

## Final Resource Assessment: Overarching Principles: Domestic Abuse

### 1 INTRODUCTION

1.1 This document fulfils the Council's statutory duty to produce a resource assessment which considers the likely effect of its guidelines on the resources required for the provision of prison places, probation and youth justice services.<sup>1</sup>

### 2 RATIONALE AND OBJECTIVES FOR NEW GUIDELINE

2.1 In 2006, the Sentencing Guidelines Council (SGC), the predecessor body to the Sentencing Council, published the definitive guideline *Overarching Principles – Domestic Violence*. The Council took the decision to revise this guidance to reflect the important changes in terminology, expert thinking and societal attitudes over the last ten years, in this important area of sentencing. 'Domestic abuse' is now the term used, rather than 'domestic violence', to reflect that both physical violence and controlling and coercive behaviour constitute abuse in domestic settings. The proposed new guideline is therefore titled *Overarching Principles – Domestic Abuse*.

### 3 CURRENT SENTENCING PRACTICE

3.1 Section 76 of the Serious Crime Act 2015 created a new offence of 'controlling or coercive behaviour in an intimate or family relationship',<sup>2</sup> and this is the only offence that relates directly to domestic abuse. A guideline for sentencing this offence will be published later in 2018.

3.2 Many different criminal offences can involve domestic abuse, but these offences are recorded under more generic criminal offence types (for example, as specific assault or harassment offences), and not as domestic abuse specifically. Therefore, it is not possible to identify which offences within the MoJ Court Proceedings Database (one of the main sources of data on sentencing practice) are related to domestic abuse. Instead, a summary of domestic abuse statistics from other sources is presented below, although

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<sup>1</sup> Coroners and Justice Act 2009 section 127: [www.legislation.gov.uk/ukpga/2009/25/section/127](http://www.legislation.gov.uk/ukpga/2009/25/section/127)

<sup>2</sup> This offence came into force in December 2015. In 2016, the only year for which data is currently available, 58 offenders were sentenced for this offence.

this includes only limited information on sentencing and concentrates more on the prevalence of domestic abuse in society and within other parts of the criminal justice system.

#### *Home Office*

3.3 The Home Office has been collecting information from the police since April 2015, on whether recorded crimes are related to domestic abuse. Crimes are ‘flagged’ as being ‘domestic abuse related’ by the police if the offence meets the government definition of domestic violence and abuse. Data for the year ending March 2017<sup>3</sup> shows that violence against the person crimes were the most likely to be flagged with around a third, 32 per cent (375,629), of such crimes flagged as domestic abuse. The offence group with the next highest proportion of crimes flagged as domestic abuse-related was sexual offences, at 13 per cent (15,480). Overall, 11 per cent of all crimes recorded by the police (excluding fraud) were flagged as domestic abuse-related<sup>4</sup>, representing 488,049 offences.

#### *Crown Prosecution Service*

3.4 Statistics from the Crown Prosecution Service show that there were 93,590 defendants prosecuted for domestic abuse-related offences in the year ending March 2017<sup>5</sup>. Over three-quarters of domestic abuse-related prosecutions were successful in securing a conviction during this year (70,853 convictions in total).<sup>6</sup>

#### *Crown Court Sentencing Survey*

3.5 The Crown Court Sentencing Survey (CCSS)<sup>7</sup> also included some information about sentences where domestic abuse was a feature; where a Community Domestic Violence Programme or Integrated Domestic Abuse Programme was imposed as a

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<sup>3</sup> Figures on police recorded crime where offences were flagged as domestic-abused related can be seen as part of the Office for National Statistics publication: [‘Domestic abuse in England and Wales: year ending March 2017’](#)

<sup>4</sup> Police recorded crime data are not designated as National Statistics. The Home Office statistics cover notifiable offences only, which means that most summary offences are excluded. Recorded crime figures are therefore not directly comparable to the Ministry of Justice courts data which is the data source for the sentencing statistics included elsewhere in this resource assessment.

<sup>5</sup> Figures on prosecutions and convictions for offences involving domestic abuse can be found in the Office for National Statistics publication [‘Domestic abuse in England and Wales: year ending March 2017’](#). The publication also includes data on police recorded crime, charges, summonses and victims. CPS data are not designated as official statistics and more detail on the quality of the data can be found on the publication web page linked to above.

<sup>6</sup> It should be noted that the CPS definition of domestic abuse is slightly wider than the definition used within the guideline.

<sup>7</sup> From 1<sup>st</sup> October 2010 to 31<sup>st</sup> March 2015 the Council conducted the Crown Court Sentencing Survey (CCSS) which collected data on sentencing practice in the Crown Court.

requirement of a suspended sentence order or community order, or where domestic abuse was considered as an aggravating factor.<sup>8</sup>

3.6 Based on CCSS data, Table 1 shows the offences that domestic abuse programmes and the aggravating factor of domestic abuse were most commonly associated with (although domestic abuse also occurs in a variety of other offences). However, it should be noted that these figures should be treated with caution, because not all Crown Court sentences are covered by the CCSS data, and not all cases related to domestic abuse would have had this recorded on the CCSS forms. The figures presented below are therefore likely to undercount the true prevalence of domestic abuse within these offences.<sup>8</sup>

**Table 1 – Crown Court Sentencing Survey forms where sentences included a domestic abuse programme or where domestic abuse was recorded as an aggravating factor, 2014**

<b>Offence</b>	<b>Total CCSS forms returned for this offence in 2014</b>	<b>Number of forms with DA indicated</b>	<b>Prevalence of DA</b>
Actual Bodily Harm (ABH)	4,280	150	3%
Common assault	1,220	60	5%
Grievous Bodily Harm (GBH)	2,500	40	1%
Breach of protective order	910	30	3%
Harassment	440	20	4%
Affray	2,110	20	1%
Threats to kill	210	10	6%

*Numbers in this table have been rounded to the nearest 10.*

*Magistrates' court sentencing survey*

3.7 The Sentencing Council recently launched a data collection exercise<sup>9</sup> in a sample<sup>10</sup> of magistrates' courts across England and Wales, running from the beginning

<sup>8</sup> This information wasn't specifically requested on the CCSS forms, but sentencers were able to indicate that these programmes had been imposed or that these factors had been considered by writing within free text boxes provided at relevant points on the forms. Although this relies on self-recording by sentencers, the information that has been completed does give some general information on sentences with elements of domestic abuse.

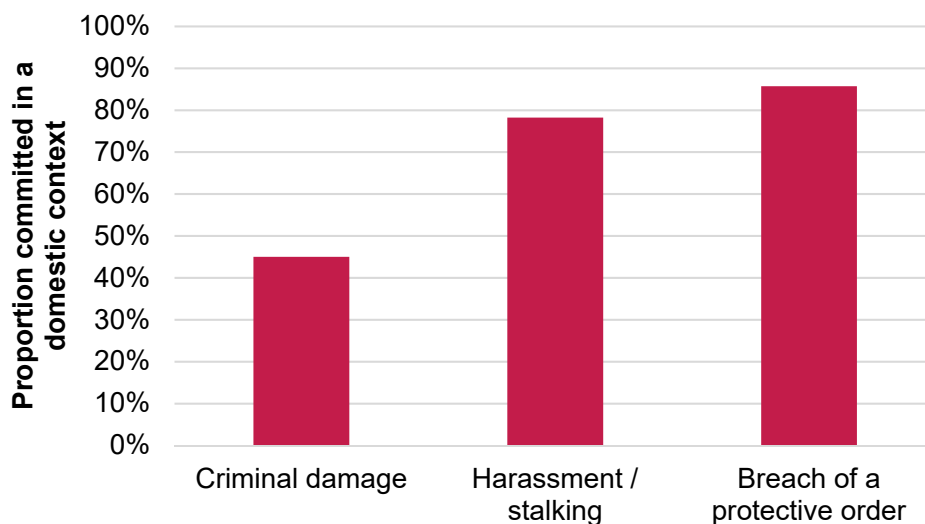
<sup>9</sup> The data collected as part of this exercise will be analysed in more detail for the evaluations of each of the guidelines they cover.

<sup>10</sup> In total, 80 magistrates' courts were selected to take part in the exercise, and were selected based on sentencing a high volume of the offences for which data are being collected.

of November 2017 to the end of March 2018. As part of this exercise, sentencers are being asked to give details of the sentencing factors they have taken into account and the final sentence they have imposed each time they sentence an adult<sup>11</sup> for one of a list of offences. This includes the offences of harassment, criminal damage and breach of a protective order<sup>12</sup>, and asks sentencers to indicate whether the offence was committed in a domestic context, and how this was taken into consideration when sentencing.<sup>13</sup> This data collection is still under way, and so the full dataset is not yet available. However, it has been possible to take an early look at data from the first few months of the exercise and the results of this have been analysed to inform the final resource assessment. Figures presented below may differ to those that cover the full period (up to the end of March 2018) and so should be treated as indicative only.

3.8 Early findings showed that a large proportion of the offences for which data was collected were committed in a domestic context. For the offences for which the relevant questions were included, around 980 forms were collected and analysed in time to be included in this assessment. Of those, nearly half of criminal damage and over two thirds of both harassment/ stalking without violence and breach of a protective order were reported to have been committed in a domestic context.

**Figure 1 – Proportions of offences committed in a domestic context, from an early extract of the magistrates’ court sentencing survey, by offence**



<sup>11</sup> The data collection is collecting information for offenders aged 18 and over only.

<sup>12</sup> The data collection also includes the collection of data for possession of a bladed article or offensive weapon, breach of a community order and breach of a suspended sentence order, but these offences do not include the questions related to domestic abuse.

<sup>13</sup> The questions asked on this topic were “Was the offence committed in a domestic context?” and “Broadly speaking, how did the domestic context affect your sentencing decision?”

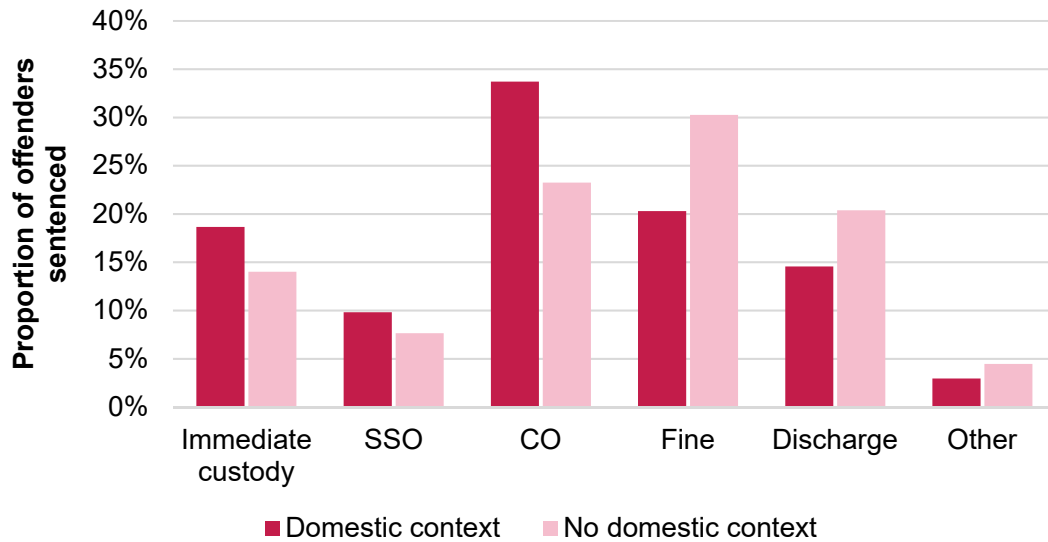
3.9 While domestic abuse can be a factor in any type of offence, it is possible that harassment/ stalking and breach of a protective order are examples of offences that are more likely than many other offences to be committed in the context of domestic abuse; and it is therefore likely that for many offences, the proportion committed in a domestic context would be lower than recorded here.

3.10 As the data collection is still ongoing, there are not yet enough records to make detailed or meaningful comparisons of sentencing outcomes for each individual offence. Figures for all three offences have therefore been added together to analyse sentence outcomes.

3.11 When asked how the domestic context affected their sentencing decision, overall, 42 per cent said that they increased the sentence as a result of the domestic context, while 56 per cent said it made little or no difference to the sentence. Additionally, around 2 per cent said that they decreased the sentence as a result of the domestic context.

3.12 For offences committed in a domestic context, 19 per cent of offenders were sentenced to immediate custody and 10 per cent were given a suspended sentence order. This is in comparison to those offences not committed in a domestic context, for which 14 per cent of offenders were sentenced to immediate custody and 8 per cent to suspended sentence orders. These differences may be due to factors other than the domestic context, and so these findings should be treated with caution.

**Figure 2 - Sentencing outcomes from an early extract of the magistrates' court sentencing survey, for offences committed in a domestic context and for those not committed in a domestic context<sup>14</sup>**



3.13 Overall, on average, sentences for those offences committed in a domestic context were more severe, with higher proportions of offenders given custodial or community sentences and lower proportions given fines, discharges or other sentences.

#### **4 KEY ASSUMPTIONS**

4.1 To estimate the impact on resources of a new guideline, an assessment is required of how it will affect aggregate sentencing behaviour. This assessment is based on the objectives of the new guideline, and draws upon analytical and research work undertaken during guideline development. However, the assessment is heavily dependent on a number of assumptions, in part because it is not possible precisely to foresee how sentencers' behaviour may be affected across the full range of sentencing scenarios. Any estimates of the impact of the new guidelines are therefore subject to a large degree of uncertainty.

4.2 The resource impact of a new guideline is usually measured in terms of the change in sentencing practice that is expected to occur as a result of it. For this to be possible, detailed information on current sentencing practice is required. However, as very little data on sentencing practice for cases involving domestic abuse has been available on which to base the assessment, other sources of information have been

<sup>14</sup> These figures should be treated with caution due to the small sample size of the data collected and analysed so far. Of the 980 completed forms included here, sentencers indicated that around 640 offences were committed within a domestic context and 350 were not. Numbers are rounded to the nearest 10 and so may not sum to the total.

utilised instead. Current guidance, transcripts of judges' sentencing remarks, and news articles have been reviewed and findings from interviews with sentencers (which were undertaken as part of the consultation) have been used to check that the draft guideline was being interpreted as intended, and to estimate the impact of the guideline on sentencing practice.

4.3 Data from the data collection at magistrates' courts has also helped to inform the final resource assessment, by indicating how sentencers may currently be taking the domestic context of an offence into consideration, when sentencing a particular set of offences.

4.4 It remains difficult to estimate with any precision the impact the guideline may have on prison and probation resources. Even with information on the extent to which sentencers already take the domestic context of an offence into account when sentencing for the small number of offences included in the data collection, this does not help us to understand the magnitude of the impact, as we do not know how many offenders are sentenced each year or which sentences offenders are currently receiving for offences not included in the data collection. We also know very little about sentencing at the Crown Court.

## **5 RESOURCE IMPACTS**

5.1 This section should be read in conjunction with the guideline available at: <http://www.sentencingcouncil.org.uk/publications/?s&cat=definitive-guideline>

5.2 The existing *Overarching Principles – Domestic Violence* guideline states that: *'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.'*

5.3 In contrast, the new guideline emphasises that domestic abuse offences are regarded as particularly serious within the Criminal Justice System, and states that: *'The domestic context of the offending behaviour makes the offending more serious...'* This shift in emphasis is expected to result in different sentences for some cases of domestic abuse and is likely to mean that more severe sentences are imposed under the new guideline.

5.4 However, the guideline also states that: *'Passing the custody threshold does not mean that a custodial sentence should be deemed inevitable. Where the custody threshold is only just crossed, the court will wish to consider whether the better option is instead to impose a community order, including a requirement to attend an accredited*

*domestic abuse programme or domestic abuse specific intervention. Such an option will normally 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.*' The Council's intention behind the revised guideline is to ensure that courts identify and treat cases involving domestic abuse seriously and appropriately and factor it into all relevant sentencing decisions, in a consistent manner across the court system. It is not the Council's intention to increase sentencing severity across the board.

5.5 So in some cases, it may be that sentencers feel that that the new guideline may lead them to sentence more severely than they would have under the current guideline (although this impact may well be tempered by the fact that many sentencers would appear to be sentencing more severely in such cases already – see para 5.6 below). However, in other circumstances, sentences other than immediate custody, with a focus on rehabilitation, may be imposed as a more appropriate option instead (for example, a community order with relevant requirements that aim to reform the offender).

5.6 Analysis of a limited number of transcripts suggests that domestic abuse is already taken into account in sentencing in many cases, and can often already increase the severity of the sentence.<sup>15</sup> This is supported by early findings from the data collection at magistrates' courts, which showed that in 42 per cent of cases,<sup>16</sup> sentencers said they increased the sentence as a result of the domestic context.

5.7 However, as stated earlier, in other cases (56 per cent<sup>17</sup>), sentencers said it made little or no difference to the sentence, and in a very small number of cases (2 per cent<sup>18</sup>), sentencers said that they decreased the sentence because of the domestic context.

5.8 As shown earlier, a large number of offenders are convicted each year for offences related to domestic abuse, and so any impact that the guideline may have on increasing sentencing severity could result in a substantial cumulative effect on prison places and probation resources. However, as described above, the evidence collected indicates that many sentencers are already increasing their sentences where the offence has been committed within a domestic context.<sup>19</sup> For those that are not, some may

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<sup>15</sup> It should be noted that only a handful of transcripts were analysed, and were selected on the basis of the sentence including a community programme or aggravating factor related to domestic abuse, so although it provides evidence of some sentencers increasing sentences because of the domestic context, it does not include evidence of cases where the domestic context did not affect the sentence. Therefore, this finding should be treated with caution.

<sup>16</sup> This equates to around 260 forms.

<sup>17</sup> This equates to around 350 forms.

<sup>18</sup> This equates to around 10 forms.

<sup>19</sup> The data collected may not be representative of sentencing practice across all sentencers. Additionally, the way sentencers treated offences committed within a domestic context for the offences included in the



increase their sentence as a result of the new guideline, but others may opt for a community order, following the guideline's emphasis on rehabilitation and the need to consider the most appropriate sentence to address the offending behaviour.

5.9 Overall, it is likely that there will be an increase in severity as courts apply the new guideline which ensures that sentencers treat cases committed in a domestic context as more serious. The exact magnitude of any increase, or any change in the distribution of cases across different disposals, is impossible to predict with any greater precision.

5.10 However, monitoring work will seek to understand the impact and determine whether the guideline is working as intended, and rectify any problems found. This will include a data collection exercise currently planned for 2019/20; similar in format to the exercise described earlier. By comparing sentencing practice across the two exercises (before and after the guideline is in place), it should be possible to investigate changes and understand the impact of the guideline.

5.11 It should be noted that most of the evidence collected to inform this assessment has been for adults (those aged 18 and over) only, whereas the guideline applies to anyone aged 16 or over. However, when sentencing offenders aged 16 to 18 for offences related to domestic abuse, sentencers are instructed to refer to the Council's 'Sentencing Children and Young People' overarching principles guideline, alongside the Domestic Abuse guideline. The Children and Young people guideline, which came into effect on 1<sup>st</sup> June 2017, states that '*Custodial sentences must be a last resort for children and young people*' and emphasises the aim of the youth justice system as being to prevent reoffending, with a focus on rehabilitation. In 2016, around 16,900 people aged 16 or 17 years old were sentenced in total, and of those just under 8 per cent (around 1,300) were sentenced to immediate custody. The number of these offences that were related to domestic abuse is likely to be much lower. It is expected that the new 'Overarching Principles: Domestic Abuse' guideline will not change average sentencing practice for 16 and 17 year olds, but even if some small changes were observed, the volumes are low enough that there would be little impact on prison or probation resources.

## **6 RISKS**

6.1 Two main risks have been identified:

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data collection, may not be representative of how they treat this issue for other offences. These results therefore may not hold for all sentencing practice and should be treated as indicative only.

**Risk 1: The Council’s assessment of current sentencing practice is inaccurate**

6.2 An important input into developing sentencing guidelines is an assessment of current sentencing practice. The Council uses this assessment as a basis to consider whether current sentencing levels are appropriate or whether any changes should be made. Inaccuracies in the Council’s assessment could cause unintended changes in sentencing practice when the new guideline comes into effect. This is a bigger risk for this guideline, because so little information is available on current sentencing practice.

6.3 This risk is mitigated by information that has been gathered by the Council as part of the guideline development and consultation phase, including transcripts of judges’ sentencing remarks, news articles and current guidance. Information collected as part of the data collection currently being carried out at magistrates’ courts has also helped in understanding current sentencing practice at magistrates’ courts, for the small number of offences it covers; however, further information will be available once this has been completed.

**Risk 2: Sentencers do not interpret the new guidelines as intended**

6.4 If sentencers do not interpret the guidelines as intended, this could cause a change in the average (mean) severity of sentencing, with associated resource effects.

6.5 The Council takes a number of precautions in issuing new guidelines to try to ensure that judges interpret them as intended. For example, following the release of the guidelines, explanatory material will be provided to read alongside the guidelines.

6.6 Data collected from magistrates’ courts as part of the data collection exercise tells us what sentencing practice looks like for several offences before the guideline is in effect. As mentioned earlier, a similar exercise is planned for 2019/20, to collect data once the guideline is in place. This will help the Council to monitor the impact of the guideline, compare sentencing practice before and after the guideline, and to ensure any divergence from its aims is identified and rectified.