



Response to: consultation on draft statutory guidance for police on DAPNs and 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.

Rights of Women welcomes the opportunity to respond to the consultation on statutory guidance for police on Domestic Abuse Protection Notices (DAPNs) and Domestic Abuse Protection Orders (DAPOs). Due to time constraints, we have not commented on every section and have set out our key suggestions below. Rights of Women’s previous consultation responses and briefings set out our wider concerns in relation to DAPOs and protective orders¹.

Multi-agency information sharing and safety planning

This section of the guidance focuses on multi-agency information sharing and safety planning from the point that a DAPN is given, if a DAPO is made or if the court decides not to make a DAPO. There does not seem to be consideration of the role that multi-agency working will play in the lead up to a DAPO application by the police, the victim, or a third party. It is likely that applications for DAPOs will be considered as part of safety planning, for

¹ [Response to FPRC consultation on proposed Pilot Practice Direction DAPOs, June 2023](#); [Joint briefing from Rights of Women and Respect on Domestic Abuse Protection Orders \(DAPOs\), June 2019](#)

example through established multi-agency forums. Guidance on prioritising the safety of the victim and any children, seeking the views of the victim, listening to support services and engaging in multi-agency discussions are important at this stage.

When considering who should apply for the DAPO, the guidance should caution against expecting or leaning towards third parties, such as domestic abuse support services, to make the application. These services are unlikely to have the necessary legal expertise or resources to instruct lawyers, and applying for a DAPO for the victim (as opposed to supporting the victim through the legal process) can change the nature of the relationship between the service and the victim. It should be made clear that if a multi-agency forum has decided that a DAPO application is appropriate, and the survivor would like this to proceed, responsibility must be on the police to make the application.

Signposting

The list of signposting organisations is referred to as being in Annex F on pages 11 and 17 of the draft guidance, but is in fact at Annex D.

Survivors may need legal advice in the context of police led as well as victim and third party led DAPO applications. For example, once a police led application for a DAPO is made, the victim may want advice on varying the order, or there may need to be supplemental applications to deal with issues relating to the property or the transfer of tenancies which the police may not have been able to consider. Survivors may also need advice on their options if the police decide not to charge following a breach of a DAPO. It would therefore be prudent to add organisations that are able to provide this type of advice to the list of signposting organisations, such as Rights of Women and legal aid lawyers (<https://find-legal-advice.justice.gov.uk>).

Immigration status and migrant victims

It is deeply disappointing that calls for a firewall² between the police and immigration enforcement have been rejected. Such a firewall is essential to ensure migrant survivors can report abuse to the police without fear of being deported, separated from their children or criminalised themselves. This places migrant women at particular and increased risk in relation to domestic abuse, and means they are less likely to seek the support that will enable them to be protected by a DAPN or DAPO.

At the very least, the statutory guidance should refer to the sections of the [Domestic Abuse Statutory Guidance](#) which relate to immigration status and migrant victims. The following paragraphs should be reiterated in full, given their particular relevance as potential barriers to migrant women being able to benefit from DAPNs and DAPOs:

Perpetrators of domestic violence can use insecure immigration status as a way to inflict abuse on the victim, for example, by way of threatening to tell the police or Home Office. When dealing with victims with insecure immigration status, police should treat all individuals who report domestic abuse as victims first. See the 'Immigration status and migrant victims'

² See [Step Up Migrant Women](#) campaign and the [Domestic Abuse Commissioner's Safety Before Status Report](#)

section for guidance as to what support victims with insecure immigration status may be able to access. [Paragraph 345]

Victims may be reluctant to report abuse due to the fear of information sharing by the police and other statutory and non-statutory services with the Home Office for the purpose of immigration control. The Home Office has undertaken a review into the data-sharing arrangements between the police and Immigration Enforcement when encountering migrant victims of crime, in response to the super-complaint submitted by Liberty and Southall Black Sisters. The review concluded that the Home Office will not be establishing a firewall but will seek to implement an Immigration Enforcement Migrant Victims Protocol which puts safeguarding needs first. See also the 'Victims with insecure immigration status' section. [Paragraph 202]

Centring victim survivors

We hear on our advice lines that survivors are advised by police officers to apply for non-molestation orders in various circumstances when the police could have taken action (such as applying for a Domestic Violence Protection Order). Applying for a protective order places numerous demands on survivors' safety, mental health, jobs, caring responsibilities and their finances. Our understanding is that part of the reason why DAPOs were introduced was to decrease the burden placed upon survivors. For this reason, the guidance should warn against police officers shifting the burden of protecting survivors by suggesting that the victim survivor should apply for the DAPO.

Equally, there will be victims who feel less comfortable relying on the police to protect them or may want more control over the way their case is presented and the provisions that would best meet their needs. Police officers and judges who do not deal with family law cases may not feel comfortable seeking or making the types of DAPO provisions which are traditionally made by family courts when considering occupation orders.

If a victim expresses that they would prefer to apply for the DAPO themselves through the Family Court then they should be supported in doing so. This support would include but is not limited to appropriate signposting and providing any evidence that would support her application.

It is important that victims are not inadvertently disempowered by police and third party led applications. There are instances within the draft statutory guidance where further emphasis could be given on seeking and giving due regard to the views of the victim, whilst at the same time recognising that in some cases the safest and most appropriate course of action might be to seek a DAPO without the explicit support of the victim. Examples of where this could be added include:

- **3.2.5:** in relation to what the police will consider when deciding which protective measure is most appropriate
- **9:** paragraph 9.11 states that the courts must hear from the victim if the victim is seeking to discharge the DAPO or make it less onerous on the perpetrator. There is no mention of seeking views from the victim in other circumstances, for example if the police, third party or perpetrator are seeking a variation or discharge.

Once a DAPO is made, it is important that the victim survivor is kept updated with key information. Survivors may need to consider what steps or legal action they can take to

protect themselves and any children in light of that information. We suggest the guidance make reference to the Victims' Code and stress the importance of keeping victims informed, particularly in relation to the following:

- **3.4:** when the DAPN has been served on the perpetrator
- **3.5 and 11:** informing the victim if the DAPN or DAPO has been breached (if the victim is not the one who reported the breach), and any decisions relating to charging and arrest.
- **6.3:** what prohibitions and positive requirements have been ordered, and compliance with those provisions.
- **6.5:** the responsible person must be required to report any non-compliance with positive requirements to the victim as well as the police.
- **9:** keeping the victim informed and providing them of any varied orders
- **12:** keeping the victim informed of any applications to appeal and decisions relating to the appeal.

Authorisation of a DAPN

The guidance makes clear that a DAPN must be authorised by a 'senior police officer' who is a constable of at least the rank of inspector (as required by the Domestic Abuse Act 2021). For clarity and consistency, the guidance could include information on how the authorisation process will work if the officer who is attending the incident is of a lower rank, and the timescales involved with this.

Recording of DAPOs on police systems

In [Rights of Women's response to the Family Procedure Rules Committee's consultation on the DAPO pilot practice direction](#) we set out in detail our concerns and recommendations in relation to the way family courts notify the police and the recording of DAPOs. We will not repeat them again here, save to say that a sophisticated digital solution which has one consistent method of police notification is needed urgently, and this will allow for a DAPO to be accessed easily across all police forces.

Notification requirements

In [Rights of Women's response to the Family Procedure Rules Committee's consultation on the DAPO pilot practice direction](#) we set out in detail our concerns in relation to the introduction of notification requirements and will not repeat them here. However, given that they are being introduced, we suggest that information be added in part 9 of the guidance on why the notification requirements are being introduced, and how the police will use the information once it is received to protect survivors or make DAPOs more effective.

The provision of this information should add protection to the victim and not merely result in collection of additional data. It is imperative that the guidance enables victims to understand the steps police should take when the respondent has supplied the required information. This should include the recording of the information in a way that is linked to the order and

the history of abusive behaviour and can be accessed by other police forces should the respondent move to their area.

Bail conditions and DAPOs

The guidance states that DAPOs can be used alongside bail conditions, which we support. However, the guidance could be strengthened to highlight the differences between bail conditions and DAPOs and the potential for DAPOs to provide greater protection, for example by highlighting the very limited police powers for breach of pre-charge bail compared to breach of a DAPO. This guidance may also be helpful if the victim chooses to apply for a DAPO themselves. The fact that the perpetrator is subject to pre-charge bail and the incorrect assumption that this provides sufficient protection is sometimes a reason why legal aid for non-molestation orders is not granted.

Guidance on provisions currently obtained through family courts

In part 6, it would be helpful to add guidance on seeking provisions for the perpetrator to continue paying towards rent, mortgage or other outgoings affecting the home. We are aware that some information has been included in the guidance to legal practitioners. We are of the view that the police need this guidance too, and possibly more detailed guidance as they will be less familiar with the way the courts have approached these types of applications when considering occupation orders.

It may also be helpful to have sections in the guidance looking specifically at the types of provisions that will be possible to include in a DAPO but are traditionally obtained through the family courts. The police are unlikely to have sufficient understanding of these provisions which can provide survivors with the security and stability they need to remain separated from the perpetrator. It is likely that the police will need training on these provisions.

**Rights of Women
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