

# Overarching Principles: Domestic Abuse Definitive Guideline

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# Overarching Principles: Domestic Abuse

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## APPLICABILITY OF GUIDELINE

In accordance with section 120 of the Coroners and Justice Act 2009, the Sentencing Council issues this definitive guideline. It applies to all offenders aged 16 and older, who are sentenced on or after 24 May 2018, regardless of the date of the offence.

For offenders aged 16 - 18 refer also to the *Sentencing Children and Young People Overarching Principles* Definitive Guideline; however the general principles of this guideline will still apply.

Section 125(1) of the Coroners and Justice Act 2009 provides that when sentencing offences committed after 6 April 2010:

“Every court –

- (a) must, in sentencing an offender, follow any sentencing guidelines which are relevant to the offender’s case, and
- (b) must, in exercising any other function relating to the sentencing of offenders, follow any sentencing guidelines which are relevant to the exercise of the function.

unless the court is satisfied that it would be contrary to the interests of justice to do so.”

## SCOPE OF THE GUIDELINE

1. This guideline identifies the principles relevant to the sentencing of cases involving domestic abuse. There is no specific offence of domestic abuse. It is a general term describing a range of violent and/or controlling or coercive behaviour.
2. A useful, but not statutory, definition of domestic abuse presently used by the Government is set out below. The Government definition includes so-called ‘honour’ based abuse, female genital mutilation (FGM) and forced marriage.

***Any incident or pattern of incidents of controlling, coercive, 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. The abuse can encompass, but is not limited to: psychological, physical, sexual, financial, or emotional.***

3. Controlling behaviour is a range of acts designed to make a person subordinate and/or dependent by isolating them from sources of support, exploiting their resources and capabilities for personal gain, depriving them of the means needed for independence, resistance and escape and/or regulating their everyday behaviour.
4. Coercive behaviour is an act or pattern of acts of assault, threats, humiliation (whether public or private) and intimidation or other abuse that is used to harm, punish, or frighten the victim. Abuse may take place through person to person contact, or through other methods, including but not limited to, telephone calls, text, email, social networking sites or use of GPS tracking devices.

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5. Care should be taken to avoid stereotypical assumptions regarding domestic abuse. Irrespective of gender, domestic abuse occurs amongst people of all ethnicities, sexualities, ages, disabilities, religion or beliefs, immigration status or socio-economic backgrounds. Domestic abuse can occur between family members as well as between intimate partners.
6. Many different criminal offences can involve domestic abuse and, where they do, the court should ensure that the sentence reflects that an offence has been committed within this context.

### ASSESSING SERIOUSNESS

7. The domestic context of the offending behaviour makes the offending more serious because it represents a violation of the trust and security that normally exists between people in an intimate or family relationship. Additionally, there may be a continuing threat to the victim's safety, and in the worst cases a threat to their life or the lives of others around them.
8. Domestic abuse offences are regarded as particularly serious within the criminal justice system. Domestic abuse is likely to become increasingly frequent and more serious the longer it continues, and may result in death. Domestic abuse can inflict lasting trauma on victims and their extended families, especially children and young people who either witness the abuse or are aware of it having occurred. Domestic abuse is rarely a one-off incident and it is the cumulative and interlinked physical, psychological, sexual, emotional or financial abuse that has a particularly damaging effect on the victims and those around them.
9. Cases in which the victim has withdrawn from the prosecution do not indicate a lack of seriousness and no inference should be made regarding the lack of involvement of the victim in a case.

### AGGRAVATING AND MITIGATING FACTORS

The following list of non-exhaustive aggravating and mitigating factors are of **particular relevance to offences committed in a domestic context**, and should be considered alongside offence specific factors.

#### Aggravating Factors

- Abuse of trust and abuse of power
- 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*)
- Steps taken to prevent the victim reporting an incident
- Steps taken to prevent the victim obtaining assistance
- Victim forced to leave home, or steps have to be taken to exclude the offender from the home to ensure the victim's safety
- Impact on children (*children can be adversely impacted by both direct and indirect exposure to domestic abuse*)
- Using contact arrangements with a child to instigate an offence
- A proven history of violence or threats by the offender in a domestic context
- A history of disobedience to court orders (*such as, but not limited to, Domestic Violence Protection Orders, non-molestation orders, restraining orders*)

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### Mitigating Factors

- 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*
- Evidence of genuine recognition of the need for change, and evidence of obtaining help or treatment to effect that change

### OTHER FACTORS INFLUENCING SENTENCE

The following points of principle should be considered by a court when imposing sentence for any offences committed in a domestic context:

10. A sentence imposed for an offence committed within a domestic context should be determined by the seriousness of the offence, not by **any** expressed wishes of the victim. There are a number of reasons why it may be particularly important that this principle is observed within this context:
  - The court is sentencing on behalf of the wider public
  - No victim is responsible 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.
11. Provocation is no mitigation to an offence within a domestic context, except in rare circumstances.
12. The offender or the victim may ask the court to consider the interests of any children by imposing a less severe sentence. The court should consider not only the effect on the children if the relationship is disrupted but also the likely effect of any further incidents of domestic abuse. The court should take great care with such requests, as the sentence should primarily be determined by the seriousness of the offence.
13. Offences involving serious violence, or where the emotional/psychological harm caused is severe, will warrant a custodial sentence in the majority of cases.
14. Some offences will be specified offences for the purposes of the dangerous offender provisions.<sup>1</sup> In such circumstances, consideration will need to be given to whether there is significant risk of serious harm to members of the public by the commission of further specified offences. The 'public' includes family members and if this test is met, the court will be required to impose a life sentence, or an extended sentence in appropriate cases.

<sup>1</sup> Criminal Justice Act 2003 (as amended) sections 224-229

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15. 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.
16. The court should also consider whether it is appropriate to make a restraining order, and if doing so, should ensure that it has all relevant up to date information. The court may also wish to consider making other orders, such as a European protection order, sexual harm prevention order, criminal behaviour order (this is not an exhaustive list). Further details for restraining orders are set out below.

### RESTRAINING ORDER

17. Where an offender is convicted of any offence, the court may make a restraining order (Protection from Harassment Act 1997, section 5).
18. Orders can be made on the initiative of the court; the views of the victim should be sought, but their consent is not required.
19. The order may prohibit the offender from doing anything for the purpose of protecting the victim of the offence, or any other person mentioned in the order, from further conduct which amounts to harassment or will cause a fear of violence.
20. 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).
21. The order may have effect for a specified period or until further order.
22. A court before which a person is **acquitted** of an offence may make a restraining order if the court considers that it is necessary to protect a person from harassment by the defendant (Protection from Harassment Act 1997, section 5A).

### VICTIM PERSONAL STATEMENTS

23. 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.

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