

Overarching Principles: Domestic Abuse

Response to consultation

Contents

Foreword	3
Introduction	4
Research	6
Approach	7
Gender	7
Seriousness	8
Use of technology	8
Aggravating factors	9
Mitigating factors	9
Victim's influence on sentencing	11
Custody threshold	11
Restraining orders	12
Victim Personal Statements	12
Conclusion and next steps	13
Annex A: list of respondents	14

Foreword



On behalf of the Sentencing Council I would like to thank all those who responded to the consultation on a revised domestic abuse guideline, and those who attended the consultation events.

Since the consultation was launched, the Government has announced plans to publish a draft Domestic Violence and Abuse Bill. Our understanding is that the Bill will address a number of commitments, one of which is to create a statutory definition of domestic abuse. There is as yet no confirmed timetable for the publication of the draft bill, or indication of when a substantive bill will be introduced for Parliamentary consideration. The Council has therefore taken the decision to continue with the publication of a definitive guideline. Were any proposals to be brought forward and become law, the Council would consider updating or amending any sections of the guideline that might be affected as appropriate.

As with all Sentencing Council consultations, the views put forward by all consultees were carefully considered. The range of views provided by respondents was of great value, particularly given this is such a sensitive and important area of sentencing and one where strong views are held.

As a result of this process, the general approach outlined in the consultation has been maintained but with a number of amendments made to the guideline, reflecting points made by respondents on certain issues. In particular, there is now additional guidance on restraining orders, and new guidance on Victim Personal Statements, and on the use of technology to perpetrate offences.

The Council is confident that this guideline will be helpful to those sentencing these difficult cases.

Lord Justice Treacy
Chairman, Sentencing Council

Introduction

In 2006 the Council's predecessor body, the Sentencing Guidelines Council (SGC) published an *Overarching Principles: Domestic Violence Guideline*. In 2016 the Council decided to revise this guideline to reflect the changing way that such offences are viewed by both society and the courts, and the consequent changes that have occurred in the last ten years to this important area of sentencing.

In March 2017 the Sentencing Council published a 13-week consultation on a revised guideline for sentencing cases which occur within a domestic context. Engagement events were held with interested parties as part of the consultation, as detailed below.

3 May 2017	Multi-agency forum for those working in the field of, and those affected by domestic abuse	Worcestershire
22 June 2017	Refuge (advocates and survivors)	London

The response to the draft guideline was favourable. Many respondents to the consultation welcomed the Council's decision to revise the guideline, noting that the guidance was in clear need of updating.

This was a joint consultation alongside draft guidance for offences grouped together collectively as 'intimidatory offences' (stalking, harassment, threats to kill, disclosing private sexual images and controlling and coercive behaviour). At the time of writing we are still considering the responses to the guideline for intimidatory offences and we expect to issue the definitive guideline for these offences, and the consultation response paper, in summer 2018.

In total 53 responses were received for the joint consultation; with some submitted by email and letter, and some responses submitted online.

Since the consultation was launched, the Government has announced plans to publish a draft Domestic Violence and Abuse Bill. Were any legislation to be brought

forward and become law, the Council would consider the impact on the guideline, and what changes, if any, would need to be made. If, for example, there were to be minor changes to the wording of the definition of domestic abuse, the Council may take the view that it may be appropriate to update the guideline to reflect those changes without the need for further consultation. If, however, legislation were to be passed that had a significant impact on the guideline, the Council may decide that the guideline needs fuller revision and consultation on the changes may be appropriate.

Breakdown of respondents

Type of respondent	Number
Charity/voluntary organisation	1
Judiciary (1 representative body and 1 individual response)	2
Legal professionals (4 collective responses and 1 individual response)	5
Magistrates (9 collective responses, 10 individual responses)	19
Members of the public	7
Other	2
Parliament	2
Police (1 collective response, 2 from PCCs and 1 individual)	4
Government	1
Academics	2
Victims' representative group	8

Research

To assist the Council in developing the guideline, the following research was conducted:

- At an early stage, 129 sentencers (Crown Court judges, district judges and magistrates) from the Council's pool of research participants provided views on the SGC guideline and suggestions for what the Council might want to take into consideration for the new guideline.
- A small number of informal interviews with sentencers were also conducted.
- Data from the Crown Court Sentencing Survey, the Crime Survey for England and Wales, the Home Office and the Crown Prosecution Service were also used to obtain information about domestic abuse related offences.
- Qualitative content analysis was undertaken of the transcripts of the sentencing remarks for 20 Crown Court cases involving domestic abuse, to help understand the key factors influencing sentencing decisions in these cases.
- Once the draft domestic abuse guideline was developed, this was reviewed by 29 sentencers in in-depth interviews (although these interviews focused mainly on the guideline for intimidatory offences).

Approach

Given the spread of offences in which domestic abuse can be a factor, in the consultation the Council proposed that there should be a stand-alone domestic abuse guideline, which would be cross referenced in other relevant guidelines. The Council intends that all guidelines will be available digitally later in 2018. Accordingly, links will be embedded into guidelines such as assault, sexual offences and so on, that will take users to the domestic abuse guidance at the click of a button. Given the large number of positive responses to this proposal in consultation, the Council decided to maintain this approach.

An issue was raised during consultation about the age applicability of the guideline. The draft guideline had stated that it applied to offenders aged 18 and over, however, the Government definition of domestic abuse quoted within the guideline refers to those aged 16 and over. The Council considered this point and has clarified that the guideline applies to all offenders aged 16 and over, but that for offenders aged 16 to 18, sentencers should also refer to the *Sentencing Children and Young People Overarching Principles Definitive Guideline*.

Gender

The draft guidance noted that domestic abuse can occur between anyone, and that care should be taken to avoid stereotypical assumptions regarding domestic abuse. The Council felt that it was important to include wording on this point (which the SGC guideline was silent on), to guide courts that domestic abuse can occur in many contexts, and that assumptions should not be made about who can be a victim or perpetrator of domestic abuse.

In general, this proposed wording was supported by consultees. However a small, but significant number, Refuge, Women's Aid, Paladin, Suzy Lamplugh Trust and Standing Together Against Domestic Violence, expressed opposing views. They disagreed with this wording, arguing that the guidance should be amended to highlight the reality of the gendered nature of domestic abuse, and the differences in the frequency, severity and nature of abuse between men and women. The ManKind Initiative however strongly supported the proposed wording, stating the wording was an important landmark statement, making clear that domestic abuse is a crime where both men and women are victims as individuals.

The Council considered all these comments very carefully, and those of a number of consultees who argued that guidelines must remain gender neutral. The Council has decided not to alter the approach proposed in consultation. The Council's guidelines are always drafted so as to be gender neutral, and it is important to make it clear that anyone can be a victim of domestic abuse, and that it can occur within same sex relationships, and so on.

Similarly, a number of respondents felt that the guideline should include examples of a wider range of abusive relationships, citing examples of abuse between family members, as many may not regard abuse within a non-stereotypical situation, e.g. abuse by an adult child towards a parent, as domestic abuse. The Council agreed that this was an important point to reflect within the guideline, so has decided to add the wording '*Domestic abuse can occur between family members as well as between intimate partners*' to the guidance.

Seriousness

The draft wording proposed in consultation stated that '*the domestic context of the offending behaviour makes the offending more serious because it represents a violation of the trust that normally exists between people in an intimate or family relationship*' and that '*domestic abuse offences are regarded as particularly serious within the Criminal Justice System*'. This wording was included to mark a clear difference from the SGC guideline, which had stated that '*offences committed in a domestic context should be regarded as being no less serious than offences committed in a non-domestic context*'.

Generally consultees were pleased with the change in emphasis in the revised guidance from the SGC guidance. However, Refuge, and Paladin felt that the wording should be amended, that '*particularly serious*' does not equate to '*more serious*' than other offences, and that it should do. The Council considered this, but felt that the proposed wording did make it clear that offences committed within a domestic context are more serious, and that they are to be treated as such by the courts, so decided to leave the proposed wording unchanged.

Use of technology

Women's Aid suggested that there should be reference to abuse which is being perpetrated through use of technology, such as email/text, social networking sites, use of GPS trackers and so on, as these are burgeoning methods by which domestic

abuse can occur. The Council agreed that this was an important point to cover within the definitive guideline, in recognition that abuse may no longer just take place through person to person contact, but also through newer methods involving technology, and so has included a new reference to this within the guideline.

Aggravating factors

The proposed aggravating factor which attracted the greatest number of comments by consultees was the one relating to vulnerability. The draft wording proposed was '*victim is particularly vulnerable (some victims of domestic abuse may be more vulnerable than others, and may find it almost impossible to leave an abusive relationship)*'. This wording deliberately did not attempt to define vulnerability narrowly, as vulnerability can take many forms, not all of which are outwardly visible.

Paladin, Women's Aid and the Suzy Lamplugh Trust expressed concern with this wording, and suggested that perhaps an alternative could be '*victim had additional vulnerabilities*'. The Council gave the wording of this factor a great deal of further consideration, mindful of the sensitivity of this issue.

The Council has decided to revise the wording to '*victim is particularly vulnerable (all victims of domestic abuse are potentially vulnerable due to the nature of the abuse, but some victims of domestic abuse may be more vulnerable than others, and not all vulnerabilities are immediately apparent)*'. This wording is designed to allow courts to take a broad view of whether a victim is vulnerable or not, and not just by reference to a set of specific factors, such as age, disability etc., which cannot hope to include every instance of possible vulnerability. Victims of domestic abuse are individuals, and need to be treated as such, rather than to be cross referenced against a list of factors which may not apply to them, and may not address their particular vulnerability.

Mitigating factors

This section of the draft guideline attracted a number of comments by respondents, who expressed a number of different views on the proposed factors.

The first mitigating factor listed in the draft guideline referred to positive good character. Refuge, Women's Aid and the Suzy Lamplugh Trust felt that this factor should be removed altogether, as the outward behaviour of the offender has no relevance to the abuse they may be repeatedly perpetrating behind closed doors. Several respondents felt that the factor should remain, but with greater clarification

added; others, such as the Law Society and the Criminal Bar Association (CBA), felt the wording was appropriate as proposed.

The Council considered these opposing views carefully, and has decided that it was important to retain this factor, but that it should be reworded. The Council referred back to the wording used in the SGC guideline, and felt this wording could be suitably adapted and used in the revised guideline, as it encapsulates all the relevant issues to be considered. The new wording reads:

'Positive good character - 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 abuse to continue unnoticed for lengthy periods is the ability of the perpetrator to have a public and a private face. In respect of offences committed within a domestic context, an offender's good character in relation to conduct outside these offences should generally be of no relevance where there is a proven pattern of behaviour.'

A number of respondents expressed concern with the factor relating to provocation. The draft guideline heavily caveated this factor, but a number of respondents, including Women's Aid, Refuge, Suzy Lamplugh Trust and some magistrates felt that it should be removed, because the offending is inexcusable. A number of other consultees felt that the factor should remain, but that greater guidance should be given on what constitutes provocation.

As a result of considering this difficult issue further, the Council has decided to remove reference to this factor within the 'mitigating factors' section, but provide a brief reference to it within the 'other factors influencing sentence' section. This reads *'provocation is no mitigation to an offence within a domestic context, except in rare circumstances'*.

A number of respondents also expressed concern with the proposed mitigating factor relating to self-referral for help. Respondents commented that great caution should be exercised when considering this, that a measure of 'sincere intent' is needed to ensure that the offender is not just playing the system, and that the factor should be qualified in some way.

After considering these responses, the Council has decided to revise the wording proposed in consultation, to *'evidence of genuine recognition of the need for change, and evidence of obtaining help or treatment to effect that change'*.

Victim's influence on sentencing

The draft guideline had included guidance that read '*it is undesirable that a victim should feel a responsibility for the sentence imposed*'. A small number of respondents felt that the guideline needed to be more explicit about the victim's influence on sentencing. The Council considered this and has reworded the sentence to read '*no victim is responsible for the sentence imposed*'.

Custody threshold

The Justices' Clerks' Society (JCS) queried the wording in the draft guideline which referred to the custody threshold being crossed. It commented that the reference in particular to suspended sentences did not appear to be reflecting the *Imposition of Community and Custodial Sentences Definitive Guideline*. The Council considered this and has decided to reword parts of paragraph 15 of the guideline, removing the reference to suspended sentences, and reflecting the *Imposition Guideline* by including the statement '*passing the custody threshold does not mean that a custodial sentence is inevitable*'.

In addition, the draft guideline had stated that, if the custody threshold was only just crossed, an alternative to custody could be a community order with a requirement to attend an accredited programme, but that this would not be appropriate if there had been a pattern of abuse or the offender denied responsibility for the offence. The Council has decided to remove the qualification that this consideration would not be appropriate if there had been a pattern of abuse.

The intention behind the rewording of this paragraph is to prompt courts to consider how best to rehabilitate offenders, in order to try and stop the cycle of domestic abuse offending, which can worsen over time and continue within successive relationships. For offenders who wish to reform and are willing to engage constructively with rehabilitative programmes, community orders are likely to be more effective than custody. This reworded paragraph can be seen in its entirety below:

'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 has also decided to include a reference to '*domestic abuse specific interventions*', following a suggestion by a magistrates' bench during consultation. This is to address the fact that current accredited domestic abuse programmes are only available to men who have offended against female partners. There are a number of non-accredited domestic abuse interventions which range from group work programmes to one to one interventions that can be delivered as part of a Rehabilitation Activity Requirement (RAR).

The Council left the wording of paragraph 13 in the guideline unchanged, which reads: '*Offences involving serious violence, or where the emotional/psychological harm caused is severe, will warrant a custodial sentence in the majority of cases*'.

Restraining orders

The JCS suggested that, as well as the text provided on orders in the draft guideline, it would be helpful to include some additional information to the effect that orders can be made on the court's initiative and that the views of the victim should be sought, but that their consent is not required. They also suggested that as victims who continue or resume relationships with offenders are at greater risk, a condition 'not to molest' is a necessary prohibition. They commented that the tendency is for restraining orders to be considered in the context of keeping the parties apart, whereas a substantial number will resume/continue relationships and still need protection.

The Council considered that providing information on these points would be helpful to courts, so the definitive guideline now has some additional lines of guidance, as shown below:

'Orders can be made on the initiative of the court; the views of the victim should be sought, but their consent is not required.'

'If the parties are to continue or resume a relationship, courts may consider a prohibition within the restraining order not to molest the victim (as opposed to a prohibition on contacting the victim).''

Victim Personal Statements

Some respondents (Refuge, Magistrates Association, CBA, Victims' Commissioner, some magistrates' benches) suggested that the guideline should refer to Victim Personal Statements (VPS). Guidelines generally do not refer to VPS, as the use of

them is not consistent and there is a concern that a negative inference may be made about the impact of the offence if one is not present, when the victim may simply not have been offered the opportunity to make one.

After due consideration on these points, the Council has decided to include a reference to VPS, but with a suitable caveat, that the absence of a VPS does not indicate the absence of harm, as shown below.

‘The absence of a Victim Personal Statement (VPS) should not be taken to indicate the absence of harm. A court should consider, where available, a VPS which will help it assess the immediate and possible long-term effects of the offence on the victim (and any children, where relevant) as well as the harm caused, whether physical or psychological.’

Conclusion and next steps

The consultation has been a vital part of the Council’s consideration of the guideline. Responses received from a variety of organisations and individuals have informed the changes made to the definitive guideline.

The definitive guideline will apply to all offenders aged 16 and over sentenced on or after 24 May 2018, regardless of the date of the offence.

The guideline will be available in pdf from 24 May 2018 via both the online and app versions of the Magistrates’ Court Sentencing Guidelines. Printed copies will also be available on request from info@sentencingcouncil.gov.uk

Following the implementation of the definitive guideline, the Council will monitor the effect of the guideline.

Annex A:

List of consultation respondents

Martin Alderman JP
HHJ Maureen Bacon QC
Dame Vera Baird QC, PCC for Northumbria
James Baker
Lee Barnard (Metropolitan Police)
Denise Blackburn (Denise Blackburn & Partners)
Central Kent Magistrates
Central London Magistrates
Alex Chalk MP
Criminal Bar Association
Jacquie Dabnor JP
David (no surname given)
Wendy Forrest
Richard Graham MP
Highbury Corner Magistrates Consultation Committee
Ben Hughes JP
Immigration Fraud UK
Justices' Clerks' Society
Caron Kipping
The Law Society
Maya Linstrum-Newman
London Criminal Courts Solicitors' Association
Nicky Loveday JP
Magistrates' Association
The ManKind Initiative
Judith Massey JP
Clare McGlynn (Durham University)
David Milner-Scudder
Ministry of Justice
Oxfordshire Bench
Paladin
Gary Price JP
Prison Reform Trust
Erika Rackley (University of Birmingham)
Refuge
Revenge Porn Helpline
Frances Ridout (Queen Mary Legal Advice Centre)
Safer Leeds, Leeds City Council
Chris Smith JP
South Wales Police and South Wales PCC
SouthEast London Bench
Standing Together Against Domestic Abuse
The Suzy Lamplugh Trust
Richard Thomas JP
Victims' Commissioner

Warrington Anti-Stalking Clinic Initiative
Peter Watson JP
West Hampshire Magistrates
West Sussex Bench
West Yorkshire Magistrates
Matthew Withey
Women's Aid