



Sentencing Guidelines Council

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**Overarching Principles:  
Domestic Violence**

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**Definitive Guideline**



## FOREWORD

In accordance with section 170(9) of the Criminal Justice Act 2003, the Sentencing Guidelines Council issues this guideline as a definitive guideline. By virtue of section 172 of the Act, every court must have regard to a relevant guideline. This guideline applies to offences sentenced on or after **18 December 2006**.

This guideline stems from a reference from the Home Secretary for consideration of sentencing in cases of domestic violence. The referral suggested that “domestic violence” should be described in terms of the Crown Prosecution Service definition (described on page 3) and this suggestion was adopted by the Council.

**Consequently this guideline is for use for all cases that fall within the Crown Prosecution Service definition of domestic violence.**

There is no specific offence of domestic violence. The definition covers a broad set of circumstances and allows conduct amounting to domestic violence to be covered by a wide range of offences. The guideline identifies the principles relevant to the sentencing of cases involving violence that has occurred in a domestic context and includes details of particular aggravating and mitigating factors.

**This guideline makes clear that offences committed in a domestic context should be regarded as being no less serious than offences committed in a non-domestic context. Indeed, because an offence has been committed in a domestic context, there are likely to be aggravating factors present that make it more serious.**

In many situations of domestic violence, the circumstances require the sentence to demonstrate clearly that the conduct is unacceptable. However, there will be some situations where all parties genuinely and realistically wish the relationship to continue as long as the violence stops. In those situations, and where the violence is towards the lower end of the scale of seriousness, it is likely to be appropriate for the court to impose a sentence that provides the support necessary.

Advice from the Sentencing Advisory Panel covered both domestic violence and the offences of breach of a restraining order or a non-molestation order. The Council is issuing two guidelines which are published simultaneously.

The Council has appreciated greatly the work of the Sentencing Advisory Panel in preparing the advice on which this guideline has been based and for those who have responded so thoughtfully to the consultation of both the Panel and the Council. The advice and this guideline are available on [www.sentencing-guidelines.gov.uk](http://www.sentencing-guidelines.gov.uk) or from the Sentencing Guidelines Secretariat at 8–10 Great George Street, London SW1P 3AE. A summary of the responses to the Council’s consultation also appears on the website.

Chairman of the Council  
December 2006

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## DOMESTIC VIOLENCE

### A. Definition of Domestic Violence

1.1 There is no specific offence of domestic violence and conduct amounting to domestic violence is covered by a number of statutory provisions. For the purposes of this guideline, wherever such offending occurs, domestic violence is:

**“Any incident of threatening behaviour, violence or abuse [psychological, physical, sexual, financial or emotional] between adults who are or have been intimate partners or family members, regardless of gender or sexuality.”<sup>1</sup>**

1.2 Most incidents of domestic violence can be charged as one of a wide range of offences including physical assault (with or without a weapon), harassment, threats to cause injury or to kill, destroying or damaging property, false imprisonment (locking the victim in a room or preventing that person from leaving the house), and sexual offences.

1.3 This guideline covers issues which are relevant across the range of offences that might be committed in a domestic context. Under the above definition, the domestic context includes relationships involving intimate partners who are living together, intimate partners who do not live together and former intimate partners. It is also wide enough to include relationships between family members, for example between a father and a daughter, or a mother and a daughter, perhaps where the daughter is the mother’s carer.

### B. Assessing Seriousness

2.1 **As a starting point for sentence, offences committed in a domestic context should be regarded as being no less serious than offences committed in a non-domestic context.**

2.2 Thus, the starting point for sentencing should be the same irrespective of whether the offender and the victim are known to each other (whether by virtue of being current or former intimate partners, family members, friends or acquaintances) or unknown to each other.

2.3 A number of aggravating factors may commonly arise by virtue of the offence being committed in a domestic context and these will increase the seriousness of such offences. These are described in more detail in **C** below.

### C. Aggravating and Mitigating Factors

3.1 Since domestic violence takes place within the context of a current or past relationship, the history of the relationship will often be relevant in assessing the gravity of the offence. Therefore, a court is entitled to take into account anything occurring within the relationship as a whole, which may reveal relevant aggravating or mitigating factors.

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1 This is the Government definition of domestic violence agreed in 2004. It is taken from *Policy on Prosecuting cases of Domestic Violence*, Crown Prosecution Service, 2005.

3.2 The following aggravating and mitigating factors (which are not intended to be exhaustive) are of particular relevance to offences committed in a domestic context, and should be read alongside the general factors set out in the Council guideline *Overarching Principles: Seriousness*.<sup>2</sup>

### **Aggravating Factors**

#### **(i) Abuse of trust and abuse of power**

3.3 The guideline *Overarching Principles: Seriousness* identifies abuse of a position of trust and abuse of power as factors that indicate higher culpability. Within the nature of relationship required to meet the definition of domestic violence set out above, trust implies a mutual expectation of conduct that shows consideration, honesty, care and responsibility. In some such relationships, one of the parties will have the power to exert considerable control over the other.

3.4 In the context of domestic violence:

- an *abuse of trust*, whether through direct violence or emotional abuse, represents a violation of this understanding;
- an *abuse of power* in a relationship involves restricting another individual's autonomy which is sometimes a specific characteristic of domestic violence. This involves the exercise of control over an individual by means which may be psychological, physical, sexual, financial or emotional.

3.5 Where an abuse of trust or abuse of power is present, it will aggravate the seriousness of an offence. These factors are likely to exist in many offences of violence within a domestic context.

3.6 However, the breadth of the definition of domestic violence (set out in **1.1** above) encompasses offences committed by a former spouse or partner. Accordingly, there will be circumstances where the abuse of trust or abuse of power may be a very minor feature of an offence or may be deemed no longer to exist – for example, where the offender and victim have been separated for a long period of time.

#### **(ii) Victim is particularly vulnerable**

3.7 For cultural, religious, language, financial or any other reasons, some victims of domestic violence may be more vulnerable than others, not least because these issues may make it almost impossible for the victim to leave a violent relationship.

3.8 Where a perpetrator has exploited a victim's vulnerability (for instance, when the circumstances have been used by the perpetrator to prevent the victim from seeking and obtaining help), an offence will warrant a higher penalty.

3.9 Age, disability or the fact that the victim was pregnant or had recently given birth at the time of the offence may make a victim particularly vulnerable.

3.10 Any steps taken to prevent the victim reporting an incident or obtaining assistance will usually aggravate the offence.

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2 Published December 2004. The lists of aggravating factors from the guideline are reproduced at Annex A for ease of reference. See also [www.sentencing-guidelines.gov.uk](http://www.sentencing-guidelines.gov.uk)

**(iii) Impact on children**

3.11 Exposure of children to an offence (either directly or indirectly) is an aggravating factor.

3.12 Children are likely to be adversely affected by directly witnessing violence or other abuse and by being aware of it taking place while they are elsewhere in the home.<sup>3</sup>

**(iv) Using contact arrangements with a child to instigate an offence**

3.13 An offence will be aggravated where an offender exploits contact arrangements with a child in order to commit an offence.

**(v) A proven history of violence or threats by the offender in a domestic setting**

3.14 It is important that an assessment of the seriousness of an offence recognises the cumulative effect of a series of violent incidents or threats over a prolonged period, where such conduct has been proved or accepted.

3.15 Where an offender has previously been convicted of an offence involving domestic violence either against the same or a different partner, this is likely to be a statutory aggravating factor.<sup>4</sup>

**(vi) A history of disobedience to court orders**

3.16 A breach of an order that has been imposed for the purpose of protecting a victim can cause significant harm or anxiety. Where an offender's history of disobedience has had this effect, it will be an aggravating factor.

3.17 Commission of the offence in breach of a non-molestation order imposed in civil proceedings, in breach of a sentence (such as a conditional discharge) imposed for similar offending, or while subject to an ancillary order, such as a restraining order, will aggravate the seriousness of the offence.

3.18 The appropriate response to breach of a civil order is dealt with in a separate guideline *Breach of a Protective Order*.

**(vii) Victim forced to leave home**

3.19 An offence will be aggravated if, as a consequence, the victim is forced to leave home.

**Mitigating Factors**

**(i) Positive good character**

3.20 As a general principle of sentencing, a court will take account of an offender's positive good character. However, it is recognised that one of the factors that can allow domestic violence to continue unnoticed for lengthy periods is the ability of the perpetrator to have two

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3 The definition of "harm" in s.31(9) of the Children Act 1989 as amended by s.120 of the Adoption and Children Act 2002 includes "impairment suffered from seeing or hearing the ill-treatment of another".

4 Criminal Justice Act 2003, s.143(2)

personae. In respect of an offence of violence in a domestic context, an offender's good character in relation to conduct outside the home should generally be of no relevance where there is a proven pattern of behaviour.

3.21 Positive good character is of greater relevance in the rare case where the court is satisfied that the offence was an isolated incident.

## **(ii) Provocation**

3.22 It may be asserted that the offence, at least in part, has been provoked by the conduct of the victim. Such assertions need to be treated with great care, both in determining whether they have a factual basis and in considering whether in the circumstances the alleged conduct amounts to provocation sufficient to mitigate the seriousness of the offence.

3.23 For provocation to be a mitigating factor, it will usually involve actual or anticipated violence including psychological bullying. Provocation is likely to have more of an effect as mitigation if it has taken place over a significant period of time.

## **D. Other factors influencing sentence**

### **Wishes of the victim and effect of the sentence**

4.1 As a matter of general principle, a sentence imposed for an offence of violence should be determined by the seriousness of the offence, not by the expressed wishes of the victim.

4.2 There are a number of reasons why it may be particularly important that this principle is observed in a case of domestic violence:

- it is undesirable that a victim should feel a responsibility for the sentence imposed;
- there is a risk that a plea for mercy made by a victim will be induced by threats made by, or by a fear of, the offender;
- the risk of such threats will be increased if it is generally believed that the severity of the sentence may be affected by the wishes of the victim.

4.3 Nonetheless, there may be circumstances in which the court can properly mitigate a sentence to give effect to the expressed wish of the victim that the relationship be permitted to continue. The court must, however, be confident that such a wish is genuine, and that giving effect to it will not expose the victim to a real risk of further violence. Critical conditions are likely to be the seriousness of the offence and the history of the relationship. It is vitally important that the court has up-to-date information in a pre-sentence report and victim personal statement.

4.4 Either the offender or the victim (or both) may ask the court to take into consideration the interests of any children and to impose a less severe sentence. The court will wish to have regard not only to the effect on the children if the relationship is disrupted but also to the likely effect on the children of any further incidents of domestic violence.

## **E. Factors to Take into Consideration**

**The following points of principle should be considered by a court when imposing sentence for any offence of violence committed in domestic context.**

1. Offences committed in a domestic context should be regarded as being no less serious than offences committed in a non-domestic context.
2. Many offences of violence in a domestic context are dealt with in a magistrates' court as an offence of common assault or assault occasioning actual bodily harm because the injuries sustained are relatively minor. Offences involving serious violence will warrant a custodial sentence in the majority of cases.
3. Some offences will be specified offences for the purposes of the dangerous offender provisions.<sup>5</sup> In such circumstances, consideration will need to be given to whether there is a significant risk of serious harm to members of the public, which include, of course, family members. If so, the court will be required to impose a life sentence, imprisonment for public protection or an extended sentence.
4. Where the custody threshold is only just crossed, so that if a custodial sentence is imposed it will be a short sentence, the court will wish to consider whether the better option is a suspended sentence order or a community order, including in either case a requirement to attend an accredited domestic violence programme. Such an option will only be appropriate where the court is satisfied that the offender genuinely intends to reform his or her behaviour and that there is a real prospect of rehabilitation being successful. Such a situation is unlikely to arise where there has been a pattern of abuse.

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<sup>5</sup> Criminal Justice Act 2003, Part 12, Chapter 5

## **Extracts from Guideline Overarching Principles: Seriousness**

**This is a general list which is included here for ease of reference. Not every factor will apply to an offence committed in a domestic context.**

### **(i) Aggravating factors**

#### **1.22 Factors indicating higher culpability:**

- Offence committed whilst on bail for other offences
- Failure to respond to previous sentences
- Offence was racially or religiously aggravated
- Offence motivated by, or demonstrating, hostility to the victim based on his or her sexual orientation (or presumed sexual orientation)
- Offence motivated by, or demonstrating, hostility based on the victim's disability (or presumed disability)
- Previous conviction(s), particularly where a pattern of repeat offending is disclosed
- Planning of an offence
- An intention to commit more serious harm than actually resulted from the offence
- Offenders operating in groups or gangs
- 'Professional' offending
- Commission of the offence for financial gain (where this is not inherent in the offence itself)
- High level of profit from the offence
- An attempt to conceal or dispose of evidence
- Failure to respond to warnings or concerns expressed by others about the offender's behaviour
- Offence committed whilst on licence
- Offence motivated by hostility towards a minority group, or a member or members of it
- Deliberate targeting of vulnerable victim(s)

- Commission of an offence while under the influence of alcohol or drugs
- Use of a weapon to frighten or injure victim
- Deliberate and gratuitous violence or damage to property, over and above what is needed to carry out the offence
- Abuse of power
- Abuse of a position of trust

**1.23 Factors indicating a more than usually serious degree of harm:**

- Multiple victims
- An especially serious physical or psychological effect on the victim, even if unintended
- A sustained assault or repeated assaults on the same victim
- Victim is particularly vulnerable
- Location of the offence (for example, in an isolated place)
- Offence is committed against those working in the public sector or providing a service to the public
- Presence of others e.g. relatives, especially children or partner of the victim
- Additional degradation of the victim (e.g. taking photographs of a victim as part of a sexual offence)
- In property offences, high value (including sentimental value) of property to the victim, or substantial consequential loss (e.g. where the theft of equipment causes serious disruption to a victim's life or business).

**(ii) Mitigating factors**

1.24 Some factors may indicate that an offender's culpability is **unusually** low, or that the harm caused by an offence is less than usually serious.

**1.25 Factors indicating significantly lower culpability:**

- A greater degree of provocation than normally expected
- Mental illness or disability
- Youth or age, where it affects the responsibility of the individual defendant
- The fact that the offender played only a minor role in the offence

**(iii) Personal mitigation**

1.26 Section 166(1) Criminal Justice Act 2003 makes provision for a sentencer to take account of any matters that 'in the opinion of the court, are relevant in mitigation of sentence'.

1.27 When the court has formed an initial assessment of the seriousness of the offence, then it should consider any offender mitigation. The issue of remorse should be taken into account at this point along with other mitigating features such as admissions to the police in interview.

Extracted from Guideline *Overarching Principles: Seriousness*, Sentencing Guidelines Council, December 2004



