Response to: Consultation on proposed Pilot Practice Direction (PD) on Domestic Abuse Protection Orders (DAPOs)

About Rights of Women

Rights of Women is a legal rights organisation which specialises in supporting women who are experiencing – or at risk of experiencing – all forms of Violence Against Women and Girls (VAWG), including domestic and sexual violence. In our approach, we recognise the additional barriers posed by the intersection of gender-based abuse, racism, structural inequality and other forms of discrimination and oppression that impact on women's vulnerability, exclusion and marginalisation.

By offering a range of services – including specialist telephone legal advice lines, legal information and training for professionals – we aim to increase women's understanding of their legal rights and improve their access to justice. We empower women to make informed choices where they come into contact with the criminal, family, employment or immigration and asylum legal systems so they can live free from violence.

Rights of Women is a registered charity 1147913 and Company Limited by Guarantee.

Rights of Women's consultation response

Before answering the specific questions asked in the consultation we would point out that as a women's legal organisation we will confine our responses to law and legal policy issues within our skills and experience.

Q1: When considering the draft Pilot Practice Direction in its entirety

a. **Does the Pilot PD provide sufficient detail and clarity?**
b. **Are there any procedural gaps or specific areas that would benefit from further expansion? Please provide specific information on these areas; and**
c. **Are there any difficulties in the interpretation of the proposed Pilot PD? If so, please set these out.**

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General comments

It is rare for family procedure rules and practice directions to be sufficiently clear for litigants in person (LiPs), and this is no exception. The Harm Panel Report[1], published by the Ministry of justice in 2020 recommends that for the Family Court to better protect adult and child victims of domestic abuse, private children law proceedings should be designed based on the following principles:

- A culture of safety and protection from harm
- An approach which is investigative and problem solving
- Resources which are sufficient and used more productively
- A more coordinated approach between different parts of the system
- Procedures need to be designed with the needs of children, litigants in person and domestic abuse and other serious safeguarding concerns as central considerations

We see no reason why these principles should not be applied to applications for protective orders such as DAPOs. The final of these is particularly pertinent when drafting procedure rules. The FPRC should be mindful that LiPs are expected to comply with the rules as much as represented parties and, therefore, they must be written and designed with LiPs in mind.

The current drafting of these rules do not do this. For example, there is far too much cross-referencing of paragraphs within the PD, and requires constant scrolling back and forth. Cross-referencing can and must be reduced to avoid the PD resembling a labyrinth that many lawyers will struggle to navigate, let alone LiPs.

Voice of the survivor

One of our recurring criticisms of the proposals in relation to DAPOs has been the lack of focus given to the voice of the survivor in the development and design of these orders. We have raised this concern in numerous consultation responses. We highlight our joint briefing with Respect here[2].

It is crucial that that the voice of the survivor is centred and procedural safeguards are put in place to ensure that survivors are empowered through the process. There is a particular risk with third party applications.

We have highlighted ways to elevate the autonomy and the voice of survivors throughout our response but raise here one significant proposal which we would strongly urge the FPRC to reconsider; that the person to be protected will not automatically be a party to proceedings where a third party makes the application. We consider this to be a grave oversight. The message this sends to survivors about the centrally of their own views about their own lives is deeply disempowering and paternalistic. The third party applicant and the respondent will both be given an opportunity to have their views heard and take part in proceedings in ways which are only possible with party status but the person to be protected is denied this automatic right. We urge the Committee and relevant minsters to rectify this problem. Failure to do so will leave survivors in a similar position to that which they find themselves in within the criminal justice system, where they are not provided with party status and find that their interests are often overlooked.

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[1] Hunter, Burton, Trinder (2020) Assessing risk of harm to children and parents in private children proceedings

[2] https://rightsofwomen.org.uk/wp-content/uploads/2019/06/Briefing-on-Domestic-Abuse-Protection-Orders-14-June-2019.pdf

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Timescales
We are increasingly hearing from survivors and frontline domestic abuse professionals of delays in progressing applications for non-molestation orders. One survivor who called our advice line recently told us that she submitted an urgent without notice application by email and 4 days later the hearing still has not happened. We have been told of courts that have automatic reply emails that state urgent applications will be responded to within 21 days. Survivors and professionals also report delays of days and weeks in drawing up and sealing court orders ready for service. The time it takes for court bailiffs to serve orders has also been reported to us as an issue for concern. This is alarming and must be addressed in the PD. Delays place survivors at risk of further abuse. We recommend provisions are added that require urgent applications to be heard within 24 hours. DAPOs must be sealed and be ready for service within 4 hours of the order being made, or within 20 hours if the order is made after 2pm. Where applications are to be served by court bailiff, the first attempt at personal service must take place within 48 hours of the order being made, preferably sooner.

We suggest that HMCTS collate and report data on the time it takes to draw up orders and serve orders. This will help HMCTS prioritise resources, help applicants consider their service options and help manage expectations of applicants and persons to be protected so they can plan their safety accordingly.

Notification requirements
Section 41 of the Domestic Abuse Act 2021 (the 2021 Act) imposes mandatory notification requirements on P. Within 3 days of a DAPO being made, P must notify the police of their name and home address. This requirement will apply to all cases where DAPOs are made, except where P is already subject to notification requirements.

Rights of Women has concerns about the impact the notification requirements will have on survivors who do not wish to involve the police. There are many reasons why a survivor might choose not to report abuse to the police and seek protective orders from the civil courts. The mandatory notification requirement means that the police will always have to be notified of the existence of the DAPO. We are concerned that this will dissuade survivors from applying for DAPOs. Knowing that the perpetrator will have to report to the police due to action the survivor has taken may also dissuade survivors from applying. This is likely to exacerbate existing racial inequalities and disadvantage Black and minoritised survivors, who have less trust in the CJS due to the history of disproportionate policing and discrimination their communities have continually faced. This point has been well evidenced on numerous occasions including within various iterations of the Crime Survey of England and Wales and notably within the Lammy Review [3] which recommends that statutory bodies must recognise and take responsibility for this damaged relationship and undertake carefully considered and transparent steps to try to build community confidence. The proposal for mandatory notification undermines the principles of these recommendations and is likely to be seen and interpreted as a continuing refusal to take them onboard.

[3] The Lammy Review. *An independent review into the treatment of, and outcomes for, Black, Asian and Minority Ethnic individuals in the Criminal Justice System.* Available at: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/643001/lammy-review-final-report.pdf

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The Baroness Casey review found that the metropolitan police is institutionally racist, misogynistic and homophobic and that "*time and time again, those complaining are not believed or supported*"[4]. The experiences we hear on our family and criminal law advice lines reflect a similar story across the country. Unsurprisingly, trust in the police is low. Laws which force women to interact with and be known to the police against their will are regressive and some women will view them as dangerous and choose to remain at risk of abuse rather than apply for protective orders.

In addition to the above, we have concerns about what additional safety the notification requirements provide. We have raised the importance of carefully considering how, in real operational terms, the notification requirements provide additional safety and we remain unclear on what benefit these provisions will provide to survivors.

For many survivors, the notification requirements are not providing any additional safety but are limiting their choices. The PD should allow for judges to disapply the notification requirements in circumstances where the survivor states that she does not want the provisions to apply or where the judge considers it just to do so. If amendments to the 2021 Act are required to enable this to happen then the FPRC should recommend those amendments are made as soon as possible.

Q2: Paragraph 3 – Application for a DAPO on notice

This paragraph covers the application procedure for both victim applications and applications by third parties, who may be either individuals (such as lay friends and family) or representatives from professional organisations. We feel that making an application on a bespoke form will allow for all the necessary information the court needs to be captured, while enabling the facts to be set out more freely in the supporting witness statement. We have also made it clear that certain details should only be provided if known, in order not to deter applications from victims where such information may not be known.

- **a. Do you agree with our suggested approach that applications ought to be on an application form supported by a witness statement?**
- **b. Do you consider that the additional information required under paragraph 3.4 of the PD is appropriate and clear enough?**

It is important that these forms and processes are designed with litigants in person in mind, and that they are consulted upon to ensure they meet the needs of litigants. The application form, a pro-forma for completion of the statement and Form C8 should be available in one place with clear and easy to understand guidance. The CourtNav service being delivered by RCJ Advice is a good example of an application process designed around litigants in person.

The information required under paragraph 3.4 should be strengthened in relation to "the opinion of the person to be protected about the making of an order, if that person is not the applicant". The additions should ensure the voice of the survivor is central to the application

[4] https://www.met.police.uk/police-forces/metropolitan-police/areas/about-us/about-the-met/bcr/baroness-casey-review/

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for their protection. Even well-meaning professionals around the survivor may take steps that would actually place her at greater risk through a failure to properly consult her.

We suggest the requirements include the following:

- A summary of how the views of the person to be protected were obtained and when
- Confirm whether the person to be protected is aware of the application and if not, why not
- “the opinion of the person to be protected” is vague. The applicant should be required to set out the opinion of the person to be protected on the orders sought generally, specifically in relation to the conditions to be included in the order, and any other views that might be relevant to the application.
- If the order is sought contrary to the views of the person to be protected, the applicant must set out why they continue to pursue the application and their assessment of the risk of pursuing an application contrary to the wishes of the applicant

Paragraph 3.3 which requires organisations to provide the name and address of the person making the applications may also require further clarification and amending. It is anticipated that domestic abuse support services may be one of the types of organisations that apply for protected parties. Staff names and refuge addresses must be kept confidential. This is a requirement of employment in a refuge service. The rules could allow for the provision of a PO Box address or the address of the head office in circumstances where providing the address of the person submitting the application is not safe or appropriate. The name of the director or CEO of the refuge should be sufficient. For recent guidance in relation to this, see Re P (service on parent in a refuge) [2023] EWHC 471 (Fam). We are aware the FPRC will be consulting on rules flowing from this judgment and would ask the committee to try to apply the same principles when considering these rules.

Paragraph 3(c)(1) requires an application for a DAPO to set out the opinion of any relevant occupant about making the order, if known. Many women live with extended family who either enable or are perpetrators of abuse, and would be considered relevant occupants. The PD should make clear that it is not necessary to contact relevant occupants to ascertain their views but that if they are known they should be included, that relevant occupants should not be contacted without first consulting the person to be protected, that the safety of the person to be protected should be prioritised over seeking the views of relevant occupants and that the application must not be served on relevant occupants unless this is ordered by the court.

Q3: Paragraph 5 – Permission to apply for a DAPO

Under section 28(2)(c) of the DA Act, the Secretary of State has the power to specify in regulations third party organisations who can apply for a DAPO in the family court on the victim’s behalf. These powers will not be exercised for the DAPO pilot, however anybody can still ask for permission of the court to apply for a DAPO under section 28(2)(d), and this paragraph explains the intended procedure. The pilot will inform our views about the organisations which ought to be specified in regulations for the national roll-out.

a. Do you agree the procedure as set out is clear enough?

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b. **Do you agree with our suggested approach that applications for permission should be submitted on a bespoke form as opposed to using the FPR Part 18 procedure?**

Paragraph 5.5 requires the court to process the permission application '*as soon as practicable*'. This should be amended to: '*as soon as practicable and within 24 hours*'. We are hearing from survivors that courts are taking longer and longer to process applications despite them being urgent. A without notice permission application for a DAPO is likely to be made in cases where safety issues need resolving urgently, and this should be reflected in the PD.

Paragraph 5.2 could be strengthened by requiring applicants to explain why it is preferable for the applicant to apply or why the person to be protected is not in a position to apply herself, in line with our comments above about the importance of the voice of the survivor.

We agree a bespoke form would be better than using the FPR Part 18 procedure. The Part 18 procedure is not easy for lay applicants to understand. The bespoke form should come with clear, easy to understand guidance. The organisations that are likely to use the form and organisations that represent the interests of survivors should be consulted before the form is finalised.

Q4: Paragraph 6 – Application for a DAPO in existing proceedings

Where an application in existing proceedings is made in writing, at paragraph 6.3(a) we have provided that it should be made on an application form which will be a different form to the application form used for a standalone DAPO application. This is because we would like to allow for a simpler and shorter form to be used, taking into account how such applications may arise, balanced with the information the court needs to have available in order to reach a decision on whether a DAPO should be granted.

a. **Do you agree that a separate form should be used?**

Yes, we agree that a separate, simpler form should be used but repeat our earlier comments in relation to the importance of consultation on the forms.

In relation to paragraph 6.3(b) which relates to written applications, reference to "completed in accordance with paragraph 3" is unhelpful and confusing. Much of paragraph 3 is not applicable for a written application by the protected party within proceedings, and it would be too difficult of litigants in person to cross-reference and work out what is applicable. Reference to paragraph 3 should be deleted, and any completion requirements should be set out in paragraph 6 itself.

Similarly, in relation to paragraph 6.5, references to paragraphs 4 and 4.3 are confusing and it is not clear what they are asking the applicant to do. Paragraph 6.5(b)(ii) directs the applicant paragraph 4.3, but all paragraph 4.3 does is direct the applicant to paragraph 3 subject to 4.4. It would better to spell out the information the court is seeking in paragraph 6.5 even if this means there is repetition.

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Q5: Paragraph 7 – Parties

As a DAPO application can be made by a third party, and the victim can be under 18 (but must be 16 or over), this paragraph provides how the court can protect the victim's interests (and consider whether they need to be made a party to the proceedings and, if so, whether they need a litigation friend. No provision is made for appointment of a children's guardian, and it is therefore not anticipated that Cafcass will be involved in this capacity.

a. **Do you believe the interests of those victims are adequately protected by the intended procedure?**
b. **Do you believe that the provisions of FPR Part 16 and Practice Direction 16A relating to the appointment of a litigation friend sufficiently provide for such appointments, taking into account that a children's guardian will not be appointed specifically for these purposes?**

We do not believe paragraph 7 is sufficiently clear or promotes the interests of victims. Firstly, paragraph 7 completely overlooks an important issue that needs addressing: the party status of the person to be protected aged 18 and over. It is not clear whether the person to be protected aged 18 and over who is not the applicant will automatically be a party to proceedings. Other sections of the rules suggest this is not the intention, which we believe to be the wrong approach. We have set out in our general comments at Question 1 the importance of the person to be protected being a party.

In relation to a child aged 16 or 17, at present when a child applies for a non-molestation order, the application is dealt with in the High Court. We believe this should be the same for DAPOs as they will involve similar issues and complexity. The number of applications that fall into this category will be relatively small, as at present for non-molestation orders. In this situation, we see no reason why the 16 or 17 year old would not be a party to the proceedings for the same reasons that someone over 18 should be a party. The decision the court makes will have a significant impact on their private and family lives. Their views about their own lives should be encouraged through automatic party status.

In our view, the number of people to be protected, aged 16 or 17 who are in need of a litigation friend will be very small. These should be dealt with in the High Court, as above. We agree that consideration should be given to the need for a litigation friend.

Q6: Paragraphs 8 – 10 on service of a DAPO application and paragraphs 17 – 19 on service of a DAPO

These paragraphs cover in-depth procedure related to all possible scenarios, including service of a DAPO application and order when made on notice or without notice and when an application or an order is made in existing proceedings. They also deal with service when a third party is applying on behalf of a victim and service on a victim who is a child, as well as service on a mortgagee or landlord, where relevant. As our intention is to follow the case progression route as far as possible, the service paragraphs are spilt between service of applications and service of orders, which come later in the Pilot PD.

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The primary method of service is personal service, but the court is reminded of their powers under FPR 6.35 and 6.36 to dispense with service or allow service by alternative means where it is anticipated that personal service will be difficult to effect. We have taken great care to make explicit provision that service for unrepresented individual applicants will rest with the court bailiff, and with a solicitor, for represented applicants. The provisions are set out in greater detail than it has sometimes been the case in other FPR, because the FPRC wanted to make these provisions as accessible and clear as possible.

a. **Do you agree with this approach?**
b. **Is there anything else that the service provisions would benefit from?**
c. **Do you agree with the suggested inclusion of service on a mortgagee or landlord, which are loosely based on the FPR Part 10 provisions that relate to Occupation Orders, given that DAPOs can include requirements related to property**?

Paragraphs 8-10 - Service of application

The procedure to apply for the court to abridge the notice period or apply for service by alternative means will not be clear to LiPs and will need to made clear either in the PD or in guidance that is aimed at LiPs, or both.

We agree that where the applicant is an individual and is acting in person the court officer must effect service, but the first attempt at service must occur within 24 hours. We are of the view that this provision should extend to organisations as they may face similar challenges to those faced by LiPs. Most charities that support survivors of VAWG work on very tight budgets and may not have the resources to arrange personal service.

Following our comments above about the importance of the person to be protected having party status, we envision that all of the paragraphs in relation to notifying them of how to apply to become a party to proceedings can be removed. We would not object to carefully drafted guidance being sent to all persons in this situation, provided it is consulted on with organisations that support survivors of abuse and survivors themselves.

Paragraph 8.4(b) – We agree that where the applicant is an individual acting in person the court officer must effect service, service of orders is a significant challenge for many LiPs. However, we are also mindful of significant delays in service by court bailiffs across England and Wales. We therefore suggest that the requirement be for court officers to attempt service within 24 hours of the hearing. This would force local courts to prioritise the drawing up and service of protective orders in a way they are not currently doing. There should also be an option for the court to order alternative means of service as is currently the case with non-molestation orders to ensure that where an issue arises with service by the court officer, another method may be used. This should be explained in the PD as it is not currently clear that the court can order alternative methods. In exceptional circumstances where the applicant wants to take responsibility to arrange for service (because, for example, it would be more timely than court service) then this should be possible. See our suggestion in response to Question 1 in relation to reporting data on the time it takes to draw up and serve orders.

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In paragraph 8.7 – it is not clear why the service requirements only apply when it relates to a property lived in by the person to be protected as it could be an application to return to a home which the person has already left.

We agree that for most cases that relate to occupation of the home, service on a mortgagee or landlord will be appropriate. However, there may circumstances where this cannot or should not happen at the initial stages or at all. Examples include if the applicant does not have the mortgagee's details, or where the landlord is a relative or friend of P. This is particularly pertinent in cases of so-called honour based abuse where family members may also be perpetrators of abuse. We suggest the words "unless the court directs otherwise" or words to that effect should be inserted into paragraph 8.7. It would also help LiPs if paragraph 8.7 made clear that service of the supporting statement is not required on the mortgagee or landlord.

Paragraph 9 (service of application for a DAPO without notice) is confusing. LiPs may think that this is about service on P. The title and content should be amended to make clear that this about service on the protected party where there is a third party application for a DAPO without notice to P. We are unsure why "any other person directed by the court" is included given it is unlikely that the court will have had an opportunity to make any directions at this stage of a without notice application.

Paragraph 10 – we do not believe it is necessary or a wise use of resources for an application made within proceedings to be served personally. We suggest the word personally is removed.

Service of DAPOs – alternative means of service

It is sometimes the case that an alternative method of service such as email is ordered, but if P denies knowledge of the order the police / CPS may refuse to charge P. It is worth adding to the PD that when a judge is considering an alternative means of service regard should be given to whether the method of service will meet the standard of evidence required to enable a prosecution for breach of the order. This guidance will be helpful both for the judge and for LiPs.

However, we also believe that more work needs to be done with the police and CPS on their decision making processes when considering whether to investigate or prosecute a breach. Reports for breaches are too often dismissed if there hasn't been personal service, even if there are read receipts for orders served by email or messaging apps.

Paragraph 17 – Service of DAPO on notice

Personal service requires a lot of resource and may be unnecessary if P is at the hearing when the DAPO is made and the court is confident that P is aware of the terms of the order. For the benefit of LiPs, it should be built into the PD that P is treated as having been served with the order if he attends the hearing at which the order is made. There is no need for personal service in this case. This should also be reflected in the standard orders so that police can enforce them. Referring to rules 6.35 and 6.36 alone may not provide sufficient clarity.

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We agree that where the applicant is an individual acting in person the court officer should effect service. We are of the view that this provision should extend to organisations as they may face similar challenges to those faced by LiPs. Most charities that support survivors of VAWG work on very tight budgets and may not have the resources to arrange personal service.

Paragraph 17.6 – Insert the words “unless the court directs otherwise” to cater for situations where it is not possible or safe to serve the DAPO on a mortgagee or landlord.

Paragraph 18 – Service of DAPO without notice and Paragraph 19 – Service of DAPO made within proceedings

There are several references to paragraph 17 which makes these paragraphs difficult to interpret for LiPs. For example, it will not be obvious to LiPs that the court officer is required to effect service of without notice / within proceedings DAPOs if the applicant is an individual acting in person. It would be better to set out the provisions in full within paragraphs 18 and 19, rather than cross-referencing to paragraph 17.

Again, it should be possible for applicants that are organisations to request service by the court officer.

Paragraph 19 - As above, it should be made explicit that P’s attendance at the hearing at which the order is made is treated as service and personal service is not necessary in these cases. This should be reflected in standard wording in the order so that the police can enforce them.

Tracking progress and status

In light of concerns highlighted elsewhere in this response in relation to delays and issues with service, we suggest that there be a system to track when orders have been made, drawn up, collected for service, served on P, consent for police notification from the person to be protected, and whether police notification has occurred.

The person tasked with serving P should be required to report back to the applicant and the court officer if service has not occurred within 48 hours stating why service has not occurred.

See our suggestion in response to Question 1 in relation to reporting data on the time it takes to draw up and serve orders.

Q7: Paragraph 11 – Hearings

This paragraph provides for DAPO hearings to be heard in private, unless the court orders otherwise or a DAPO application is being heard within existing proceedings that are already being heard in public. We have favoured this approach, to keep DAPO hearings heard in the family court consistent with the majority of family proceedings, in order to protect the privacy of children and vulnerable families. However, the rights of legal publishers and bloggers to attend such hearings will be preserved under FPR 27.11(2)(ff). It is understood that DAPO applications heard in the magistrates’ court will be routinely heard in public.

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a. Do you agree with our suggested approach?

Rights of Women is a strong supporter of more open justice within the Family Court. In general, we would support open hearings with certain restrictions as in the Court of Protection. The fact that proceedings in the Magistrates Court will proceed in open court without any reporting restrictions, save the statutory protections that exist for victims of rape, must at least raise the question of why these proceedings should be so extremely inaccessible.

However, we are realistic that while the reporting pilot is ongoing, it is reasonable to wait for the outcome of this pilot before proposing rules that are different to the current position in relation to non-molestation order applications.

Q8: Paragraph 14 – Including a positive requirement in a DAPO

This paragraph provides for an interim DAPO to be made, while allowing the court the necessary time to request evidence of suitability and enforceability of a particular programme. The procedure therefore envisages the court giving directions as to how the evidence of suitability and enforceability is to be obtained. It is our intention for the evidence to be provided by the most appropriate programme provider available in that area.

We are working to develop a more detailed process for how these referrals will be managed. We also intend to provide a guidance/reporting framework document for participating programme providers, which will set out how they will be expected to meet their obligations under section 36(5) of the DA Act, including how they will report on compliance and non-compliance to the police as required by section 36(5)(c) of the DA Act. Therefore, the Pilot PD does not provide for this level of detail, and it is drafted in line with similar provisions in the CrimPR, including provisions for DAPOs at CrimPR 31.10.

a. **Do you have any comments on these provisions?**
b. **Do you think anything else needs to be included which relates to the court's communication with programme providers and the flow of information between the two?**

The person to be protected is not mentioned at all in this paragraph. Amendments are required to ensure they are kept informed and consulted.

The following provisions are missing from the PD:

- Whose responsibility it will be to explain positive requirements to the person to be protected, including the nature of the positive requirement, how compliance will be monitored, and any potential for notification or involvement of the police.
- Requirements for the court and the responsible person to gather views from the person to be protected on any potential positive directions and take those views into account before positive requirements are ordered.
- Directions on how and when the responsible person will report compliance to the court.

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- Directions on how and when the responsible person will report compliance to the person to be protected and the applicant (if this is not the protected party).
- Directions on how and when non-compliance will be reported to the court, person to be protected and the applicant.
- A requirement that the person to be protected will be notified about any information being provided to the police on compliance or non-compliance.
- Directions on what should happen if the responsible person finds that there is non-compliance or if P is being uncooperative.
- In some circumstances it may be appropriate for the court officer to inform the person to be protected of the responsible person's identity and the means by which the responsible person may be contacted (for example, in case they need to alert the responsible person to non-compliance or if they need assurance of compliance before allowing contact between P and a child).
- Any perpetrator programme ordered by the court must be Respect accredited and appropriately matched to P's risk and need.

We refer to our response to Q1 in relation to reporting compliance to the police. The primary purpose of DAPOs is to protect the survivor of domestic abuse. Any action taken must have the survivor's needs and wishes centred. Therefore, decisions about positive requirements should not be made without first obtaining the views of the person to be protected, and ensuring that they understand what decisions are being made and what to expect from the positive requirements. The views obtained from the person to be protected should include any views they might have on how they might wish to be kept informed about compliance, and any concerns they might about information being provided to the police.

It is vital that the person to be protected is kept informed about compliance and non-compliance with positive requirements as this may impact upon the safety measures survivors put in place for themselves and their children.

Paragraph 14.1 is unnecessary as paragraph 14.5 is sufficient. See our comments in response to Q1 regarding excessive cross-referencing.

Risk assessments may be required to assess the suitability for perpetrator programmes. They may also be necessary to help survivors and professionals supporting them to safety plan, and help the court understand whether the DAPO should be extended or varied. Risk assessments should only be provided by services that are regulated and quality assured (not businesses) and independent of any perpetrator or treatment programmes being considered. Provision will need to be made for the risk assessment to be shared with the person to be protected and any services providing them with support as a survivor of domestic abuse.

It is difficult to comment further on these provisions without first knowing the more detailed information that the FPRC is still working on. The PD may require further amendments after we know:

- How positive requirements will be funded
- How the responsible person will be funded for their work on assessing suitability, and monitoring and supervising compliance
- How the providers will be selected
- What happens if there are no appropriate programme providers in the local area

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Q9: Paragraph 15 – Electronic monitoring requirements

This paragraph aligns with the procedural approach taken to this same requirement under CrimPR 14.12 for court bail and CrimPR 31.10 for DAPOs made in criminal proceedings.

It is our intention to follow the court bail model for electronic monitoring as closely as possible. We will develop more detailed guidance and procedure for court staff, police and electronic monitoring providers, which will include guidance on how appropriate consent of relevant occupants may be taken, as required under section 37(3), how address validity will be verified, and how the electronic monitoring provider will report breaches to the police.

Unlike for positive requirements, where the court is considering imposing electronic monitoring, the perpetrator's presence will be necessary at court, as required by section 37(2), so that the perpetrator can confirm their address and advise the court whether consent needs to be obtained from the principal occupiers of the premises where the equipment needs to be installed. Where the perpetrator is not present at court, the court will rely on the FPR Part 37 procedure to secure their attendance.

a. **Given that electronic monitoring is being introduced for the first time in the family court, do you have any observations on these provisions?**

Again, the person to be protected is not mentioned at all in this paragraph. Amendments are required to ensure they are kept informed and consulted.

Firstly, it should be made clear to survivors that if P breaches the parameters to be monitored then the provider will send this information to the police. The views of the person to be protected, including any concerns regarding the involvement of police, must be taken into account before ordering electronic monitoring.

The PD should include a requirement for the court to inform the person to be protected that electronic monitoring will not provide her with additional protection. We fear that many survivors will be under the misapprehension that if P is subject to electronic monitoring and P turns up a their house then an alarm will go off at the police station and the police will make their way to the scene. It should be made clear to the person to be protected both before and after making the order that the electronic monitoring is a means to evidence non-compliance only, and that if she is in danger she should call 999 or seek urgent assistance.

Consideration also needs to be given as to what will realistically happen when the police receives a report of a breach from the electronic monitoring provider. Will the police take action every time a breach is reported by the electronic monitoring provider, or will that information just be there in the event that someone else, such as the person to be protected or responsible person, makes a formal complaint? Either way, the person to protected should be kept informed.

Paragraph 15.2 – The court officer should also:

- inform the person to be protected of the responsible person's identity and the means by which the responsible person may be contacted

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- notify the person to be protected of any variation or discharge of the electronic monitoring requirement, unless she was at the hearing when the variation or discharge order was made.

Q10: Paragraphs 20 and 21 – Notification to the police

These paragraphs depart from the standard procedure under FPR Part 10, which places the onus on the applicant or their solicitor to serve an order on the police after service has been effected on the respondent.

Under these provisions, the responsibility will shift to the court for all cases and the notification will be made within 1 day of the order being sealed to a dedicated email address nominated by the piloting police forces. This will expedite police notifications and ensure greater consistency in comparison to how the police are currently notified. It still remains the case that a certificate of service confirming the perpetrator is made aware of the terms of order will have to be notified to the police by whoever effected service, and this will follow the same notification process.

In the longer-term, it is our intention to explore more sophisticated digital solutions for such notifications, with the Home Office leading a preliminary scoping exercise in this space.

a. **Do you have any comments specific to these provisions?**

Survivor consent
We refer to our comments in response to Q1 in relation to notification requirements and the importance of allowing survivors to decide whether they want to involve the police. For the same reasons, amendments must be made to Paragraphs 20 and 21 to ensure that survivors are consulted before information is provided to the police. Without these amendments, survivors who do not wish to involve the police will be dissuaded from applying for DAPOs, and the those that do apply are being disempowered and potentially endangered by a process that is meant to be protecting them.

Consent of the person to be protected must be sought before the court officer contacts the police for each of the following:

- Consent to provide the police with the name and address of the person to be protected
- Consent to provide the police with the court order and statement of service

Paragraph 21 would need to be amended to reflect that the statement of service would only be sent to the police if the person to be protected has consented to the DAPO and related information being served on the police.

The person to be protected should be made aware that if there is a breach and she decides to report this to the police, then a copy of the order and statement of service will need to be provided to the police in order for P to be prosecuted for breach of the order. The person to be protected should also be provided with information on the procedure to apply for enforcement through contempt of court proceedings.

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Police notification method
Once consent from the person to be protected is obtained, we agree that there should be a system in place for the court to notify the police, and that this should be done within 1 day as proposed in paragraph 20.4.

The purpose of notifying the police of DAPOs is so that, in the event of a breach or an incident of abuse, the police already have the DAPO to hand and can immediately proceed with an arrest. We are aware of some police officers not proceeding with enforcement because they state they do not have a copy of the order. Delays in sending the DAPO to the police is likely to leave survivors at risk of further abuse.

We are not aware of what operational measures have been put in place in the pilot areas to address the many problems with police recording of data. In particular, the FPRC should be confident that these measures will improve safety through knowledge of the following:

- What will happen with the DAPO once it reaches the police email address. Will it live on the email account, or go on to one of the systems used by the police force? Have resources been provided to monitor the email address and ensure documents are uploaded onto the appropriate database immediately. We are aware that currently there are inconsistent procedures across the different police forces, and they use different databases and systems which do not communicate with each other. The FPRC and relevant ministers should consider what would happen if P or the person to be protected move outside the police force area where the DAPO was served, or if the abuse occurs outside the police force areas where the DAPO was served, will the police force investigating the matter have access to the same information as the force served with the orders?
- How will the DAPO and statement of service be located by the police? Will they have to search through all of the emails on the account? Failure to locate a DAPO which has been sent to the email account may lead to delay in taking action or a decision not to take further action by the police, leaving the survivor at risk of further and possibly fatal abuse. We are aware that a similar system is being used for Forced Marriage Protection Orders and FGM Protection orders, however, there are far fewer orders of these types being made compared to non-molestation orders, and the expectation is that DAPOs will replace non-molestation orders.

We would encourage the FPRC to ensure pressure is placed on the pilot operators and evaluators to measure these problems. In particular, we are concerned that:

- Similar measures for notification to the police of Part 4 orders have been in place in the past in different areas. These have, as far as we are aware, entirely disappeared. There were many problems with dedicated email addresses for this purpose which have been highlighted in our points above. As a result of these problems, it became a pointless exercise to email the force.
- We are concerned that the promise of the order being held by the police will lead to survivors not keeping a copy of the order on them at all times. This false sense of security undermines survivors' safety if, operationally, the problems above arise
- The resourcing of this is measured in both court and police time as a lack of resourcing was one of the reasons why measures like this have failed in the past. The number of orders made will significantly higher than is currently the case for

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FGMPO and FMPO. The roll out of this measure across England and Wales would need to be adequately resourced in order to be effective.

One of the recommendations that came as a response to the Centre for Women's Justice's super-complaint on the use of protective measures[5] was to create improved communication mechanisms between the Family Courts and the police when non-molestation orders are issued, and improved police recording of non-molestation orders. This was over four years ago, and yet the communications mechanisms have not changed. The introduction of DAPOs is the ideal opportunity to improve the deficiencies that exist within the current protective order regime, rather than inherit the same issues.

DAPOs will only be worth the paper they are on if they are enforceable. The more sophisticated digital solution must be available by the time the pilots launch in 2024 and we urge the Ministry of Justice and Home Office to prioritise the development of this solution.

Police force areas
Paragraph 20.3 indicates that there will be different procedures depending on the police force area. It's possible for a breach to occur outside of the police force area where the DAPO was served, and this may lead to difficulties with enforcement. This must be considered when decisions are made about what will happen to the email the court sends to the police, where it will be saved and who can access it. Survivors must be informed of this information so that they can take steps to address any safety issues that arise as a result of this. The issues we have raised above about how this will work operationally if rolled out across the country must be included in the evaluation.

A sophisticated digital solution which has one consistent method of police notification, after consent of the survivor is obtained, and which allows for a DAPO to be accessed easily across all police forces is needed urgently.

Notifying the person to be protected when a DAPO is served or P is informed of its terms

Paragraph 21 requires notifying the police about service, but we cannot find anywhere in the PD a requirement to tell the person to be protected when a DAPO is served or P is informed of its terms. It should go without saying that the person to be protected must be informed and provided with a copy of the statement of service so that they know from when the order is effective but this is easily overlooked, and for that reason we believe that the requirement should be added to the PD. Survivors may need to know whether the DAPO is effective before they take steps such as return home, or they may need to know whether to report an incident as a breach of a DAPO. They must have a copy of the statement of service to show to the police in the event they seek enforcement action.

Q11: Paragraph 22 – Variation or discharge of a DAPO

The provisions reflect requirements under sections 44 and 45 of the DA Act, in particular those provisions that have been developed to protect the victim from being

[5] https://www.gov.uk/government/publications/police-use-of-protective-measures-in-cases-of-violence-against-women-and-girls

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coerced to apply to vary to make an order less onerous or to bring it to an end. Under section 44(4)(a), the court is obliged to confirm whether the police wish to give evidence, and this would apply to all DAPOs being varied in the family court, even where the police were not involved in the DAPO. In paragraph 22.5, we have provisionally included the words 'where practicable' where we refer to this evidence being provided within 1 day of the police being notified that an application to vary or discharge has been made, and we are working with the police to confirm how the process will operate in practice.

a. Do you have any comments on the proposed procedure?

We refer to our comments throughout this consultation response about the importance of survivor consent in relation to police involvement. Paragraph 22 would need to be amended to reflect that the police should only be notified or involved in an application to vary or discharge if the police force has already been served with the order following consent from the person to be protected.

Paragraph 22.7 prevents the court from determining an application to vary or discharge a DAPO without first hearing from the person to be protected but only if the application is made by the person to be protected. The person to be protected should always be heard irrespective of who applied, or at least attempts must be made to hear from them, before determining any application which so fundamentally impacts upon their lives and safety. We suggest the paragraph is amended accordingly.

Similarly, paragraph 22.8 should be amended to provide that where the court is considering whether to vary or discharge a DAPO of its own initiative it must first ascertain the wishes and views of the person to be protected.

Paragraph 22.10 should be amended to provide that where positive requirements and electronic monitoring requirements are varied the court officer must notify the person to be protected (in addition to the responsible person).

Q12: Section X – Enforcement (paragraphs 23 to 29)

These provisions are modelled on similar provisions in FPR Part 10 and Part 11, where the civil contempt of court route has also been preserved.

a. Do you have any comments on these provisions, including how they currently operate in practice?

The option to enforce DAPOs through civil contempt of court action is important, particularly for survivors who do not want to report to the police or have received a poor response following reports to the police.

Our view is that the option to enforce through committal applications is not as accessible as it could be for the following reasons:

- Some survivors who want to attempt a committal application are advised to report to the police instead. This could be because the professional is not aware of the option to enforce through the family courts, or because the procedure for a committal application is obscure and off-putting.

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- Survivors who wish to attempt a committal application will struggle to understand the PD and Family Procedure Rules, and the lack of clear guidance on what forms to use and the procedure may lead to survivors giving up on a committal application.
- When applying the merits test and considering whether to grant legal aid for a committal application, the Legal Aid Agency can refuse legal aid on the grounds that the survivor has the option of enforcing through the police. If a report has already been made to the police and a decision has been made not to charge then this, again, is a reason to refuse legal aid on the merits of the application.

In light of the above, we recommend that clear guidance is provided on how to enforce DAPOs, including which forms to use and the information the court will need. We also recommend amendments to Legal Aid Agency guidance which recognises that reporting to the police is not always the most appropriate course of action, and that a decision not to prosecute by the police or CPS should not be a reason to refuse legal aid (we appreciate this is a matter for the MoJ and Legal Aid Agency not the FPRC).

Although it is outside of the scope of this current piece of work, we would also take the opportunity to raise the lack of clarity about enforcement through committal generally in the FPR and would welcome the FPRC taking steps to improve those rules.

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