not intended to be a definitive interpretation of the Domestic Abuse (Scotland) Act 2018.

#### **The Domestic Abuse (Scotland) Act 2018**

The Domestic Abuse (Scotland) Act 2018 creates an offence with respect to a person engaging in a course of behaviour which is abusive towards that person's partner or ex-partner.

The new law covers not only spouses, civil partners and cohabitants but also people in intimate personal relationships who do not live together.

As well as physical abuse, the new law covers other forms of psychological abuse and coercive and controlling behaviour that cannot be easily prosecuted under the existing law.

#### **Understanding the Domestic Abuse Act Scotland**

Members of COSCA need to understand the new offence in Scotland of Domestic Abuse and what it covers – see Appendix 1: The Domestic Abuse (Scotland) Act 2018.

Sometimes referred to as 'intimate terrorism', members need to know that:

- domestic abuse is repeated (more than once) abusive behaviour by a partner or former partner (not family as in England)
- the reasonable person test is used in Scotland to determine whether there is abusive behaviour and that the actual impact of the behaviour is not relevant
- the behaviour can be intentional **or** reckless, but that it does not need to be both
- the explanatory notes in the Act regarding the behaviours covered by the ACT are very helpful in identifying the wide range of behaviours that are considered abusive under the ACT.
- specific training in Domestic Abuse is required if counsellors intend to work with perpetrators of domestic abuse.

### **Domestic Abuse against men and women and across cultures**

Statistically, more women are domestically abused than men, but men can be victims too with about 20-30% of domestic abuse being female to male. Same sex domestic abuse also takes place. Men may face the additional stigma of not wanting to appear as a victim or even worrying that no one will believe them. Domestic abuse can also affect anyone regardless of age, gender or social background.

Domestic abuse can change in how it is manifested across different cultures in Scotland. Counsellors need to be aware of the different types of domestic abuse across cultures.

### **Understanding Domestic Abuse: Attachment Theory**

Attachment theory can help members to understand why domestic abuse takes place. Humans are drawn to have relationships with significant others and to maintain contact with them. Many people are traumatised by isolation from others. So, a secure attachment offers a safe haven and a secure base. People can develop different styles of attachment as they grow from being children, ranging from secure to insecure.

Abusive relationships are highly stable with some lasting as long as 60 years. People can get locked into abusive relationships as adults due to their idiosyncratic attachment tendencies and the specific patterns of the relationship that they are in. A woman or man leaving an abusive relationship increases the risk of harm and so, often, avoids doing so.

## Barriers to leaving an abusive relationship:

- **Shame or denial:** Perpetrators of abuse may be well liked in the community and can make their victims feel like they caused the abuse. This can lead to feelings of shame and embarrassment developing in the victim. Perpetrators may even minimise or deny that the abuse is happening (this is often referred to as 'gaslighting'), making the victim feel like they are making a fuss over nothing.
- **Fear:** Leaving an abusive relationship can be dangerous. The victim might be worried that their abuser will become more violent towards them and even that their life is at risk
- **Being alone:** Abusers often isolate their victims, cutting off contact between them and friends and family. Victims might worry that they have no one to turn to when they decide to leave or that they have become too reliant on their abuser.
- **Low confidence:** Abusers are experts at chipping away self-worth. This can lead to their victims feeling incredibly low in confidence and unable to make decisions. They may be suffering from trauma too, clouding their judgement and ability to cope.
- **Practical reasons:** If an abuser controls every aspect of their victim's life, leaving can be practically very hard. Victims may not have financial independence. They may have children that they are worried about or, if they have insecure immigration status, they may fear that they will be deported if they leave the abusive relationship.
- **Lack of support:** A running thread through all of these barriers is a lack of support. Victims may feel as though they have no one who can help them, or perhaps they have tried to get support before but had a bad experience.

## Counselling and Domestic Abuse

Counsellors can work with individuals and couples who are involved in domestic abuse without the counsellor knowing it, sometimes for many counselling sessions. Walking into a therapy room not knowing the background of the clients can be very risky.

To work safely, ethically and legally with clients, counsellors need to carry out risk assessments for themselves and their clients before the counselling sessions begin and use them often throughout the counselling. When counsellors are working with children and vulnerable adults who may have witnessed or have been part of the domestic abuse, they need to take account of their needs and include these in any safety plan that is drawn up.

A range of different and relevant risk assessment tools should be used to identify signs of domestic abuse. Counsellors should do risk assessment and safety planning training to ensure that the above tools are used properly. It may take a long period of assessment and working to engage before the attachment issues are touched on and worked with. During this period of assessment, counsellors need to ensure the safety of themselves and those being assessed before any therapeutic work starts.

The above risk assessment tools must be able to identify behaviours that are domestic abuse versus situational couple violence. Counsellors themselves should be competent to differentiate between conflict between couples where couples just don't get on versus those who domestically abuse.

Counsellors who are working with couples also need to be competent to do so and have undergone a substantial training in couple work. Counsellors need to always work within their competence and also have the psychological capacity to work with couples in a domestic abuse situation.

Counsellors working with domestic abuse should attend domestic abuse awareness training.

Courses in counselling and psychotherapy should include training on working with domestic abuse or assessment of domestic abuse at the very least in their course content.

There is a high possibility of escalation of domestic abuse in the counselling room or just after, where the abused person can be re-victimised. It is also possible that when counsellors work with the relationship between the 2 parties and relational cycle, that the abused person is blamed, reinforcing the abuser's refusal to accept responsibility. Counsellors should, therefore, use non-blaming language when working with parties involved in domestic abuse. They should also be aware of the potential of their collusion with the perpetrator of the domestic abuse and of blaming the victim for the abuse. The responsibility for domestic abuse lies with the perpetrator and not the victim.

As the counsellor's client records can be used in court investigations, counsellors should not record in their client records any of their own interpretations of what was disclosed by the clients. They should use the client's own words and not make value statements. Counsellors are reminded that their client records can be accessible to both parties and could be used to perpetuate the abuse. When writing client notes, suspected or disclosure of domestic abuse should be recorded by the counsellor using the client's own words. The counsellor's assessment, any safety concerns and details of information given to the client regarding support and services should also be included in the client notes.

In the course of their work with clients, counsellors have a right to say 'no' to working with individuals and couples involved in domestic abuse.

## **Counsellor's role in ensuring parties' safety when domestic abuse is disclosed or becomes apparent:**

When domestic abuse becomes evident or is suspected, the counsellors' role is to support the clients and to have informed, appropriate conversations on accessing support, the options available, and managing the expectations around what people think may happen if they report domestic abuse.

It is important not to abandon a couple once the risk assessment identifies domestic abuse as this can increase the possibility of danger to the victim. Instead, the priority should be to hold onto them as long as you can. Counsellors should also consider referring on to specialists in the area of domestic abuse if there are suitable services available and accessible. However, counsellors could also keep managing the risk themselves if no other suitable services are there.

## **Counselling for Perpetrators of Domestic Abuse**

Insight and empathy is needed in the perpetrator of domestic abuse for a counsellor to work with him/her and for the counselling to be effective. If the perpetrator manifests moderate to high levels of narcissism, then this can be an indication that counselling cannot work for them.

When disclosures are made by perpetrators, it is important that counsellors do not engage in collusive interventions or discussions with perpetrators who disclose DA, or when it becomes evident to the counsellor that the client is, or has been abusive to, a current and/or former partner or partners.

The Caledonian System is now being rolled out in Glasgow – see **Appendix 2: Useful Contacts**. Convicted domestic abusers are enrolled on this programme which aims to address their violent behaviour and improve the lives of the women and children affected. The Caledonian System works with men convicted of domestic abuse offences to help them: recognise their abuse; take responsibility for themselves and their relationship with their ex/partners and children; and reduce their reoffending. It is not an alternative to prosecution and if at any point the programme is breached by the perpetrator the case is returned to court for consideration of whether a separate sentence should be imposed.

## **Counselling for victims:**

Counsellors should support the person abused and also signpost them to experts in the field. It is recommended that counsellors inform women who are victims of domestic abuse that they can access support from specialist services such as the local Women's Aid organisations and that they themselves make links with their local Women's aid group: <https://womensaid.scot/find-nearest-wa-group/> . The above women can also contact Scotland's Domestic Abuse and Forced Marriage Helpline: 0800 027 1234 or <http://sdafmh.org.uk/> , or other organisations. It should

be borne in mind that domestic abuse occurs significantly more often for disabled women than for non-disabled women.

Some women feel anxious about having any psychological support or treatment because their abusive partner might use this against them, as evidence that they were 'mad' or an unfit parent. Women are also fearful of any kind of mental health assessment in case it ends up on their medical notes and results in them losing their children. Even when counsellors are not specialists in domestic violence and abuse, some women who have left abusive relationships have reported that they had breakthrough moments working with them. Women who have had specialist domestic abuse counselling have reported that they found it really good, as the counsellors had an understanding of the impact of abuse such as trauma, flashbacks and nightmares.

Men who are victims of domestic abuse can also contact the following expert support services: Fearless Service <https://fearless.scot/> and Scotland's Domestic Abuse and Forced Marriage Helpline: 0800 027 1234 or <http://sdafmh.org.uk>

## **Confidentiality**

Clients must be made aware that the information provided by the client will not be disclosed to another agency or third without the client's consent unless there is risk to life to an identified child, or to an "adult at risk of harm", as defined in the Adult Support and Protection (Scotland) Act 2007. T See NHS Scotland Guidance.

The statement on confidentiality in the COSCA Statement of Ethics and Code of Practice Confidentiality should be applied in the context of domestic abuse. It reads as follows: 'Exceptionally, a member may disclose information obtained during the working relationship with their client in the interests of the safety of the client and/or others. In advance of this disclosure, whenever practicable, the client's permission will be sought and the client-work supervisor consulted.'

There is no legal obligation contained within the Domestic Abuse Act obliging the reporting of domestic abuse. So, counsellors are not legally obliged to pass on information about domestic abuse. When a client does not want to press charges against a domestic abuser, the counsellor needs to accept that he/she has a legal right not to do so.

Where COSCA members' services have been commissioned (e.g. by courts, social work, criminal justice, medical professionals, as a condition of exclusion and/or other protective orders, probation etc.), members may have contractual obligations to report threats of domestic abuse, or disclosures about perpetration of domestic abuse, to parties responsible for commissioning the COSCA members' services.

## APPENDIX 1: The Domestic Abuse (Scotland) Act 2018

### Introduction

The Domestic Abuse (Scotland) Act 2018 became effective in Scotland on 1<sup>st</sup> April 2019.

The full text of the legislation can be viewed using the following link:

<http://www.legislation.gov.uk/asp/2018/5/contents/enacted>

The Explanatory Notes can be viewed using the following link:

<http://www.legislation.gov.uk/asp/2018/5/notes/contents>

Under this Act a person commits an offence if they:

- engage in a course of behaviour (“*course*” involves behaviour on at least 2 occasions) which is abusive (see definition in s.2) of their partner or ex-partner; and that both of the following further conditions are met:
  - that a **reasonable person** would **consider** the course of behaviour to be likely to cause the victim to suffer physical or psychological harm; and
  - that either:
    - the person **intended** by the course of behaviour to cause the victim to suffer physical or psychological harm, **or**
    - **is reckless** as to whether the course of behaviour causes the victim to suffer physical or psychological harm.

References to psychological harm in the Act include fear, alarm and distress.

### Abusive behaviour

For the offence to be triggered, the behaviour must be abusive in terms of the descriptions provided in Section 2 which provides a list of effects on the victim that

are relevant in order to indicate behaviour that is abusive in connection with the offence. *(Note that these descriptions are non- exhaustive.)*

These behaviours include:

- Behaviour directed at a partner or ex-partner which is violent (including sexual violence), threatening or intimidating, and
- Behaviour directed at a partner or ex-partner, at a child (under 18) of a partner or ex-partner, or at another person that either has as its purpose (or among its purposes) one or more of the relevant effects, or would be considered by a reasonable person to be likely to have one or more of the relevant effects, namely:

- o Making the person dependent on, or subordinate to the abuser
- o Isolating them from friends, relatives or other sources of support
- o Controlling, regulating or monitoring their day-to-day activities
- o Depriving them or, or restricting their freedom of action
- o Frightening, humiliating, degrading or punishing them

### **Aggravation in relation to a child – Section 5 of the Act**

In addition to the main offence, the Act introduces an aggravation which can be added to a charge where an offence involves a child.

The offence is aggravated if at any time in the commission of the offence under section 1:

- the accused directs behaviour at a child, or
- the accused makes use of a child in directing behaviour at the victim, or
- if a child sees or hears, or is present during, an incident of behaviour that the accused directs at the victim as part of the course of behaviour, or
- if a reasonable person would consider the course of behaviour, or an incident of behaviour that forms part of the course of behaviour, to be likely to adversely affect a child usually residing with either the accused or the victim.

### **Some important additional points to note about the ACT are that:**

- » the offence is not retrospective. The course of conduct offence and criminalisation of the controlling behaviours can only be used on, and will only apply to, abusive behaviour that takes place after the offence comes into force on 1 April 2019. However, the Crown Office and Procurator Fiscal Service (COPFS) will still be able to prosecute existing offences which occurred prior to commencement where the abuse occurred on one occasion, in line with existing procedure

- » there is no legal obligation contained within the Act obliging reporting of domestic abuse.

### **Sources of Evidence for abuse prosecutions:**

As with current domestic abuse prosecutions, evidence to prove the new offence will come from a wide range of sources including:

- Family members, friends of the victim or accused; neighbours; work colleagues
- CCTV/Telephone/social media evidence
- Forensic evidence occasionally (usually more so for violence/sexual violence)
- Specialist support and advocacy organisations such as Women's Aid
- Professionals in social work, health- potential for health records to be used as evidence and health professionals/counsellors to be asked to give statement-importance of accurate note taking!

## **APPENDIX 2: Useful Contacts**

**Scottish Women's Aid:** 2nd Floor, 132 Rose Street, Edinburgh, Scotland EH2 3JD  
Tel: 0131 226 6606. <https://womensaid.scot/>

### **Working with Domestic Abuse perpetrators in a counselling setting:**

- Caledonian System: <https://www.gov.scot/policies/violence-against-women-and-girls/strengthening-the-law/>
- RESPECT website – <http://respect.uk.net/>

### **Support for families experiencing domestic abuse (England):**

- The DASH Charity: <https://thedashcharity.org.uk/>

### **Support for men**

- Abused Men in Scotland (AMIS): <https://www.abusedmeninscotland.org>
- Fearless Service: <https://fearless.scot/>
- Scotland's Domestic Abuse and Forced Marriage Helpline: 0800 027 1234 <http://sdafmh.org.uk>

### **Support for LGBTI+ community**

- <https://fearless.scot/>
- <https://lgbtdomesticabuse.org.uk/>

### **Black and Minority Ethnic Communities**

- Shakti Women's Aid: <https://shaktiedinburgh.co.uk>
- Saheliya: <http://www.saheliya.co.uk/>

### APPENDIX 3: REFERENCES

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