

Good Practice in Commissioning Specialist Domestic Abuse Services



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Foreword from Scottish Women's Aid

Scottish Women's Aid (SWA) is delighted to offer this good-practice guidance for those involved in the commissioning of domestic abuse services. The need for an authoritative piece of guidance that met the needs of both commissioners and services emerged from the many queries SWA has fielded from the network of Women's Aid groups, and through our work with local authorities regarding obligations under European rules, Scotland's Public Sector Equality Duty and recent National procurement legislation.

SWA has some concerns about the ways in which domestic abuse services are being commissioned in some local authorities, particularly in light of the procurement regulations which came into effect in April of this year. Our biggest worry is that the main driver will be cost-cutting in the short-term, resulting in unsuitable, unsafe services which have not been shaped by the needs and experiences of women, children and young people affected by domestic abuse.

The Women's Aid movement in Scotland is 40 years old this year. Historically, Scotland's specialist services focused on provision of emergency housing and specialist support, undertaken by feminist activists who volunteered their time and resources to making sure that women and children experiencing domestic abuse had somewhere safe to go when staying at home became too dangerous. Forty years later we have services providing a comprehensive set of supports, many of which are not related to housing but which are being funded through housing support models in order to maintain a stable funding stream.

Scotland has some of the best domestic abuse policies and services in the world, and we got here by finding ways to work in collaboration, ensuring our decisions are informed by the lived experience of those most affected. This document exemplifies that commitment to working together, to understanding all parties' constraints, and to doing the right thing at the end of the day.

We are all in this together.

The overriding message of this guidance is that commissioners have many choices for how they commission domestic abuse services. What those choices are and how and why they are made is an intrinsically political process that should be transparent and in the public interest. We are convinced that service providers and local authorities alike will find this guidance helpful for identifying the right local strategy and for feeling confident that their strategy is based on a sound legal and ethical basis.



Dr. Marsha Scott
Chief Executive, Scottish Women's Aid

Foreword from COSLA

COSLA welcomes this note on Good Practice in Commissioning Domestic Abuse Services as an important contribution to continued efforts by Scottish Women's Aid and Local Government to tackle violence against women.

While our ultimate aim is to prevent violence against women in all its forms, the achievement of that vision remains a long way off. As a result, there is still a need for specialist services for survivors of domestic abuse and their families, and this document seeks to support councils in commissioning such vital services.

The document aligns with our commitment to Equally Safe: Scotland's Strategy for Preventing and Eradicating Violence Against Women and Girls and is one of several valuable products of this work.

Local authorities have a lead role to play in delivering this strategy but we cannot do it without partner agencies and, in particular, the third sector. The collaborative process through which this good practice note has been drafted and its acknowledgement of the difficult times faced by public bodies and providers adds real value to the document.

We hope this guidance document can be of use to local authorities, providers and other agencies and we thank Scottish Women's Aid for their continued efforts in this important area of work.



Cllr Harry McGuigan
COSLA Spokesperson for Community Well-being

1. INTRODUCTION

SWA and COSLA have developed this guidance to support good practice in the commissioning of services for women and children affected by domestic abuse. We are committed to ensuring that provision reflects local and national commitments to domestic-abuse-competent specialist services, whilst supporting local authorities to deliver best value and the most appropriate services with the resources available.

This guidance reflects feedback from a number of consultation events which were held to gather information and input from commissioners and from service providers across Scotland. In this challenging economic context, in which local authorities are under increased pressure to make savings, it is important that commissioning processes are safe in both the short and long term. Budget cuts to local government are a grave concern, with direct cuts impacting severely on women and children in general, and specifically on those affected by domestic abuse. Even where local authorities must make reductions in funding, they can still ensure that they make the best use of the commissioning approaches available to them. Strategic approaches to commissioning will be underpinned by an understanding of long and short terms needs of women, children and young people affected by domestic abuse. Such approaches should reflect an understanding of the risks that certain commissioning processes pose to women and children who are in need of specialist support and to the local authorities that are funding such support.

As national organisations which are aligned with national commitments to end domestic abuse, COSLA and SWA recognise the importance of supporting commissioning processes that will reduce risk for local authorities, for communities, for specialist services and, most importantly, for women, children and young people affected by domestic abuse. Though commissioners are operating in an increasingly complex environment, they have at their fingertips a range of options and tools which can enable them to put in place commissioning processes that uphold the good practice principles outlined in this guidance, and that will help to reduce risk through the provision of services that meet the needs of women, their children and the wider community.

This guidance reflects the principles of *Equally Safe: Scotland's strategy for preventing and eradicating violence against women and girls*. In particular, it is predicated on a gendered analysis of violence against women and girls which recognises that women and girls are disproportionately affected by particular forms of violence, and that they experience such violence precisely because they are women and girls.

2. THE SCALE OF THE PROBLEM

Domestic abuse is persistent and controlling behaviour by a partner or ex-partner which causes physical, sexual and/or emotional harm. It is common but often concealed. In most cases, it is experienced by women and children and is perpetrated by men.

Domestic abuse is not an isolated incident, not a 'one off', nor is it a fight or an argument between two people who are equal in a relationship. Rather it is a pattern of surveillance and domination by one partner over the other, where fear is not just a by-product but a central tactic used by the perpetrator. Within this pattern of behaviour, physical violence can be non-existent, regular and 'low level', or serious and sustained. Women also often experience high levels of sexual violence and financial control. Women, and their children, are sometimes killed by a partner or ex-partner and, although many ask 'why doesn't she just leave?', research shows that the act of 'leaving' is the time when women and children are at most risk of lethal violence.

Domestic abuse can also have a huge impact on children and young people. Research shows that children affected by domestic abuse face three main risks: the risk of observing traumatic events, the risk of being abused themselves, and the risk of being neglected (Mullender 2003). Evidence suggests that witnessing domestic abuse may be as harmful to children as suffering physical abuse, and that there is a co-occurrence of domestic abuse and child abuse in 40% of cases (Walby 2004). Children's experience of domestic abuse can also include control of their time and movement within the home, deprivation of resources and imprisonment, and isolation from the outside world (Katz 2016).

Domestic abuse can be a significant child protection issue. It is the third most common ground for referral to the Children's Reporter, the fourth biggest concern in child protection case conferences and is present in over 50% of Serious Case Reviews. As outlined in the Scottish Government's National Guidance for Child Protection in Scotland (2014), supporting and protecting a non-abusing parent can be the most effective way to protect children in the context of abuse. It can also be the most effective way to reduce further harm, and expense for communities and local authorities.

Domestic abuse can have a devastating and long-term impact on lives of the women and children affected. It can result in homelessness, isolation, loss of earnings, physical and mental health problems, injuries and even death. Common health effects of domestic abuse include physical injury, poor health and a range of psychological and reproductive difficulties. Domestic abuse has a damaging impact on mental health with problems such as anxiety, depression and low self-esteem being well documented for women and children. All this, quite obviously, has consequences for local services such as housing, health, policing, social services and voluntary sector organisations.

APPENDIX A provides links to further information and resources.

An analysis of 10 separate domestic violence prevalence studies by the Council of Europe showed consistent findings:

- Between 1 in 3 and 1 in 5 women experience domestic abuse over their lifetimes;
- Between 6–10% of women experience domestic abuse in a given year;
- Domestic abuse accounts for between 16% and one quarter of all recorded violence with one incident reported to the police every minute;
- In any one year, there are 13 million separate incidents of physical violence or threats of violence against women from partners or former partners;

- 2 women a week are killed by a male partner or former partner.

It is hard to establish the exact scale of the problem, but there are figures that give us some indication of the extent of the issue in Scottish society today.

An officer will attend a report of domestic abuse in Scotland every 9 minutes, 365 days a year (Scottish Police Authority 2015). Almost 20% of police operational time is spent dealing with Domestic Abuse issues (Police Scotland 2016). About 25% of prosecution cases are domestic abuse related.

Scottish Government Statistical Bulletin (Crime & Justice Series), 2014/15

- 59,882 domestic incidents recorded in Scotland.
- In 79% of incidents where gender is recorded, there is a female victim and a male perpetrator¹.
- Domestic Incidents account for 15% of all violent crime in Scotland.

These statistics illustrate both the seriousness of the crimes committed and how widespread domestic abuse is. In Scotland, incidents of domestic abuse recorded by the police have increased each year since recording began in 1999.

Children and Young People Experiencing Domestic Abuse

- Following the death or serious injury of a child or children, 50% of Serious Case Reviews cited domestic abuse as a factor;
- In 2015/16, close connection to perpetrator of domestic abuse was the third most common ground for referral to the Children's Reporter, with 2498 children in Scotland being referred;
- In 2015, domestic abuse was identified as the fourth biggest concern in case conferences, being raised as a concern for 969 children and young people; and
- In 40% of cases of domestic abuse there is a co-occurrence with child abuse.

Scottish Women's Aid Census 2016

On one day in Scotland:

- 366 women and 351 children and young people were living in a Women's Aid refuge;
- 943 women and 358 children and young people were supported by a Women's Aid group;
- 66 women and 20 children and young people contacted Women's Aid for the very first time
- 46% of women and their children who requested refuge were turned away due to a lack of safe and suitable spaces; and
- One woman was unable to get into refuge because she had no recourse to public funds.

¹ It is worth noting that official data on domestic abuse suffer from significant methodological problems. These figures reflect police-reported crime data and the Scottish Crime and Justice Survey. The former reflects an 'incidents' approach and the crime survey, like all such surveys, tends to skew gender breakdowns because of small samples. See Michael Johnson, *A Typology of Domestic Violence: Intimate Terrorism, Violent Resistance, and Situational Couple Violence (Northeastern Series on Gender, Crime, and Law*, Northeastern University Press, 2008.

3. SPECIALIST DOMESTIC ABUSE SERVICES

With over 40 years of listening to and working with women, children and young people, Women's Aid has developed an in-depth and specialist understanding of domestic abuse and the impact that it has on women, children and young people.

It is important to note that specialist domestic abuse services in Scotland are underpinned by a **gendered analysis of domestic abuse**, which highlights that domestic abuse is:

'a function of gender inequality and an abuse of male power and privilege. It takes the form of actions that result in physical, sexual and psychological harm or suffering to women and children, or affront to their human dignity, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or private life' (Equally Safe, Scottish Government, 2016).

The gendered analysis of domestic abuse highlights, then, that domestic abuse is not only caused by gender inequality but that it also reproduces and furthers women's inequality. Domestic abuse can and does result in homelessness, isolation, loss of income, physical and mental health problems, injuries, and even in the deaths of women and children. Specialist domestic abuse services recognise that these issues are often intertwined and inseparable and that services should be designed and provided with this in mind. Specialist domestic abuse services recognise the risk to women and children who cannot access appropriate support. They understand the need for safe, women-only spaces, run by women and for women who have been affected by domestic abuse. They know that domestic abuse can be viewed as a child protection issue and that if a non-abusive parent or carer is not safe, it is unlikely that the children will be. This is why specialist domestic abuse services provide specialist **support for women**, specialist **support for children**, and **support for mothers and children together** to help them rebuild their lives.

It is for this reason that specialist services provide a range of services such as:

- **Refuge accommodation** which provides emergency temporary housing for women on their own or with children when they need a safe place to stay;
- **Visiting support** for women, children and young people in the community rather than in refuge. This can range from providing individual support, to providing a drop-in service at a local health centre;
- **Information** for women, children and young people on their rights and options. This enables them to make informed choices and decisions about their future. Women, children and young people can access this service in person by calling into the local Women's Aid's office or by telephone;
- **Advocacy** for women and children, which assists them in negotiating the complexities of the range of agencies they will have to deal with in rebuilding their lives;
- **Training, awareness raising and prevention work** with agencies and communities; and
- **Children and young people's services** which provide services such as one-to-one support, group work programmes and play therapy.

Both DIRECTIVE 2012/29/EU (hereinafter called **The Victims' Rights Directive**) and *Convention on Preventing and Combating Violence Against Women and Domestic Violence* (hereinafter called **The Istanbul Convention**) distinguish between general and specialist support services and highlight the need for each. As outlined in The Victims' Rights Directive, '[s]pecialist support services should be based on an integrated and targeted approach which should, in particular, take into account the specific needs of victims, the severity of the harm suffered as a result of a criminal offence, as well as the relationship between victims, offenders, children and their wider social environment' (Council of Europe, 2012).

The Istanbul Convention, of which the UK Government is a signatory, distinguishes specialist services from generic services on the grounds that they are underpinned by a gendered understanding of domestic abuse; they are rights-based and safety-focused; they avoid secondary victimisation; they can provide, where possible, a range of services on the same premises; their approaches are integrated, recognising the relationships between victims/survivors, perpetrators and their environment; and they address the specific needs of women, children and young people who are victims and survivors of domestic abuse (Council of Europe, 2012).

Specialist support services are largely offered by the 36 Women's Aid across Scotland, although a number of local authorities and other public sector organisations provide gendered, specialist services. All services should promote the involvement of women and children affected by domestic abuse in service design and delivery, and take into account the needs of various groups. Although many domestic abuse services are funded through housing budgets, reflecting the historical focus on refuge, it is important that those involved in commissioning processes recognise that specialist domestic abuse services provide much more than housing support.

Specialist domestic abuse services work alongside women, children and young people to ensure they are able to make informed choices. They provide a range of support and care which tackle the short and long-term impacts of domestic abuse on women, children and young people. Furthermore, research has shown that where women, children and young people can access the support they need, when they need it, they are less likely to require as many, or as lengthy, interventions from other agencies such as health, social services and the police.

Quality Standards

Women's Aid services in Scotland are rigorously and continuously assessed against a range of quality standards and quality assurance mechanisms. Such mechanisms include:

- National Care Standards
- SSSC Code of Practice
- Funder Outcomes
- National Standards for Domestic Abuse Services

National Standards for Specialist Domestic Abuse Services

Scottish Women's Aid, in partnership with its membership of Women's Aid groups developed **The Women's Aid National Service Standards** (see **ANNEX 1**) as a benchmarking tool for domestic abuse

services in Scotland. These outline the specialist nature of the services provided for women, children and young people affected by domestic abuse and form a set of accredited criteria through which specialist services can evidence their quality.

The service standards have been developed to ensure that the value of specialist Women's Aid services is clearly defined and that the standards are underpinned by service user feedback, monitoring and evaluation, ensuring that services are needs-led and person-centred. They provide specialist domestic abuse services with a framework to evidence their work, to highlight good practice and innovation, and to identify where practice may need to be improved.

These standards can also be used by local authorities to ensure that commissioning and procurement processes are rooted in the experience and knowledge of women, children and young people, and in the knowledge and understanding gained from over 40 years of work by the Women's Aid network.

4. PRINCIPLES FOR COMMISSIONING DOMESTIC ABUSE SERVICES

This guidance uses the term ‘commissioning’ to refer to the activities involved in assessing need for services; considering options; planning the nature, range and quality of future services; and working in partnership to put these in place; and uses the term ‘commissioner’ to refer to the person, team or local authority responsible for carrying out these activities.

Commissioning processes can be underpinned by principles which can ensure that, regardless of what approach is taken, services reflect certain quality standards and meet the needs of women, children and young people accessing them. This section explores some such principles which can enable local authorities to meet their commitments under Equally Safe (2016), and to support the provision of services that reflect recommendations in The Victims’ Rights Directive and The Istanbul Convention.

These principles are also consistent with The Public Contracts (Scotland) Regulations (2015), the Procurement Reform (Scotland) Act (2014), where applicable to the commissioning approach, the Equality Act (2010) and its related Public Sector Equality Duties.

The principle of equality is essential when local authorities are considering funding specialist domestic abuse services. The Public Sector Equality Duty, for example, requires that local authorities, at every stage of the commissioning process, work to advance the equality of women and to eliminate the harassment and discrimination that contributes to their inequality. It places a duty on local authorities to assess whether there will be an adverse impact on women of a particular decision or policy and to decide if that adverse impact can be avoided entirely, reduced or somehow mitigated, or if is justified.

The Public Sector Equality Duty and Equality Impact Assessments (EIA), including Child Rights and Wellbeing Impact Assessments (CRWIAs), can be used together to establish clear and open equality and diversity intentions and aims, which are integrated across commissioning processes, policy approaches and different decision-making structures of a local authority. This will ensure that any changes or decisions made during the commissioning process are based on and reviewed against clear policy intentions and aims.

A key consideration of an EIA should be to assess the extent to which women, children and young people affected by domestic abuse are actively and meaningfully assisted to participate in the social, economic, cultural and political fabric of the local community, and how changes in commissioning processes could potentially impact negatively or positively on their participation in public life.

Some public bodies have misinterpreted the Equality Act to mean that they have to treat everybody the same and provide the same services to all groups. They have misunderstood the public sector equality duty and failed to recognise that they should have ‘due regard to the need to take steps’ to meet the needs of women that differ to those of men (see section 149(3)(b), Equality Act 2010).

Commissioning Processes

In order to meet the needs of women, children and young people affected by domestic abuse local authorities can put in place commissioning processes that:

- Recognise and value the knowledge and understanding of women, children and young people with lived experience of domestic abuse;
- Recognise the need for greater emphasis to be placed on **quality rather than cost** or price (see Scottish Government [Guidance on the Procurement of Care and Support Services](#), 2016);
- Support and enable women, children and young people from a range of backgrounds and identities to participate meaningfully in commissioning processes;
- Focus on protecting children and women. Not all cases of domestic abuse involving children rise to the level of child protection, and early provision of support and safety using a perpetrator focus (as with the Safe and Together model) will reduce levels of harm and expense; commissioning must prioritise the safety of women, children and young people affected by domestic abuse;
- Are informed by a **gendered analysis** of domestic abuse, recognising gender inequality as both a cause and consequence of violence against women and girls;
- Ensure that **Equality Impact Assessments**, including **Child Rights and Wellbeing Impact Assessments**, and analysis are conducted in a meaningful way and that these are used to shape policies and processes;
- Ensure that, where good services are already being delivered, commissioners can consider which tools will best facilitate service-continuity for the women, children and young people accessing them;
- Use tools such as service specifications and other commissioning documents to further aims to provide services which meet certain quality standards;
- Improve the economic, social, and environmental wellbeing of the area;
- Recognise and value the experience, knowledge and understanding of specialist domestic abuse services and their staff, and facilitate their involvement;
- Encourage collaboration and partnership working with specialist providers;
- Encourage the routine use of co-production in service design;
- Consider the implications of different processes on women, children and young people affected by domestic abuse;
- Consider other benefits, disadvantages and long term implications of different commissioning approaches;
- Consider the resource implications for service providers involved in the process, ensuring that processes reflect, where a procurement process is being followed, the duty of proportionality as outlined in the Procurement Reform (Scotland) Act 2014, where applicable to the commissioning approach; and
- Consider the implications of different processes on the quality of services that are currently being provided.

Local authorities should seek to fund services that:

- Are underpinned by a gendered analysis of domestic abuse, which recognises that domestic abuse is both a cause and consequence of women's inequality;
- Are shaped by and promote the views of women, children, and young people who have experience of domestic abuse;
- Demonstrate an understanding of the need for women-only spaces in the promotion of safety and of recovery from domestic abuse;
- Adopt a rights-based, person-centred, needs-led approach to addressing the impact of domestic abuse on women, children, and young people;
- Demonstrate a commitment to promoting children's rights and recognise that children and young people have their own unique needs in regard to domestic abuse;
- Support women in realising their choices with regard to housing and accommodation;
- Provide holistic, multi-faceted support for women, children and young people or, where this may not be possible, work in partnership with other appropriate agencies. Services could include:
 - Refuge accommodation
 - Advocacy services
 - 1:1 support
 - Group work
 - Follow-on/resettlement for women and children leaving refuge
 - Visiting support for women, children and young people in the community
 - Telephone support
 - Email support
 - Drop-in

Local authorities are afforded considerable flexibility in how they commission services. If underpinned by these principles, commissioning processes are more likely to deliver services that meet the needs of women, children and young people, and that have been evidenced to provide substantial savings in public spending (see [Spend Now, Save Later](#)). There is no reason why the above principles cannot be followed when awarding funds via grants, service contracts covered by procurement legislation or by way of entrustment of provision of a Service in the General Economic Interest (SGEI). The following section, [SECTION 5](#), will look at the different options available to local authorities when commissioning domestic abuse services in Scotland.

5. FINANCIAL OPTIONS FOR LOCAL AUTHORITIES COMMISSIONING SPECIALIST DOMESTIC ABUSE SERVICES

In Scotland there are a wide range of contractual arrangements between public authorities and service providers for delivering various care and support services. Some commonly use terms for such arrangements are 'grants', 'contracts' and 'service level agreements' (SLAs). Other terms include 'performance grants', 'management contracts', 'management fee contracts', and 'service contracts'.

Different arrangements carry with them practical implications in legal, financial and other terms. Such implications can be significant and can include, for example:

- The tax position and liability of a service provider in respect of VAT being affected by whether income is grant income or income earned under a contract.
- The legal considerations for each party varying depending on whether the financial arrangement is a contract or a grant.

This section aims to offer guidance in the context of the variety of arrangements available to local authorities, recent changes to parts of commissioning landscape, and the increasing pressures on local government officials. It offers clarity on the compliance of such routes with European and national legislation, and will clarify the options available to commissioners of domestic abuse services, namely (A) grants, (B) service contracts and (C) compensation for non-economic services in the general economic interest (SGEI).

Regardless of the approach taken, local authorities as public bodies must act in accordance with the EU Treaty and national law relevant to transparency, state aid, best value under the Local Government in Scotland Act 2003 and, where relevant, procurement legislation. However, local authorities do and may take different decisions in relation to how such services are commissioned. It is important that both local authorities and domestic abuse service providers have a clear understanding of the contractual arrangements available to them so that they can best select which form of arrangement is most appropriate.

A number of factors will generally be at play when deciding on how arrangements may or need to be structured including:

- Grant giving powers of the public bodies concerned;
- The degree to which service contract provisions are required (for reasons surrounding liabilities etc.);
- Local government legislative duties, e.g. best value;
- Financial drivers/constraints within the public bodies concerned; and
- State aid and procurement considerations.

The recent changes to procurement legislation have had some impact on the ways in which services in Scotland can be purchased, namely where there is a 'service contract'. We will come to this later.

It is important to note at this stage, however, that such legislative changes do not apply to grants or certain services of general economic interest.

We will now look at some of the options available to commissioners of domestic abuse services in Scotland.

(A) Grant-funding

Domestic abuse services in Scotland can be funded through grants, payments made by a public authority in exercise of a statutory power. A grant award is often conditional on the service spending the funding in a particular manner (generally referred to as 'Conditions of Grant'). Recipients of grant funding must use the grant for the purposes specified with money being restricted to those activities. A grant is a legally binding contract. Usually, payments are made for expenditure incurred, for example on a quarterly basis. In some there may be provision for a management fee. The latter are often used and will be recognisable to many under the name 'service level agreement'.

There is no set process for service provision by way of grant funding in Scotland (certain statutes refer to powers of grant but no set powers are in place for taking steps to award a grant). There is, therefore, significant scope for commissioners to underpin grant funding processes with the good practice principles outlined in [SECTION 4](#). Embedding these principles in all stages of the grant funding process will enable commissioners to select service providers that are most suitable, best meet local need and reduce risk for their local authority, existing services, and women, children and young people affected by domestic abuse.

Local authorities wishing to carry out a competitive grant process (or application process) can also embed good practice principles and can borrow from procurement principles in terms of using minimums and/or selection criteria to ensure that only authorities/organisations that satisfy such criteria will be considered.

Criteria can include items such as:

- Quality standards for domestic abuse services;
- Social characteristics;
- Organisation, qualification and experience of staff; and
- Innovative characteristics.

Grant funding is not subject to procurement regulations. However, state aid and best value considerations will arise for local authorities.

Grant funding may be appropriate where:

- Funds are being given to further a public authority's statutory duty;
- Funds are to be used to undertake activities, including the provision of services to a third party, that are not being undertaken for the benefit of the local authority;

- A recipient organisation with charitable status is required to treat the funding, and to present the funding in its accounts, as ‘restricted funds’;
- The only obligation on the local authority under the grant is to comply with the applicable statutory and other processes in awarding the grant; and
- The recipient organisation has the option of either performing the activities or handing back the money without incurring further costs.

(B) Service Contracts

A service contract is a legally enforceable agreement between a local authority and a service provider under which services are provided by an organisation to a local authority in return for payment. Only when awarding a service contract, but not a grant or ‘non-economic’ SGEI, need local authorities follow a procurement process. The statutory context in which local authorities in Scotland are operating when awarding service contracts is determined by:

- [The Public Contracts \(Scotland\) Regulations 2015](#) (the 2015 Regulations)
- [Procurement Reform \(Scotland\) Act 2014](#) (The Act)
- [Procurement \(Scotland\) Regulations 2016](#) (the 2016 Regulations)

In addition to this legislation, the Scottish Government has produced [statutory guidance](#) which describes how public bodies should support the ambitions of the Act. The Scottish Government has produced further guidance on the [procurement of care and support services](#).

Recently updated legislation has introduced some changes and opportunities in how service contracts can be awarded for health and social care services (including care and support services). These changes should help to strengthen service provision by affording local authorities more flexibility and enabling commissioners and procurement teams to select service providers that best meet local need.

A key change is that the former distinction, relevant to higher value service contracts covered by the 2015 Regulations, between Part A and Part B services contracts has been replaced with the ‘light-touch’ regime (LTR). This new regime will apply to the award of care and support services contracts only where the value of those services equals or exceeds the financial threshold of £589,000. As outlined by the Crown Commercial Service:

‘The new **LTR rules are deliberately designed to give as much flexibility to contracting authorities as possible**, and so do not lay down detailed procedural rules. Routinely using similar procedures to those in the main rules would deprive the contracting authority of the many flexibilities that the LTR rules provide.’

Under these new arrangements, the EU procurement rules under the 2015 Regulations will only apply to public contracts which are worth at least £589,000.

It is important to note that under procurement legislation applying beneath the EU rules (the Act and the 2016 Regulations):

- Contracts valued at between £50,000 and £589,000 need not be put through a competitive tendering process or be advertised. Every local authority can now directly award for such contracts, though local authorities will still need to consider best value.
- Even where contracts are valued at above £589,000 there are certain exemptions for contracts which do not require an advertised process under the 2015 Regulations. Their application to domestic abuse services is, however, likely to be limited.

The new **sustainable procurement duty** under the Act affords local authorities opportunities and reinforces the ability to pursue procurement processes which reflect the principles outlined in **SECTION 4**. This allows local authorities, amongst other matters, to focus on how their procurement processes can improve the wellbeing of an area, in particular through a reduction of inequality in the area. It places a duty on local authorities to consider how a procurement process can improve the economic, social, and environmental wellbeing of the authority's area; how it can facilitate the involvement of third sector bodies; and how it can promote innovation.

However, of significant importance to ensuring the principles in **SECTION 4** are met, there is no need to follow a set process for a very large number of care and support services. There is significant flexibility and local authorities should note the comment of Crown Commercial Services above.

If what is going to be entered into constitutes a service contract or multiple service contracts that are subject to the procurement rules, questions may arise around the cumulative and individual values of those contracts, whether they require to be aggregated and how they will be treated under current legislation.

Competitive processes

In Scotland, the vast majority of local authorities are choosing not to put domestic abuse services to tender. In a small number of local authorities, however, competitive processes are being implemented in accordance with EU procurement principles. Procurement rules only apply, however, to 'service contracts' and these rules allow for a number of flexibilities.

The resource implications associated with service contracts generally, and tendering processes in particular, can be significant for both local authorities and service providers. When resource implications are taken into account, the use of tendering as an exercise in cost-savings can be undermined. The resources required can also mean that not all service providers can to participate equally in the procurement process, which can often rule out well-established, local specialist services.

Local authorities should carefully consider what is set out in [SECTION 4](#), looking at issues such as continuity of service, process cost and duration. Informed by the views of women, children and young people affected by domestic abuse, local authorities should consider whether competitive processes are appropriate and necessary, and how they can take advantage of other routes open to them.

(C) Non-Economic Services in the General Economic Interest

The recent changes in procurement law confirmed that in addition to grants, contracting in relation to the provision of ‘non-economic’ services in the general economic interest (SGEIs) is not subject to procurement rules and processes. Whilst this is a relatively technical area in which clarity can be lacking, in certain circumstances it may be possible for a local authority to entrust provisions of a SGEI without a requirement to follow procurement legislation.

Member states have a wide margin of discretion in defining a given service as a SGEI. Broadly speaking, what is required is a document ‘entrusting’ provision of a defined SGEI which includes a mechanism to limit the ‘surplus’ (or profit) which an organisation derives from delivery. Both local authorities and provider organisations will no doubt recognise a correlation between these requirements and various service level agreements or SLAs in use for the past 20 years.

The important point here is that this route, or tool, to Commissioning is very often overlooked but it provides another useful route which may merit consideration relevant to achievement of the good practice principles set out in [SECTION 4](#).

6. COLLABORATIVE ARRANGEMENTS

Since the Christie Commission there have been moves in Scotland towards more collaborative culture in the delivery of public services. When commissioning services through grants, service contracts or ‘non-economic’ SGEIs, there is much space to ensure that collaboration is a core component of the process. From the sustainable procurement duty and coproduction, to public social partnerships and the integration of health and social care, there are a number of ways in which local authorities can integrate collaboration into their commissioning processes. As outlined in [SECTION 4](#), collaboration with both service providers and with women, children and young people affected by domestic abuse is key to ensuring that the best services are delivered within the resources available. Each of the approaches outlined in [SECTION 5](#) afford commissioners much flexibility for incorporating collaborative elements and we are keen to support a significant shift in this direction.

Co-production

Co-production is a preferred method of ensuring that commissioners are able to create service/intervention designs and related specifications that are competent, cost-effective and outcome-focused. Services/interventions are ‘co-produced’ with organisations that work directly with the recipients of these services and/or the recipients and/or potential recipients themselves. A key factor in co-production is the involvement of service users in the design and commissioning of services.

Co-production enables commissioners to consider the full range of services/interventions that impact on the lives of service users, thus joining up planning, improving communication with other service commissioners and avoiding duplication. Most important, co-production supports service/intervention designs that are much more likely to deliver desired outcomes and effective use of the public pound. This approach can support local authorities to demonstrate best value and meet the requirements of the European Union Directive on Victim’s Rights.

The power dynamic between commissioner and commissioned needs to be taken into account when considering co-production. Key elements of a successful approach include openness about the power dynamics at play, a genuine ability to commission new ways of doing things, and a clear commitment to developing trust between the parties through open and honest communication.

There are many routes to the market for commissioners which can involve or be preceded by dialogue with providers and community-based organisations.

Public Social Partnership (PSP)

In Scotland, PSPs have been used by local authorities in the commissioning services, including domestic abuse services. A Public Social Partnerships (PSPs) is, ‘[a] strategic partnering arrangement which involves the third sector earlier and more deeply in the design and commissioning of public services’ (Scottish Government, 2011). PSPs recognise the valuable contribution that can be made by third sector partners in the design of public services/interventions.

PSPs do not always result in 'service contracts' and a number have involved a partnership which is grant-funded. It follows that a PSP need not always involve a procurement process. The consideration set in [SECTION 5](#) will be relevant.

Public social partnerships (PSPs) are an interesting option, given that every local authority area in Scotland already has a local Violence against Women Partnership (VAWP). A PSP comprising Violence Against Women Partnership members, led by third-sector organisations with appropriate specialist experience, and working from the gendered framework provided in Equally Safe, might be best placed to provide proper needs assessment and resource allocation decisions.

7. POLICY CONTEXT

Equally Safe (2016)

We want an integrated system of mainstream, specialist and third sector services capable of delivering a coherent and consistent approach across a diverse range of needs. (*Equally Safe*, 2016, p.41)

Equally Safe is Scotland's strategy for preventing and eradicating violence against women and girls. It was developed in 2014 and updated in 2016.

[*Equally Safe*](#) provides a framework and standard for policy, interventions, and service design in Scotland. The overall aim of the strategy is to prevent and eradicate violence against women and girls, creating a strong and flourishing Scotland where all individuals are equally safe and respected and where women and girls live free from such abuse - and the attitudes that help perpetuate it.

It contains four priority areas:

- Scottish society embraces equality and mutual respect, and rejects all forms of violence against women and girls;
- Women and girls thrive as equal citizens: socially, culturally, economically and politically;
- Interventions are early and effective, preventing violence and maximising the safety and wellbeing of women, children and young people; and
- Men desist from all forms of violence against women and girls and perpetrators of such violence receive a robust and effective response.

The Equality Act (2010) – Public Sector Equality Duties and Equality Impact Assessments

The Public Sector Equality Duty applies irrespective of financial threshold. The Duty covers public bodies when carrying out their public functions as service providers and covers services and functions which are contracted out. As the public sector equality duty (PSED) is a continuing duty, commissioners should seek to give consideration of it in all commissioning and procurement processes.

The Act explains that advancing equality of opportunity involves having due regard to the need to:

- Remove or minimise disadvantages suffered by people due to their protected characteristics;
- Take steps to meet the needs of people with certain protected characteristics, where these are different from the needs of other people; and
- Encourage people with certain protected characteristics to participate in public life or in other activities where their participation is disproportionately low.

The Equality Act seeks to minimise disadvantages suffered by people as a result of gender inequality. Therefore, in the context of domestic abuse, public and third sector bodies carrying out public functions in Scotland are mandated not to treat women and men the same, but to meet the needs

of each, and to remove or minimise the disadvantages experienced by people due to their protected characteristics. Gender-competent commissioning processes for domestic abuse services will ensure proper application of the Public Sector Equality Duty.

A key consideration of an EIA should be to assess the extent to which women, children and young people are actively and meaningfully assisted to participate in the social, economic, cultural and political fabric of the local community, and how changes in policy could potentially impact negatively or positively on their participation in public life.

Istanbul Convention (2012)

The 'Convention on preventing and combating violence against women and domestic violence' (Istanbul Convention) is a Council of Europe convention on violence against women and domestic abuse. The convention seeks to guarantee immediate, short- and long-term specialist support services to any victim subjected to domestic abuse. The UK signed the Convention in 2013. Once ratified, the convention has binding legal effect for Scotland.

Community Empowerment (Scotland) Act 2015

The Community Empowerment (Scotland) Act, amongst others, places community planning partnerships on a statutory footing and imposes duties on them around the planning and delivery of local outcomes. It is explicitly about how public bodies work together and with the local community to plan for, resource and provide services which improve local outcomes, with a view to reducing inequalities. Each Community Planning Partnership must set out in a Local Outcomes Improvement Plan (LOIP) the local outcomes they will prioritise for improvement. The Act also focuses responsibilities on community planning partners to support each partnership to fulfil its duties.

APPENDIX A: FURTHER INFORMATION

Policy

Community Empowerment (Scotland) Act (2015)

<http://www.legislation.gov.uk/asp/2015/6/contents/enacted>

Equally Safe (2016)

<http://www.gov.scot/Resource/0045/00454152.pdf>

Guidance on the Procurement of Care and Support Services, Scottish Government (2016)

<http://www.gov.scot/Resource/0049/00498297.pdf>

Istanbul Convention (2012)

<http://www.coe.int/en/web/conventions/full-list/-/conventions/rms/090000168008482e>

National Guidance for Child Protection in Scotland (2014)

<http://www.gov.scot/Resource/0045/00450733.pdf>

Procurement Reform (Scotland) Act (2014)

<http://www.legislation.gov.uk/asp/2014/12/contents>

Public Contracts (Scotland) Regulations (2015)

http://www.legislation.gov.uk/ssi/2015/446/pdfs/ssi_20150446_en.pdf

Victims' Rights Directive (2012)

<http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32012L0029&from=EN>

Further Reading and Resources

EHRC Guidance for Local Authorities in Meeting Equality Duties

<https://www.equalityhumanrights.com/en/advice-and-guidance/guidance-scottish-public-authorities>

What is Coercive Control?

[http://www.scottishwomensaid.org.uk/sites/www.scottishwomensaid.org.uk/files/What%20is%20coercive%20control%20\(2\)_1.pdf](http://www.scottishwomensaid.org.uk/sites/www.scottishwomensaid.org.uk/files/What%20is%20coercive%20control%20(2)_1.pdf)

Violence against Women: a literature review

<http://www.gov.scot/Publications/2005/03/20895/55133>

LGBT Youth Scotland information on LGBT domestic abuse

[LGBT%20Youth%20Scotland%20information%20on%20LGBT%20omestic%20abuse](http://www.lgbtyouthscotland.org.uk/information-on-lgbt-domestic-abuse)

Beyond the Physical Incident Model: How Children Living with Domestic Violence are Harmed by and Resist Regimes of Coercive Control (Katz 2016)
<http://onlinelibrary.wiley.com/doi/10.1002/car.2422/abstract>

Ears Wide Open: learning to listen to children and young people experiencing domestic abuse in Scotland
http://www.scottishwomensaid.org.uk/sites/www.scottishwomensaid.org.uk/files/SWA_Ears_Wide_Open_report.pdf

Everyday Terrorism: How Fear Works in Domestic Abuse
<http://www.scottishwomensaid.org.uk/sites/www.scottishwomensaid.org.uk/files/EverydayTerrorismReport.pdf>

LGBT Youth Scotland information on LGBT domestic abuse
[LGBT%20Youth%20Scotland%20information%20on%20LGBT%20omestic%20abuse](http://www.scottishwomensaid.org.uk/sites/www.scottishwomensaid.org.uk/files/LGBT%20Youth%20Scotland%20information%20on%20LGBT%20domestic%20abuse)

Strengthening mother-child relationships as part of domestic violence recovery
<http://www.scottishwomensaid.org.uk/sites/www.scottishwomensaid.org.uk/files/Katz%20CRFR%20Research%20Briefing.pdf>

Women's Stories

Recounting Women
<http://www.recountingwomen.co.uk/>

For further information on any of the content of this guidance, please contact Scottish Women's Aid on info@scottishwomensaid.org.uk

ANNEX I: Women's Aid National Service Standards

Standard 1

The services Women's Aid provides and the way in which we work are informed by our understanding of the gendered analysis of domestic abuse. We provide services which aim to address domestic abuse through prevention, protection, provision and participation. Our services are staffed and managed by women with specialist knowledge and training in domestic abuse.

Elements

1. All workers, collective members, volunteers, directors and management committee members have an understanding of and a commitment to a gendered analysis of domestic abuse.
2. All workers, collective members, volunteers, directors and management committee members are aware of how the elements of prevention, protection, provision and participation are delivered and embedded into services.
3. Recruitment processes and continual professional development training ensure that all workers, collective members, volunteers, directors and management committee members have specialist knowledge and understanding of the impact of domestic abuse and the broader issues of violence against women.

Standard 2

In recognition of the gendered nature and complex effects of domestic abuse, Women's Aid provides a range of women-only services that work alongside women, children and young people in a holistic, flexible and person-centred way. All of our work is informed by and promotes the views of women children and young people who have experience of domestic abuse.

Elements

1. All workers, collective members, volunteers, directors and management committee members working within the service have knowledge of the range of services that are provided.
2. All workers, collective members and volunteers working within the service work with a holistic, flexible and person-centred approach.
3. All workers, collective members, volunteers, directors and management committee members working in the service work within a framework of promoting the views of women, children and young people.

Standard 3

Women's Aid is committed to promoting children's rights and recognises that children and young people have their own unique needs. We provide specialist support services that children and young people can access as individuals or in parallel with their mother.

Elements

1. All workers, collective members, volunteers, directors and management committee members have an underpinning knowledge of the impact of domestic abuse and relevant policies for working with children and young people.
2. We promote children's rights in recognition of the unique needs of children and young people.
3. Services are promoted and provided as holistic family support and/or as independent support for children and young people as individuals with experience of domestic abuse in their own right.

Standard 4

The refuge accommodation Women's Aid provides has high levels of safety and security to ensure appropriate, accessible and safe accommodation for women, children and young people who have experience of domestic abuse.

Elements

1. Women's Aid provides services to ensure that all refuge accommodation is safe, secure and accessible to meet the individual needs of women, children and young people.
2. Women, children and young people are informed of the options for available refuge accommodation.
3. The refuge accommodation is part of the holistic support package offered to women, children and young people.

Standard 5

Women's Aid works to raise the standard of all statutory and voluntary services, and represents the views of women, children and young people with experience of domestic abuse, through multi-agency partnership working.

Elements

1. All workers, collective members, volunteers, directors and management committee members are aware of and participate in the appropriate multi-agency partnerships that exist.
2. All workers, collective members, volunteers, directors and management committee members have knowledge of the relevant statutory and voluntary services at a local level.
3. Relevant workers, collective members, volunteers, directors and management committee members are aware of the content in the organisational strategy relating to this area of work.

For further information on the National Service Standards, please contact Scottish Women's Aid on info@scottishwomensaid.org.uk

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