

## **Title: What I have learned from COVID-19: Emergency Access to the Courts for those affected by Domestic Abuse**

### **Introduction**

Domestic abuse has received increased coverage from the media throughout the COVID-19 lockdown, and thus is an issue that has been propelled more into the public consciousness. The objective of this article is to take the reader through access to the courts during lockdown for those in need of emergency injunctive relief from situations of domestic violence, with the purpose of showing that the COVID restrictions has required the courts to adapt accordingly. The article will begin by describing the court process, and relief offered for those who present to the district court looking for injunctive relief from situations of domestic abuse. From there, the article will describe how that process has been changed by the 'lockdown'. Finally, the article will assess if the change in the process has any negative or positive impacts on person seeking injunctive relief for domestic abuse, on those who practise or work in the area of domestic abuse support, and suggest any changes to access to the court that may be highlighted as relevant in light of this. The article makes no distinction between the terms 'domestic abuse' and 'domestic violence', and may use the terms interchangeably.

### **Domestic Abuse as a women's issue**

The article is working from the standpoint that domestic abuse is a gendered issue predominately affecting women, and therefore that majority of domestic violence applications are made by women. Dr Sinéad Conneely, Dr Roisin O'Shea, and Shane Dempsey in their article 'Domestic Violence in the District Court' cited the following:

*'Of the domestic violence applications observed, almost 74.4 per cent were allegations made by a wife or female partner against their husband or male partner, and 7.8 per cent were made by a husband or male partner against their wife or female partner.'*<sup>1</sup>

### **Protection from Domestic abuse through the District Court**

#### *Protection Orders and Interim Barring Orders*

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<sup>1</sup> S. Conneely, R. O'Shea, and S. Dempsey, 'Domestic Violence in the District Court' *Irish Journal of Family Law* 2019 (4), pp79-86

For those in need of immediate relief from domestic abuse, an ex parte application can be made for a protection order which can prohibit the respondent from engaging in violence and threats of violence against the applicant. If the applicant is successful, the protection order is then served on the respondent and he is put on notice of the safety order hearing. Crucially, the remit of the protection order includes other forms of domestic abuse that are non-physical. The protection order remains in force until the full hearing. There is no legislative guidance on the time frame for a return date for the full hearing. If the applicant is successful at hearing, the protection order will cease to exist and a safety order will instead be granted for a set period of time. Neither the protection order nor the safety order compels the respondent to leave the home. If the applicant requires the respondent to leave the shared home, she may apply on an ex-parte basis for an interim barring order. The interim B/O is in affect for only eight days, and thus the full hearing must be heard within this timeframe. D.K. V Judge Crowley is a 2002 Supreme Court judgement that affirmed any constitutional right of *'spouses and dependent children to be protected against physical violence, was entitled to abridge the constitutional right to due process of other persons'*, and that abridgement must be proportionate, reasonably and necessary. The time frame for the affect of the interim barring order must therefore also give consideration to the constitutional rights of the respondent, who is excluded from his home within this period.<sup>2</sup>

The majority of P/O and interim B/O's are applied for and heard in the district court. An applicant can present at the court nearest where they reside, or where the respondent resides. The ex-parte applications are accessible in a manner that it is possible for applicants to make the application themselves, rather than engage the services of a solicitor. This accessibility is a crucial for applicants who are in crisis. It also affords applicants time to apply for legal aid. The court clerk may, in their capacity, assist the applicant with the correct procedure in filling out the court forms. In Dolphin House, the family law district court in Dublin, Women's aid operates a service on the fourth floor that assists applicants with writing their original statements, and submission of forms to the court office. This service also assists applicants apply for legal aid.<sup>3</sup> All that considered, it can be concluded that there is both practical and emotional support available for applicants when applying for protection order and/or an interim barring orders in the district court.

### **Access to Domestic Abuse protection though the district court during restrictions**

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<sup>2</sup> [2002] 2 I.R 744

<sup>3</sup> Women's Aid Dolphin House Family Law Court Support and Referral Service, <https://www.womensaid.ie/services/dolphinhousesup.html> (accessed 20.05.2020)

### *Protection Orders and Interim Barring Orders during COVID-19 restrictions*

While the 'The Health Act Temporary Restrictions COVID 19 Regulations' at Regulation 4(1) does allow for members of the public to leave their homes to fulfil a legal obligation such as attending court, in general, the COVID-19 pandemic has led to inaccessibility to the courts for most matters, bar those that are considered urgent. Cases that are being dealt with are being managed in a manner that ensures there is a limited number of people in the court vicinity at all times. Within the family law courts, applications for interim barring orders, return hearing for barring orders and protection orders are within the remit of urgent, and ultimately are the only matters being dealt with in the Family Law district courts at the current time. Where safety order hearings are being adjourned, protection orders are extended to the new date.<sup>4</sup>

Applicants therefore can still attend their nearest court to access these ex-parte reliefs as a matter of urgency. However, there may be notable differences in the practical manner in which the application is made. Primarily, as numbers in court and its vicinity aim to be kept to a minimum, this has a direct impact on an applicant having physical support throughout the process. Court clerks are no longer available for face to face assistance. To maintain efficiency, the necessary court documents may now be emailed directly to the court clerk by the applicant. Women's Aid has moved its face to face service from the fourth floor of Dolphin house, to an online and over the phone service.<sup>5</sup> Applicants themselves are still required to attend face to face, and in the case of Barring order hearings, both parties will still be required to attend. Legal aid applications have also be moved to an online format.

### *Issues arising from the COVID 19 Restrictions and access to court for protection from Domestic Abuse*

There are positive and negative aspects to the revised method of access to the court for protection orders, interim barring order and barring orders in light of COVID-19 restriction.

First, that access to being granted Protection orders and interim barring orders remains in place during the current restrictions, shows the visibility of domestic violence within the court system, and highlights that domestic abuse is an issue considered to be urgent within our court system. Highlighting domestic abuse, in any capacity, as an urgent matter shows promise for the future, and gives prospect to further reforms going forward. Secondly, by the court recognising that protection orders are an urgent matter

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<sup>4</sup> Courts Service *District Court- Statement of the President 08.05.2020*, <https://beta.courts.ie/news/district-court-statement-president-08052020> (accessed 20.05.2020)

<sup>5</sup> n3

of the court, it highlights that all forms of domestic abuse are recognisable in society. As protection orders encompass forms of domestic abuse that are non-physical, including emotional and verbal abuse, the Courts have shown there is no hierarchical system of domestic abuse- all are considered to be urgent matters even within the COVID-19 restrictions. Thirdly, that accessibility and support has been maintained for the applicant- through the continuing work of the court clerks and domestic abuse charities such as Women's Aid- again shows an effective and functioning system of access to court for those in crisis due to domestic abuse.

Access to court within the current restrictions are raising new difficulties for those accessing emergency domestic abuse orders. As aforementioned, the applicant will have to attend court in person. Therefore, those who are cocooning will have an impediment to accessing a protection order or interim barring order. Older people or people with vulnerabilities therefore may be living in domestic abuse circumstances with no immediate access to relief from the courts. The practical issue of having the minimum amount of people in the court vicinity may impact those who have no childcare and may have to bring their children with them. Those who have literary difficulties or may need a translator may be impeded by less face to face assistance within the court houses and courtrooms themselves, and maybe faced with a more difficult overall process.

Another potential issue is that protection orders have been extended to consider the new date for the hearing of safety orders. As aforementioned, there is no legislative guidelines for when a safety order hearing may be heard and how long a protection order may remain in place. It highlights the necessity for such legislative guidance, as the current system may leave protection orders open to judicial review proceedings, if such a protection order impacts on the constitutional rights of the respondent and if any such extension becomes disproportionate. The hearing of a safety order, therefore, may potentially be an urgent matter.

## **Conclusion**

In conclusion, the article finds that there are many positive aspects being highlighted by an examination of access to the courts for emergency domestic abuse orders during COVID 19 restrictions. There are also negative aspects. Both assist in showing potential for reform going forward. By the court continuing to accept applications for protection orders and interim barring orders through the COVID 19 pandemic, it is signified that all forms of domestic abuse are recognised as urgent by the court. This, in return, adds visibility and increased validation in society to the issue of domestic abuse. Negative aspects come to

the fore in some of the practical elements of the changes that had to take place in accessing the courts. Vulnerable women may be negatively impacted: those who are cocooning; those who need assistance from translators and assistance with literacy aspects of the application; Those with no childcare may also have difficulty with the practical elements of accessing the courts. This highlights the importance of ongoing support- both legal and practical- for vulnerable women who want to access domestic abuse orders from the courts. That support may be continued and expanded upon when the restrictions are inevitably lifted. The COVID restrictions also highlight that there is no time limit on the hearing of a safety order, and that also is a potential reform that may make the family courts more accessible and effective for those accessing protection from Domestic Violence.