

Domestic Abuse Protection Orders: The Story So Far

Introduction

The new domestic abuse protection order—DAPO—will bring together the best elements of the existing civil order regimes. It will be available in the civil, criminal and family courts. It will be flexible, in that the court will determine the length of an order and decide what prohibitions, and positive requirements too, are appropriate to attach to it, including conditions that may compel the respondent to attend perpetrator programmes or require them to wear an electronic tag. The new DAPO will also have teeth, with a breach of conditions being a criminal offence punishable by up to five years' imprisonment or a fine, or both.ⁱ

Domestic abuse presents complex challenges for policing. Managing risks to victims is one such challenge: coercive control may evolve gradually,ⁱⁱ abusive behaviour can be concealed, and victims may be reluctant to provide information for fear of further abuse. Historically, police responses to domestic abuse have been criticised for failing victims, by treating domestic abuse as a private family matter.ⁱⁱⁱ As our understanding of the nature and prevalence of abuse has improved, expectations on officers responding to abuse have increased.

The Domestic Abuse Protection Order (DAPO) is a form of civil preventive court order designed to stop someone from perpetrating domestic abuse. It works by imposing prohibitions or requirement conditions upon the recipient (such as to stay away from a defined area where a victim lives or works). Forces can apply to a court for a DAPO to be imposed on an individual, without pursuing criminal prosecution. This enables the police to act to prevent abuse, even in circumstances where there is insufficient evidence or victim engagement to support a criminal prosecution of a suspected perpetrator.

As indicated in the comments of the former Lord Chancellor, above, the DAPO is designed to consolidate some of the protective features of existing civil preventive orders, such as Domestic Violence Protection Orders and non-molestation orders, to provide a one-stop shop for more comprehensive and longer-lasting protection for victims. There is precedent for the success of such an approach. In New Zealand, a country with shared common law traditions, a similar Order introduced under the Family Violence Act 2018. This Protection Order was designed to aim to protect a person experiencing family or domestic violence by imposing legally enforceable restrictions on the alleged abuser. The Protection Order is also backed by criminal sanction and applies a similar two-part test to the DAPO. It has enjoyed some success in safeguarding victims from abuse.^{iv}

In November 2024, the government introduced DAPOs as part of a joint Home Office and Ministry of Justice led pilot scheme. Unlike some previous orders, DAPOs have no maximum duration, allowing courts to set conditions that remain in place for as long as necessary to keep victims of domestic abuse safe.

The pilot scheme started in Greater Manchester and has since been used in three London boroughs, Cleveland and North Wales, and by the British Transport Police. More than 1,000 DAPOs have now been issued ahead of an expected national rollout of the scheme. Members of KBW Chambers have been working at the heart of the pilot, and this article reflects on some of their experiences representing police forces in contested DAPO hearings.

How DAPOs Work

DAPOs, along with Domestic Abuse Protection Notices (DAPNs), were introduced by Part 3 of the Domestic Abuse Act 2021. The DAPN is issued by the police. It enables the police to immediately impose conditions upon an alleged perpetrator of abuse to safeguard protected persons. The DAPN is legally binding and can be issued where a senior police officer considers there are reasonable grounds to believe that a person has been abusive towards another person who is aged 16 or over and personally connected to the alleged perpetrator.

The DAPN is the precursor to a DAPO as, if the police issue a DAPN, they will then also apply for a Domestic Abuse Protection Order (DAPO). A DAPO application will usually be heard by the magistrates' court within 48 hours of service of the DAPN. Victims and third parties can also apply directly to a court for a DAPO through several routes. However, the consent of a victim is not a precondition for a DAPO to be issued. A criminal court can also make a DAPO of its own motion, whether the perpetrator has been convicted or acquitted in a criminal case.

Section 32 of the Domestic Abuse Act 2021 sets out the conditions to be met for a DAPO to be made; namely, that (A) the court is satisfied on the balance of probabilities that the perpetrator has been abusive towards a person aged 16 or over to whom the perpetrator is personally connected; and (B) the order is necessary and proportionate to protect that person from domestic abuse, or the risk of domestic abuse, carried out by the perpetrator. In determining an application, a court may hear evidence and submissions.

The courts enjoy broad discretion to attach conditions to a DAPO. Section 41 of the 2021 Act provides that every person subject to a DAPO is automatically given certain notification requirements, compelling them to notify the police of certain information (name, address etc). Under section 35(1), a court may impose any requirements that it considers necessary to safeguard the person for whose protection the order is made. This can include prohibitions on contacting the protected person, or coming within a certain distance of the protected person's address. A DAPO can also require a perpetrator to submit to electronic monitoring, or to fulfil a mandatory requirement such as participation in a behaviour change programme.

The Domestic Abuse Act 2021 also provides for breaches of the DAPO. It is an offence for a perpetrator to breach a DAPO without reasonable excuse, and breach triggers a power of arrest. Breach could involve doing anything prohibited by the DAPO or failing to do something which is required by the DAPO. The maximum penalty for breach of a DAPO is the maximum imprisonment available in the magistrates' court, a fine, or both, on summary conviction; or five years' imprisonment, a fine, or both, on conviction on indictment (Section 39 (5)). Where the police and CPS do not pursue criminal charges following breach of a DAPO, the victim and other parties to the proceedings (e.g., social services) may be able to bring proceedings against the perpetrator as a civil contempt of court.

It is not yet clear how the courts will handle appeals against DAPOs. The Explanatory Notes for the Act state that appeals shall be by way of review of the lower court's decision rather than by way of rehearing, unless the court orders otherwise. Under section 44 of the Act, DAPOs can be discharged, extended or otherwise varied in wide circumstances. Sections 46 and 47 of the Act set out the circumstances in which protected persons, applicants (if another person or body), and the subject of an order, can appeal the decision of a court to impose a DAPO. A body of jurisprudence has developed on the legality of civil preventive orders. However, for the most part, this jurisprudence has been favourable to those who represent police forces. Generally speaking, civil preventive orders are not 'penalties', for which proceedings will attract heightened human rights safeguards such as the ban on retrospective punishment. Moreover, the courts have been slow to

interfere with the use of the civil standard of proof, where this has been expressly provided for by Parliament, even for orders that might fairly be said to impose serious penal-like consequences.^v

The Pilots

In practice, DAPOs go further than Domestic Violence Protection Orders, which apply for a maximum of 28 days, made upon application by the police to provide breathing space and protection for an alleged victim of violence. Often, by the time the application is made, the criminal case has already been stopped due to a lack of support from the protected party. Sometimes, police bail will remain in place whilst consideration is given to whether an evidence-led prosecution could result in a criminal conviction.

Defence practitioners and other legal professionals are quick to call the orders draconian when making representations against their imposition. These applications are made in a context where a criminal conviction for the allegations ranges from unlikely to impossible. Currently, the prohibitions that can be put in place are significant and untested judicially. DAPOs can be put in place indefinitely, often mirroring strict bail conditions with up to five years in custody for breaches, when only the civil standard of proof applies. They can prohibit an individual from returning to their home address, or from evicting a protected party from their address for the duration of an order. Sections 35-37 of the DAA 2021 specify that electronic monitoring may be imposed on respondents for up to a year. When an order is imposed, there are mandatory notification requirements. Many are decided without the respondent in attendance, and they are often not legally represented.

One of the main issues raised by those representing respondents in DAPO applications is that they are restricted to civil legal aid.^{vi} As such, any representative must be authorised to undertake civil legal aid and must apply for a civil legal aid certificate. Few defence firms are registered for civil legal aid, leaving many respondents unrepresented at contested hearings. Legal aid is often available for contested DVPO applications, even though they are less consequential orders. It remains to be seen whether the Home Office will expand the availability of legal aid for respondents ahead of the national rollout.

One selling point of the orders is the ability to impose positive requirements, such as the respondent's attendance at a drug or alcohol course or a behavioural change programme. Currently, the respondent's consent is required for the triage team to assess their suitability for the requirement. Understandably, this has led to a lack of uptake for positive requirements. There is little incentive for a respondent to agree to a lengthy programme when there is a risk of a criminal conviction if they fail to comply. In their current state, this element of the orders seems like a missed opportunity.

There are some potential resolutions for this. Allowing the courts to mandate positive requirements without the respondent's consent would inevitably lead to further criticism of these orders as draconian and punitive, with DAPOs essentially mirroring community orders without a finding of guilt to the criminal standard. An alternative would be to incentivise positive requirements. In appropriate cases, they could be treated differently from prohibitions, in which a failure to comply did not lead to an automatic breach of the order. This would hopefully encourage more individuals to accept help to address the underlying causes of their abusive behaviour.

As noted above, it is possible for the police, a respondent against whom the order was made or a protected party to apply to vary, discharge or appeal the order. This is a change to the previous DVPO regime, which did not have the same mechanism in place. Therefore, it is crucial that

proper consideration is given to the conditions within the order, the impact they would have on the respondent and the views of the protected party. Although orders can be made without the consent of the protected party, real consideration should be given as to whether they should be applied for in every case. There has been a significant number of applications to discharge orders from protected parties.

Practice Points

To increase the likelihood of successful applications, forces should consider whether they can meet both stages of the test. The circumstances in which the application has been brought are obviously relevant to the first limb, which focuses on whether abuse has occurred. The circumstances of the officer's attendance will be relevant. An application which features clear statements from officers or other witnesses or photographic evidence (e.g. of injuries, messages or the scene) is more likely to satisfy the test. The previous domestic history, previous convictions and any record of previous DAPOs/DVPOS assists the court in understanding the extent and history of the abuse. Care should be taken not to rely predominantly or solely on previous incidents, especially those which are of significant age or have already been subject to judicial determination.

When considering the second stage: that is, whether applications are necessary and proportionate, the risk factors in the parties' relationship will be on the court's mind. Addiction, mental health, involvement of support agencies, children, the extent of any family/support network are all factors that will be relevant. If police bail is in place, there must be a consideration of whether additional protection is necessary. This will depend on the length of police bail and the conditions that are already in place.

Although electronic monitoring can be imposed, it requires the respondent's attendance. This can cause delay. It may take some time to secure the respondent's attendance through a summons or a warrant, and so the necessity for this condition requires careful justification. Conditions must also be practical. If children are involved in the parties' relationship, no-contact provisions may require adjustment to accommodate for access. Prohibitions relating to attending an address, street or area need to be proportionate and workable, too. The housing situation for the respondent whilst the order is in place may need to be investigated and the impact of the order on all parties should be considered. If care is taken when preparing the applications, they are less vulnerable to challenge or appeal.

Conclusion

DAPOs are a sea-change in the landscape of civil preventive orders to have emerged in the last two decades. Unlike their predecessors, DAPOs offer policing and legal teams an exceptionally powerful resource for disrupting perpetrators of domestic abuse and securing the safety of victims. Misconceived applications risk wasted resources and could lead to injustice. Therefore, the expanded capability and flexibility of the DAPO comes with a need for rigorous, front-loaded preparation, and a firm eye on the two-stage test applied under the statute.

ⁱ Comments of Robert Buckland, then Lord Chancellor and Secretary of State for Justice, who introduced the Domestic Abuse Bill for its Second Reading on 28 April 2020: Hansard HC Deb Vol 675, Col 235.

ⁱⁱ <https://www.cps.gov.uk/legal-guidance/domestic-abuse>

ⁱⁱⁱ A. Sanders, 'Personal Violence and Public Order: The Prosecution of 'Domestic Violence' in England and Wales' (1988) 16 International Journal of the Sociology of Law 359-382; S. Stith, 'Police Response to Domestic Violence: The Influence of Individual and Familial Factors' (1990) 5 Violence and Victims 37-49.

^{iv} An Evaluation of the Ministry of Justice-funded Domestic Violence Programmes, 2018.

<https://www.justice.govt.nz/justice-sector-policy/research-data/evaluation-of-domestic-violence-programmes>

^v *Jones v Birmingham City Council* [2023] UKSC 27 at [58]-[67].

^{vi} Schedule 1, Part 1, paragraph 11 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012