

DOMESTIC ABUSE CHARGING ADVICE SHEET

This document has been prepared to provide operational assistance to police and prosecutors about the existing requirements and considerations around charging decisions in domestic abuse cases as outlined in the 5th Edition of the Director's Guidance on Charging ([link](#)). It should be read alongside this Charging Guidance and relevant Legal Guidance and policies developed to support effective investigations and prosecutions.

Definition of Domestic Abuse When Considering Charging¹

The term domestic abuse can apply to a number of offences all of which have the following behaviours in common: any incident or pattern of incidents of controlling coercive or threatening behaviour, violence or abuse between those aged 16 or over who are or have been intimate partners or family members, regardless of gender or sexuality. This can encompass, but is not limited to, the following types of abuse: psychological; physical; sexual; financial; and emotional.

The domestic nature of the offending is an aggravating factor because of the abuse of trust involved and because of the, often close, relationship with the perpetrator there may be a continuing threat to the safety of the victim.

Domestic abuse can be perpetrated over a number of years and victims may need to make very difficult decisions before reporting abuse and supporting a prosecution. These cases can require very sensitive handling particularly where victims and witnesses involved are vulnerable and/or intimidated.

Referral Criteria for Charging Decisions: the Evidential Stage and the Public Interest Stage

Evidential Stage:

The CPS will make the ultimate decision as to whether an offence, which fits the definition of domestic abuse, is charged. However, before cases are referred to the CPS for a charging decision, *the police decision maker has an important role in identifying cases where the Evidential Stage of the Full Code Test cannot be met; these cases should not be referred to the CPS.* Therefore, police decision makers must be satisfied that there is sufficient evidence for a realistic prospect of conviction before referring a case for a charging decision.

The exception to this is where the making of a charging decision in accordance with the Threshold Test is justified. The assessment of the evidence on the basis of the Threshold Test *must only* be made by the police decision maker when the suspect is *not suitable for bail* and *not all the evidence* is available at the time when they must be released from custody unless charged. Early consultation between the Police and CPS is recommended in cases (particularly highly complex cases) where the early involvement of a prosecutor would assist in the gathering of relevant evidence, the questions to be asked of suspects, any pre-charge court procedures and any strategy for a likely prosecution.

Public Interest Stage:

In cases where the evidential stage is met, but the police consider that it is not in the public interest to prosecute, the case must still be referred to the CPS to make the ultimate decision.

¹The Government definition of domestic abuse, revised in March 2013, is available [here](#)

A process map and more information about the Threshold and the Full Code Test is annexed to this sheet summarising this information.

Before 'Deciding No Further Action' - Consider:

A decision to take no further action can take place *only* if:

- The Evidential stage of the Full Code Test OR Threshold Test are not met and
- The case cannot be strengthened by further investigation or other means (see section below on evidence-led prosecutions)
- The decision does not require the assessment of complex evidence or legal issues.

This means that a police decision to take no further action only applies to those cases that clearly cannot *and will not* be able to meet the appropriate evidential standard (the Full Code Test or the Threshold Test) because all reasonable lines of enquiry have been exhausted, there is no prospect of further evidence / enquiries strengthening the case and the evidence is still insufficient for the case to eventually meet either of the Tests.

Cautions

The police can issue cautions to suspects for offences committed within a domestic abuse context only in exceptional circumstances, because of the interpersonal nature of the crime which often involves coercive or controlling behaviour on the part of the suspect within the relationship, which might influence a victim's views.

The express wishes of the victim need to be considered after a full explanation of all options and their consequences. The final decision will always rest with the police supervisor or in appropriate circumstances the CPS.

Cautions may be appropriate for domestic abuse offences which fall within wider familial relationships, such as those cases involving siblings. The Ministry of Justice guidance "Simple Cautions for Adult Offenders", should be adhered to. The guidance outlines the need for a positive action approach in domestic abuse cases: considering the incident in its entirety and focussing investigative efforts on gathering sufficient evidence to be able to build a prosecution case that does not rely entirely on the victim's statement.

Avoiding 'Cooling Off' Periods

Delaying charging decisions to allow the incident to 'cool off' for the victim to decide whether they want to support a prosecution, or for the victim and/or defendant to 'calm down', should *not be applied in any circumstance*. All charging decisions should be made speedily and with specific attention to the victim's, and any children's or other dependants', safety in mind. See CPS Legal Guidance ([link](#)) for further information.

Evidence-Led Prosecutions

Evidence gathering to build a robust prosecution case should not be focussed solely on the evidence from the victim. The stronger the overall case, the less likely it is that it will be contested or, if it is, that the prosecution will need to call upon the victim to give evidence. Prosecutors should, however, ensure that the views of the victim are balanced with this approach, and that they are not overlooked during proceedings.

Key Documents for Reference and Legal Issues to consider:

- Joint Police/CPS Evidence-Checklist ([link](#)): This is an essential document in domestic abuse files and should be actively used by police and prosecutors. The checklist must be fully completed by the Police before seeking charging advice.
- Identification: Carefully consider the identification of the primary aggressor including taking into account allegations of reciprocal abuse and self-defence.
- Res-gestae statements ([link](#)): A statement made by a person so emotionally overpowered by an event that the possibility of concoction or distortion can be disregarded. 999 calls and first accounts to officers can amount to res-gestae.
- Hearsay Evidence ([link](#)): Hearsay is “A statement not made in oral evidence in criminal proceedings which is admissible as evidence of any matter stated in it”. Hearsay evidence can only be used where the witness will not attend court.
- Bad-character evidence: Evidence of, or of a disposition towards, misconduct on the defendant’s part, other than evidence which has to do with the alleged facts of the offence.
- Reluctant and ‘Hostile’ victims ([link](#)): After having initially indicated a willingness to attend court, some victims may not attend on the day of the trial. The full reasons for non-attendance should be explored where practicable and victims should not be automatically dismissed as reluctant or ‘hostile’ – they may choose not to attend because of uncertainty over the process or access to support.
- Overall Guidance: Detailed guidance from the College of Policing ([link](#)) and CPS is available for investigators and prosecutors ([link](#)) respectively.

What if the Victim Withdraws?

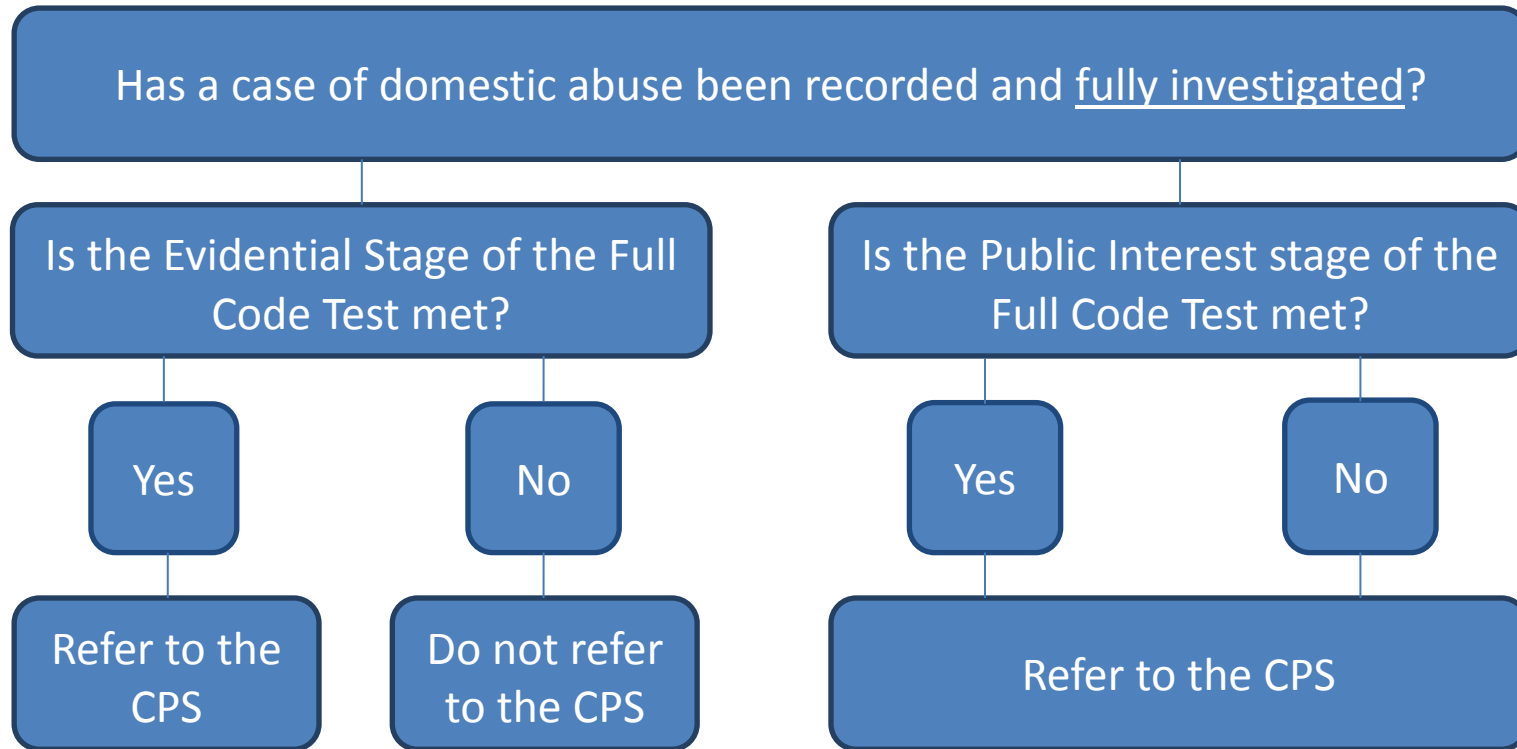
If the case has been built in line with the guidance set out in the CPS Legal Guidance on Domestic Abuse then consideration should have been given to building the case without over reliance on the victim.

However at the time a victim withdraws the police should be able to provide the prosecutor with the following information:

- A statement from the victim explaining the reasons for the withdrawal.
- A background report containing the following:
 - The Officer’s views on the case and the veracity of the retraction statement in addition to outlining any suspicion there may be concerning threats or other pressure which the witness may have been subjected to;
 - The Officer’s views on proceeding against the witness’s wishes;
 - The likely impact of a summons upon the witness, including risks to the safety of the witness, any children or any other associated person;
 - Details of any support that has been made available to the witness;
 - The likely impact on the witness and any children of not proceeding.

Further information and advice is available in the CPS Legal Guidance on Domestic Abuse ([link](#)).

Annex: Summary of the Referral Criteria for Charging Advice: Process Map and Definitions²



² Early consultation between the Police and CPS is recommended in cases (particularly highly complex cases) where the early involvement of a prosecutor would assist in the gathering of relevant evidence, the questions to be asked of suspects, any pre-charge court procedures and any strategy for a likely prosecution.

The Threshold Test:

The assessment of the evidence on the basis of the Threshold Test **must only** be made by the police decision maker when the suspect is **not suitable for bail** and **not all the evidence** is available at the time when they must be released from custody unless charged. The test which must be applied in order to assess whether the threshold test is met is:

- I. Is there a reasonable suspicion that the person charged has committed the offence and;
- II. There are reasonable grounds for believing that further evidence will become available within a reasonable amount of time and;
- III. The seriousness or the circumstances of the case justifies making an immediate charging decision and;
- IV. There are continuing substantial grounds to object to bail in accordance with the Bail Act 1976 and in all the circumstances of the case it is proper to do so and;
- V. The Public Interest stage of the Threshold Test is based on the information at the time

The Full Code Test:

In all cases other than those where it is intended to remand the suspect in custody the supervising officer must assess the available evidence to determine if the Full Code Test can be met.

The test which must be applied in order to assess whether the Full Code Test is met is:

- I. **Evidential Stage:** the supervising officer must be satisfied that there is sufficient evidence to provide a realistic prospect of conviction against each suspect on each charge.
- II. The finding that there is a realistic prospect of conviction means that an objective, impartial and reasonable tribunal properly directed and acting in accordance with the law is more likely than not to convict the defendant of the charge alleged. If the case passes the evidential stage, supervising officers must then go on to decide if a prosecution is needed in the public interest.
- III. **Public Interest Stage:** A prosecution will usually take place in rape cases unless there are public interest factors tending against the prosecution which outweigh those tending in favour. The Public Interest test will, almost invariably, be met in such cases.

The 5th Edition of the Director's Guidance on Charging is available [here](#).