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1 INTRODUCTION

- 1.1 This document explains the way we, the Crown Prosecution Service (CPS), deal with cases involving domestic violence.
- 1.2 We regard domestic violence as particularly serious because there is often a continuing threat to the victim's safety and, in the worst cases, the victim's life and the lives of others (including children's) may be at risk.
- 1.3 When we are deciding whether or not to prosecute, the safety of the victim, children and any other person involved will be a priority for us.
- 1.4 People have a right to feel safe and be safe in their personal relationships. We know that domestic violence can have a devastating effect not only upon the victim but also upon families and especially upon children who witness or are aware of the violence.
- 1.5 Stopping domestic violence and bringing perpetrators to justice must therefore be a priority for our society. We are determined to play our part by prosecuting cases effectively.
- 1.6 We will work and train with our colleagues in the criminal justice system and with Women's Aid, Refuge, Victim Support and similar groups both locally and nationally, to help us improve our understanding of domestic violence and make the right casework decisions.
- 1.7 It is the role of the police to investigate and to gather evidence. It is our job to consider the evidence and currently* to provide the police with advice, if they ask

**Current charging procedures may be changed in the future following recommendations made by Lord Justice Auld in his Review of Criminal Courts, published 8 October 2001.*

for it, as to whether to charge. We have many locally agreed protocols with the police to help us both handle domestic violence cases effectively.

- 1.8** Where the police have already charged, we have to decide whether or not to continue the prosecution. These are often difficult decisions to make but the responsibility is ours, not that of the victim or the police.
- 1.9** We realise that victims of domestic violence — particularly those who may have suffered over a considerable period of time — also have difficult decisions to make that will affect their lives and the lives of those close to them.
- 1.10** We know that barriers exist, which mean that some groups of people are less likely to report offences. This is true for minority ethnic groups, disabled people, lesbians and gay men and older people. Barriers can be due to institutional racism, homophobia and other prejudices. They can also be due to language, culture, religion, ethnic or national background.
- 1.11** It is sometimes suggested that certain types of behaviour are more acceptable within some communities than others. We believe that cultural difference is not a reason for failing to protect minority ethnic community victims of domestic violence.
- 1.12** We welcome national and local initiatives that support vulnerable or intimidated witnesses throughout the whole process of reporting crime to giving evidence in court. Whenever possible, we will ensure that victims of domestic violence benefit from these measures.

1.13 We know that domestic violence is likely to become more frequent and more serious the longer it continues and can result in death. Sometimes, therefore, we will take proceedings even if a victim asks us not to.

1.14 We will consider every case carefully and sensitively. Our decisions will be objective but made within a framework that promotes safety and support for the victim and the provision of information to the victim.

2. WHAT IS DOMESTIC VIOLENCE?

2.1 There is no statutory offence of domestic violence, as such. “Domestic violence” is a general term to describe a range of behaviour often used by one person to control and dominate another with whom they have, or have had, a close or family relationship.

2.2 When prosecuting cases of domestic violence, and to help us apply our policy on dealing with such cases, we adopt the following definition:

“Any criminal offence arising out of physical, sexual, psychological, emotional or financial abuse by one person against a current or former partner in a close relationship, or against a current or former family member.”

2.3 This definition includes all forms of violent and controlling behaviour, for example assault, harassment or threats. Further examples are given at Annex A.

2.4 In most cases, the relationship will be between current or former partners; the abuser will be male and

the victim female. But our definition also includes male victims abused by females, victims in same-sex relationships and victims of abusive family members.

2.5 We aim to respond appropriately to the needs of all victims of domestic violence regardless of their gender or that of the abuser.

2.6 We also hope that this definition will help with the reporting and monitoring of domestic violence cases.

3. THE CODE FOR CROWN PROSECUTORS

3.1 The Code for Crown Prosecutors provides guidance on how Crown Prosecutors should make decisions about whether or not to prosecute. The Code is a public document. We review the cases referred to us in line with the two tests set out in the Code.

First test — the evidential test

3.2 Crown Prosecutors must first be satisfied that there is enough evidence to provide a “*realistic prospect of a conviction against each defendant on each charge*”. This means that a jury or bench of magistrates, properly directed in accordance with the law, is more likely than not to convict the defendant of the charge alleged. For there to be a conviction in a criminal court, we have to prove the case so that the court is sure of guilt.

Second test — the public interest test

3.3 If the case does not pass the first test (the evidential test), it must not go ahead, no matter how important or serious it may be.

- 3.4** If the case does pass the evidential test, Crown Prosecutors must then decide if a prosecution is needed in the public interest. A prosecution will usually take place unless *“there are public interest factors tending against prosecution which clearly outweigh those tending in favour”*.
- 3.5** When considering the public interest test, one of the factors Crown Prosecutors should always take into account is *“the consequences for the victim of the decision whether or not to prosecute, and any views expressed by the victim or the victim’s family”*.
- 3.6** The public interest test is explained in further detail at paragraph 5 below.

4. IS THERE ENOUGH EVIDENCE TO PROSECUTE?

- 4.1** Domestic violence nearly always happens in private. The victim is often the only witness. This means that unless the defendant pleads guilty, or there is strong supporting evidence, it will usually be necessary for the victim to give evidence in court. We know that some victims will find this very difficult and may need practical and emotional support which agencies such as Women’s Aid, Refuge, Victim Support or the Witness Service can give. Contact details for some of these agencies are given at Annex C.
- 4.2** We will not automatically assume that calling the victim is the only way to prove a case. We will actively consider what other evidence may be available, either to support the victim’s evidence or as an alternative to

the victim's evidence.

- 4.3** If it is necessary to call the victim, we will consider all options available to us to help victims give their best evidence in court.

What happens when the victim withdraws support for the prosecution or no longer wishes to give evidence?

- 4.4** Sometimes a victim will ask the police not to proceed any further with the case, or will ask to withdraw the complaint. This does not necessarily mean that the case will therefore be stopped — we will first consider what other evidence is available.
- 4.5** As a general rule we will prosecute all cases where there is sufficient evidence and there are no factors preventing us from doing so.
- 4.6** If the victim has decided to withdraw support, we have to find out why. This may involve delaying the court hearing to investigate the facts and decide the best course of action.
- 4.7** We will take the following steps:
- we will ensure that a prosecutor experienced in domestic violence matters supervises the case;
 - if the information about the victim's decision to withdraw support has come from the defendant, we will ask the police to find out from the victim whether this information is true;
 - if the victim confirms it is, we will ask the police to take a written statement from the victim explaining the reasons for withdrawing support, saying whether

the original complaint was true and whether the victim has been put under pressure to withdraw support;

- we will ask the police what they think about the case and, in particular, what they feel about the risks to the victim, children and any other person's safety;
- we will also ask the police how they think the victim might react to being required to attend court.

4.8 If the victim's statement after withdrawing the complaint is not the same as the earlier statement, the police will ask the victim to explain why it has changed.

4.9 If we suspect that the victim has been pressured or frightened into withdrawing the complaint, we will ask the police to investigate further. If necessary, we will ask the court to delay any hearing so that a thorough investigation can take place before we decide about the future of the case.

4.10 If the victim confirms that the complaint is true but still wants to withdraw that complaint, we will consider first whether it is possible to continue with the prosecution without it (the evidential test) and then, if it is possible, whether we should continue with the case against the victim's wishes (the public interest test).

4.11 We will explore all of these options fully, before we decide whether or not to proceed with a prosecution. The safety of the victim, children or any other potentially vulnerable person will be a prime consideration in reaching our decision.

Continuing with a prosecution against the victim's

wishes or requiring a witness to go to court against the witness's wishes.

- 4.12** In some cases the violence is so serious, or the previous history shows such a real and continuing danger to the victim or the children or other person, that the public interest in going ahead with a prosecution has to outweigh the victim's wishes.
- 4.13** If we feel that the case should continue and that it would be necessary to call the victim to prove the case, we have to decide:
- whether we should require the victim to give evidence in person in court; or
 - whether we could use the victim's statement as evidence (under section 23 of the Criminal Justice Act 1988) without the victim having to give evidence in court.
- 4.14** We can require a husband or wife to give evidence about an assault or threat of injury by their partner (section 80 of the Police and Criminal Evidence Act 1984). In the same way, unmarried partners or members of the family can be required to give evidence under section 97 of the Magistrates' Courts Act 1980.
- 4.15** If we decide that the victim must go to court to give evidence against their wishes, that decision will only be taken by an experienced prosecutor after consultation with the police.

Using the victim's statement as evidence under Section 23 of the Criminal Justice Act 1988 so that the victim

does not have to give evidence in person at court.

- 4.16** Section 23 of the Criminal Justice Act 1988 allows us to use the victim's statement as evidence without calling the victim to court, but only in very limited circumstances.
- 4.17** We have to prove beyond reasonable doubt that the person who made the statement is afraid to give evidence or is being kept out of the way.
- 4.18** The victim does not have to give evidence to prove that he or she is afraid. This proof can come from someone else, for example a police officer or doctor or sometimes it can be seen from the victim's behaviour in court.
- 4.19** If the court decides that the statement can be used under section 23, it must then decide whether, in the interests of justice, the statement should be used in this way.
- 4.20** If the victim is the only witness to the offence, it is very difficult to satisfy the court that justice is being served when the defence cannot cross-examine the only witness against them.

5. IS IT IN THE PUBLIC INTEREST TO PROSECUTE?

- 5.1** We always think very carefully about the interests of the victim when we decide where the public interest lies. But we prosecute cases on behalf of the public at large and not just in the interests of any particular individual.

5.2 There are often difficulties in striking this balance. The views and interests of the victim are important but they cannot be the final word on the subject of prosecution. The acts of an individual have to be put into the context of the wider society.

5.3 In cases of domestic violence, if the evidential test is passed and the victim is willing to give evidence, we will almost always prosecute.

5.4 If the victim withdraws support for the prosecution but we have enough evidence to proceed, we have to decide whether or not to prosecute.

5.5 Some examples of what helps us to decide this are:

- the seriousness of the offence;
- the victim's injuries — whether physical or psychological;
- if the defendant used a weapon;
- if the defendant has made any threats since the attack;
- if the defendant planned the attack;
- the effect (including psychological) on any children living in the household;
- the chances of the defendant offending again;
- the continuing threat to the health and safety of the victim or anyone else who is, or may become, involved;
- the current state of the victim's relationship with the defendant;
- the effect on that relationship of continuing with

- the prosecution against the victim's wishes;
- the history of the relationship, particularly if there has been any other violence in the past;
- the defendant's criminal history, particularly any previous violence.

5.6 Crown Prosecutors will want the police to provide information about family circumstances and the likely effect of prosecuting on members of the family. If social services, housing or voluntary agencies (e.g. Women's Aid) are, or have been, involved, they may also be able to help by providing the police with this type of information.

5.7 Generally, provided we have sufficient evidence, the more serious the offence or the greater the risk of further offences, the more likely we are to prosecute in the public interest — even if victims say they do not wish us to do so.

6. DECIDING THE CHARGES

6.1 The charges in domestic violence cases should reflect the seriousness and persistence of the defendant's behaviour, the provable intent of the defendant and the severity of the injury suffered by the victim. They must give the court the power to impose a suitable sentence and must help us to present the case clearly and simply.

6.2 We and the police have agreed what are called "charging standards" for certain types of offence including assaults. These are guidelines that help us to

make consistent decisions about the right charges. We use them when considering domestic violence cases.

6.3 Whenever we substantially change the charge originally put by the police we will explain why we have done this, either direct to the victim, or to the police so that they can pass the information on to the victim. Some cases, however, are dealt with very quickly so we may not always be able to give the explanation before the case is finished.

7. AVOIDING DELAY

7.1 The longer the delay, the longer the victim will be at risk and under pressure. We will make sure that cases involving domestic violence are not delayed without very good reason. We will do our best to ensure that the victim is kept informed, either by us or by the police, of the reasons for any delay in the proceedings.

8. BAIL

8.1 The police make the initial decision to bail a defendant to attend the next available court hearing (usually within two to five days of charge) or to keep the defendant in custody to appear before the magistrates the next day. Once a defendant appears before the court, the decision about bail is made by the magistrates and is governed by the provisions of the Bail Act 1976.

8.2 To protect the victim or witnesses from the risk of danger, threats, pressure or other acts by the defendant which might obstruct the course of justice, we may ask

for the defendant to be kept in custody or we may ask the court to impose conditions on the bail. The court can only agree if we are able to show that there are substantial grounds for withholding bail as set out in the Bail Act. Examples of some typical bail conditions are shown at Annex B.

8.3 We will work with the police and the courts to ensure that the victim/witness is kept informed, either by the police or by us, of any change to the bail conditions or custody status of a defendant.

9. “BINDING OVER”

9.1 A “bind over” is an order that the court can make when it considers that the defendant may offend again in the future. The defendant must agree to behave properly for a period of time. The courts can make a “binding over order” at the same time as they impose other penalties. But there must be enough evidence to justify making the order.

9.2 If we have information that shows there is a risk of the behaviour recurring, we may apply for a binding over order in cases where the victim withdraws support and we decide to stop the case. This may be the only option open to us to obtain some future protection for the victim in such cases, but we must still have sufficient evidence to support our application.

9.3 Sometimes a defendant may offer to be bound over if we will agree to drop the charges. We will not agree to this without carefully considering what might happen

and whether it would be in the public interest to do so. We are less likely to accept such offers in cases involving serious violence.

10. CONCLUSION

10.1 We are determined to play our part in stopping domestic violence, but we need help from victims themselves and from other people if we are to do our job well.

10.2 Victim personal statements, for example, (*introduced from 1 October 2001*) will give victims an opportunity to say how they have been affected by the crime. They may wish to talk about their fears of intimidation, their concerns about bail and whether they would like help from any of the support agencies. We will take account of what the victim says when we are making our decisions on the case and will ensure that, where appropriate, the court is also aware of the contents of the personal statement.

10.3 We will encourage the police to provide us with the fullest evidence and background information to ensure that our decisions are properly informed at all stages of the proceedings.

10.4 We recognise and welcome the invaluable advice, emotional support and practical help and information that may be offered to victims and witnesses by Women's Aid, Refuge, Victim Support, the Witness Service and similar agencies. Such support may help

victims and witnesses to stay confident and determined to continue with the case.

10.5 We will continue to work with our colleagues in the criminal justice system and with others at national and local level to help us develop best practice and to make the right decisions when dealing with cases of domestic violence.

10.6 We will monitor the way in which we deal with cases of domestic violence and will publish this information.

10.7 We intend to review this public statement regularly so that it reflects current legislation and social perspectives. We welcome, therefore, observations that enable us to do this.

ANNEX A

Here are some examples of types of behaviour that can occur in cases of domestic violence and which MIGHT

EXAMPLES OF BEHAVIOUR
Pressurising a victim/witness to “drop the case” or not to give evidence.
Physical violence, with or without weapons, inc: punching, slapping, pushing, kicking, headbutting, hair-pulling.
Violence resulting in death.
Violence resulting in miscarriage.
Choking, strangling, suffocating.
Spitting at a person.
Threatening with an article used as a weapon e.g. a knife, tool, telephone, chair.
Throwing articles, e.g. crockery, even if they miss their target.
Tying someone up.
Threatening to kill someone.
Threats to cause injury.
Threats seriously to damage or undermine social status.
Damaging or destroying property or threatening to damage or destroy property.
Harming or threatening to harm a pet.
Locking someone in a room or house or preventing them from leaving.
Preventing someone from visiting relatives or friends.

amount to a criminal offence. Whether any particular behaviour does amount to a criminal offence will always depend on the circumstances of the particular case. These examples should therefore be treated only as guidelines.

POSSIBLE OFFENCES
Witness intimidation, obstructing the course of justice, conspiracy to pervert the course of justice.
Common assault, actual/grievous bodily harm, wounding, attempted murder.
Murder, manslaughter.
Child destruction, procuring a miscarriage or abortion.
Common assault, actual/grievous bodily harm, attempting to choke, strangle or suffocate.
Common assault.
Threats to kill, common assault, affray, threatening behaviour.
Common assault, actual/grievous bodily harm, wounding, criminal damage, affray, threatening behaviour.
Common assault, actual bodily harm, false imprisonment.
Threats to kill, harassment.
Common assault, affray, threatening behaviour*.
Harassment, blackmail.
Criminal damage, threatening to cause criminal damage, harassment.
Criminal damage, threatening to cause criminal damage, cruelty to animals, harassment.
False imprisonment, harassment.
False imprisonment, kidnapping, harassment.

EXAMPLES OF BEHAVIOUR

Preventing someone from seeking aid, e.g. medical attention.

Preventing someone from dressing as they choose or forcing them to wear a particular make-up, jewellery and hairstyles.

Racial abuse.

"Outing", e.g. sexual orientation or HIV status.

Enforced financial dependence or unreasonably depriving someone of money.

Dowry abuse.

Unreasonable financial demands.

Forced marriage.

Enforced sexual activity.

Persistent verbal abuse, e.g. constant unreasonable criticism.

Offensive/obscene/menacing telephone calls, text messages or letters.

Excessive contact, e.g. numerous 'phone calls to check someone's whereabouts.

Secret or enforced administration of drugs.

Neglecting, abandoning or ill-treating a child.

*** If the threatening or disorderly words/behaviour are used in a dwelling house, the offence can only be committed if the other**

POSSIBLE OFFENCES
False imprisonment, actual bodily harm.
Actual bodily harm**, harassment.
Racially aggravated threatening behaviour*, disorderly conduct* or harassment.
Harassment, actual bodily harm**, blackmail.
Harassment.
Blackmail, harassment, common assault, actual/grievous bodily harm.
Blackmail, harassment.
Kidnap, blackmail, false imprisonment, common assault, actual/grievous bodily harm, rape, indecent assault.
Rape, indecent assault, harassment.
Harassment, actual bodily harm**.
Improper use of public telecommunication systems, malicious communications, actual/grievous bodily harm, harassment.
Harassment, false imprisonment.
Common assault, actual bodily harm, grievous bodily harm, administering poison.
Child cruelty.
<p>person is not inside that or another dwelling. ** Actual physical or mental harm must be proved to have resulted from the behaviour.</p>

ANNEX B

BAIL

A court can remand a defendant in custody or grant bail, with or without conditions attached. Before the first court hearing, the police can also retain a defendant in custody or grant bail, with or without conditions attached, but their powers to do so are more limited than the court's.

Conditions can only be imposed to ensure that the defendant attends the next court hearing, commits no new offences in the meantime, and does not interfere with any witnesses or obstruct the course of justice.

Examples of bail conditions imposed by courts

A court can impose any condition that seems appropriate in the circumstances of the particular case. Here are some examples of typical bail conditions imposed by courts:

- **The defendant must not contact, either directly or indirectly, a named person or persons.**

This means no contact whatsoever, including by telephone, fax or letter or through another person, e.g. the defendant cannot get a relative to make contact on his behalf.

- **The defendant must not go to a named place.**

This is usually a specific address, but may also be a street,

a town, an area or even a whole county. Sometimes the court will say that the defendant must not go within a specified distance of a place, e.g. within half a mile of Victoria Road.

- **The defendant must reside at a named address.**

This means live and sleep each night there.

- **The defendant must report to a named police station on a given day or days at a given time.**

For example, every weekday morning at 8.30am.

- **The defendant must abide by a curfew between certain specified hours.**

This means remain indoors, for example, from 9pm until 8am.

- **The defendant must provide a security to the court.**

If it is thought that the defendant might not attend the next court hearing, the court can order that a set sum of money be paid into the court. If the defendant does fail to attend the next hearing then the money can be forfeited.

- **The defendant must provide a surety.**

A friend or relative must agree to ensure that the defendant attends court, or the friend or relative could lose a specified sum of money.

Sometimes, for practical reasons, there are exceptions attached to the condition. For example:

- **The defendant must not go to a named place except:**
 - to attend court;
 - to see their solicitor by prior appointment;
 - to collect their belongings at an appointed time and accompanied by a police officer or other specified person;
 - to see the children, under supervision, at a specified time.

Breaching bail conditions

If the defendant breaches bail conditions, the police can arrest the defendant and the court can remand the defendant in custody.

Sometimes, despite bail conditions that say, for example, a defendant cannot contact the victim or return home, the victim contacts the defendant or invites or allows the defendant to return home.

There are all kinds of reasons why victims sometimes do this, but if the defendant responds in such a way as to continue the contact, then the defendant is breaching bail conditions because the police or the court have not released the defendant from the conditions of bail they imposed.

It does not matter that the victim has agreed to the contact; the victim is not subject to the bail conditions, the defendant is.

The defendant is responsible for complying with any conditions imposed by the police or the court until released from those conditions by the police or court.

ANNEX C

Listed below are contact details for some of the organisations that provide help or information to victims of domestic violence. They should be able to give contact details for local organisations.

Women's Aid Federation of England, PO Box 391,
Bristol BS99 7WS; Tel: 0117 944 4411

Women's Aid National Domestic Violence Helpline
Tel: 08457 023 468 (24 hr)

Welsh Women's Aid, 4 Pound Place, Aberystwyth,
Dyfed, SY23 1LX; Tel: 02920 390874

Refuge, 2-8 Maltravers Street, London , WC2R 3EE
Tel: 0207 395 7700

Refuge National Domestic Violence Helpline
Tel: 0870 5995443 (24 hr)

Southall Black Sisters, 52 Norwood Road, Middlesex,
UB2 4DW; Tel: 0208 571 9595 (office closed Weds)

Victim Support, Cranmer House, 39 Brixton Road,
London. SW9 6DZ; Tel: 0207 735 9166

Victim Supportline
0845 3030900
9am - 9pm weekdays, 9am - 7pm weekends,
9am - 5pm bank holidays

National Child Protection Helpline
Tel 0800 800500 (24 hr)

ChildLine
0800 1111 (24 hr line for children to use)

Other useful numbers

Freecall Message Home 0800 700 740 (confidential, non-traceable, free service for those who want to pass on a message to family and friends without communicating directly and without giving details of where they are).

All the above details were correct as at November 2001

The Crown Prosecution Service is a public service for England and Wales, headed by the Director of Public Prosecutions. It is answerable to Parliament through the Attorney General.

The Crown Prosecution Service is a national organisation consisting of 42 Areas. Each Area is headed by a Chief Crown prosecutor, and corresponds to a single police force area, with one for London. It was set up in 1986 to prosecute cases instituted by the police. The police are responsible for the investigation of crime. Although the Crown Prosecution Service works closely with the police, it is independent of them.

Policy Directorate, November 2001

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এই প্রচারপত্র বাংলায়ও পাওয়া যায়

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