

**A
CONSULTATION
ON THE
CPS POLICY FOR PROSECUTING
CASES OF DOMESTIC VIOLENCE**



CPS

THE CONSULTATION PROCESS

Introduction

The aim of this consultation paper is to seek a wide range of views to inform the policy and practice of the Crown Prosecution Service (CPS) in relation to prosecuting cases of domestic violence.

The CPS has responsibility for reviewing cases of domestic violence and applying the Code for Crown Prosecutors to decide whether or not there should be a prosecution. To assist prosecutors making that decision we intend to review our current policy and practice by consulting publicly and internally on the issues raised in this document. We welcome views from everyone with an interest in the topic. This document will be widely circulated and available on the CPS website (www.cps.gov.uk).

How to respond

We welcome written and email responses to the consultation, especially, but not exclusively, to the questions set out in the document. A pro forma for responses is provided below. Please feel free to provide comments on additional sheets of paper if there is not sufficient space. A MS Word™ version of the response sheet is also available for downloading from the consultation section of the CPS website, www.cps.gov.uk.

Please include with your response: your name, organisation (if any), postal address and email address.

Closing date for responses: **29 October 2008**

Responses can be sent by post to:

Domestic Violence Consultation
Crown Prosecution Service
Policy Directorate
50 Ludgate Hill
London EC4M 7EX

Or by e-mail to: dvpolicy.cpsconsultation@cps.gsi.gov.uk

Alternative formats

If you require a copy of this consultation paper in another format, e.g. audio, large print or Braille, you should contact the address above.

Responses: Confidentiality and disclaimer

The information you send us may be passed to colleagues within the CPS, the Government or related agencies. Furthermore, information provided in response to this consultation, including personal information, may be published or disclosed in accordance with the access to information legislation (these are the Freedom of Information Act 2000 (FOIA), the Data Protection Act 1998 (DPA) and the Environmental Information Regulations 2004 (EIR).

If you want the information that you provide to be treated as confidential, please be aware that, under FOIA, there is a statutory Code of Practice with which public authorities must comply and which deals, amongst other things, with obligations of confidence. In view of this it would be helpful if you could briefly explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of the information we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not be regarded as binding on the CPS.

Please ensure your response is marked clearly if you wish your response and name to be kept confidential.

Confidential responses will be included in any statistical summary of numbers of comments received and views expressed.

The CPS will process your personal data in accordance with the Data Protection Act – in the majority of circumstances this will mean that your personal data will not be disclosed to third parties.

Next steps

A summary of the consultation responses will be published on the CPS website within three weeks of the close of the consultation exercise. The documents will be drawn to the attention of everyone who responds to the consultation. These responses will inform the CPS public policy statement on prosecuting cases of domestic violence.

**CPS POLICY ON PROSECUTING CASES OF DOMESTIC VIOLENCE:
CONSULTATION RESONSE SHEET**

1. Does the introduction explain the purpose of the document clearly and give a good indication of the importance the CPS places on tackling domestic violence?

If not, please suggest how we could make this clearer.

2. Is the role of the CPS and the explanation of the tests under the Code for Crown Prosecutors clear?

If not, please suggest ways in which we could make these two sections clearer.

3. Is any further explanation required of the things we consider in deciding to continue a prosecution against the victim's wishes; whether it is in the public interest to prosecute; or whether to accept pleas?

If so, which parts need to be explained further?

4. Does the section on support and safety of victims make clear how important these issues are to the CPS? Do they provide all of the relevant information in a way that is easy to understand?

If not, how should it be changed?

5. Do we give a clear indication of how we will deal with children as victims and witnesses?

If not, please state ways in which we could do so.

6. Is the section on keeping victims informed clear?

If not, how could we make it clearer?

7. Do the sections on bail and sentencing contain the right level of detail?

If no, please explain your answer.

8. Do the sections on community engagement and complaints provide useful information for those supporting victims?

If not, how could we make them more useful?

9. Is the document inclusive of people from all communities?

If not, please explain how we could improve it.

10. Is there any part of the policy statement that you strongly disagree with?

If so, please identify which paragraph and provide a brief explanation as to why you disagree.

11. Have you any other comments about the document?

CPS POLICY FOR PROSECUTING CASES OF DOMESTIC VIOLENCE

Contents

1	GLOSSARY
2	INTRODUCTION
3	WHAT IS DOMESTIC VIOLENCE?
4	THE ROLE OF THE CPS
5	THE CODE FOR CROWN PROSECUTORS
6	IS THERE ENOUGH EVIDENCE TO PROSECUTE?
7	IS IT IN THE PUBLIC INTEREST TO PROSECUTE?
8	DECIDING THE CHARGES AND ACCEPTING PLEAS
9	AVOIDING DELAY
10	CIVIL PROCEEDINGS
11	SUPPORT AND SAFETY OF VICTIMS
12	CHILDREN
13	KEEPING VICTIMS INFORMED
14	SPECIALIST DOMESTIC VIOLENCE COURTS
15	BAIL
16	SENTENCING
17	COMMUNITY ENGAGEMENT
18	COMPLAINTS
19	CONCLUSION

ANNEXES

ANNEX A: Examples of types of behaviour that can occur in cases of domestic violence and that might amount to a criminal offence

ANNEX B: Bail

ANNEX C: Contact details for some of the organisations that provide help or information to victims of domestic violence and professionals working with victims

GLOSSARY

Adjournment

The postponement of the hearing of a case until a future date.

Appeal

A request for a higher court to change a decision made by a lower court.

Bail

The release of a person held in custody while awaiting trial or appealing against a criminal conviction.

Charge

When a suspect is formally accused of committing a crime.

Code for Crown Prosecutors

A document that sets out how the Crown Prosecution Service (CPS) makes decisions about cases. It is widely available to the public from any of our offices, and it is on the internet at:

www.cps.gov.uk/victims_witnesses/code.html.

Complainant

A person who alleges a crime has been committed against them.

Conviction

A decision by magistrates or a jury that the defendant is guilty.

Cross-examination

Challenging the evidence given by a witness in court.

Crown Court

A court where criminal cases are dealt with by a judge and a jury of twelve members of the public. The cases heard in the Crown Court are those likely to attract higher sentences (for example, rape, grievous bodily harm and murder). The Crown Court also deals with appeals for cases dealt with by the magistrates' and youth courts.

Defendant

A person charged with a criminal offence.

Evidence

The information given to the court to help make it to make a decision about whether or not a defendant is guilty. 'Evidence-in-chief' is the evidence presented to the court during the examination-in-chief.

Examination-in-chief

The questioning of the witness by the party who called him or her. Prosecution witnesses will be questioned first by the prosecution, before being cross-examined by the defence.

Hate Crime Scrutiny Panels

Panels involving criminal justice and community partners to scrutinise hate crime cases – including domestic violence – that have gone through the criminal justice system. These panels exist in all CPS Areas.

Intermediary

An intermediary is a person specifically trained to help children and adults who are considered vulnerable to be able to communicate at court.

Independent Domestic Violence Adviser (IDVA)

An independent specialist who works alongside victims from the point of crisis, throughout the legal process, and beyond. They link in with essential services such as victim and witness support organisations, counselling, health and housing, whilst making sure that agencies to coordinate to keep the victim safe.

Magistrates' court

A court where criminal cases are dealt with by magistrates or district judges. Magistrates' courts tend to deal with cases that attract a lower sentence, such as common assault and criminal damage.

Newton hearing

The court may decide to hold a 'Newton hearing' where the defendant pleads guilty, but the defence and prosecution dispute the facts upon which the court is going to sentence the defendant. The purpose of the hearing is to establish the factual basis for the sentence to be passed.

Perpetrator programme

Domestic violence perpetrator programmes are structured group work programmes for domestic violence perpetrators. The aim of these programmes is to increase the safety of the victim and children by holding the perpetrator accountable for their behaviour.

Plea

When a defendant says he or she is guilty or not guilty.

Prosecutor

The person who presents the case against one or more defendants. Prosecutors present cases on behalf of the Crown (in other words, the state) and do not act on behalf of victims.

Special measures

The help for witnesses that a court can offer so that they can give their best evidence in court. They include: live video links, video-recorded statements, screens around the witness box, and assistance with communication.

Statutory charging

The system through which the CPS has responsibility for deciding (in all but the most minor cases) whether a suspect should be charged, and, if so, what the charge(s) should be.

Trial

When the magistrates or jury hear what happened from the defence and the prosecution, so that they can make up their minds about whether or not the defendant is guilty.

Victim

A person who has had a crime committed against them.

Witness

A person who can give relevant evidence in a criminal case. This will almost always include the victim of a crime.

Witness Care Unit

Run by the police and CPS, Witness Care Units provide help and information for victims and prosecution witnesses.

Witness summons

A court order to an individual to appear in court at a specified place and time.

1 INTRODUCTION

- 1.1 This policy statement explains the way we, the Crown Prosecution Service (CPS), deal with cases involving domestic violence. It gives advice on what the CPS does, how domestic violence cases are prosecuted, and what victims can expect from the CPS. The document is particularly aimed at those who support victims of domestic violence, whether professionally or personally, although it may also be of interest to victims, witnesses and the general public.
- 1.2 This is the third edition of the policy statement. It reflects changes to the law, procedures and other developments that have taken place since the publication of the second edition in 2005. These changes include:
 - the roll-out of statutory charging;
 - the training of CPS staff on domestic violence;
 - the implementation of new special measures for victims and witnesses;
 - the roll-out of specialist domestic violence courts (SDVCs), Independent Domestic Violence Advisers (IDVAs), and multi-agency risk assessment conferences (MARACs);
 - the publication of the Code of Practice for Victims of Crime and the Prosecutors' Pledge; and
 - the introduction of Witness Care Units.
- 1.3 Some words and phrases used in this document may not be familiar to everybody. We have therefore set out a glossary of terms at the front of this document, in which we have defined some of the words and phrases used.
- 1.4 We regard domestic violence as particularly serious. Its domestic nature is an aggravating, rather than a mitigating factor because of the abuse of trust. Victims know and often live with or have lived with their abuser. Moreover, there is often a continuing threat to the victim's safety and, in the worst cases, the victim's life and the lives of others (including children) may be at risk. Stopping domestic violence and bringing perpetrators to justice is therefore a priority for the CPS.
- 1.5 We are publishing this statement because we want those who support victims, victims themselves, their families, witnesses, and the general public to be confident that the CPS understands that domestic violence is very serious, and that it can inflict lasting trauma on victims and their extended families. We want people to know that our aim is to prosecute domestic violence cases effectively, and we want people to know what they can expect from us.
- 1.6 People have the right to feel safe and be safe in their personal relationships. The safety of the victim is a primary issue for us to consider in decision-making. We know that domestic violence can have a devastating effect not only upon the victim but also upon families and especially upon children who witness and suffer directly the consequences of that violence.

- 1.7 We are determined to play our part by prosecuting cases effectively and fairly, monitoring our performance, and working within a multi-agency approach. We recognise that criminal proceedings are just one element of this approach and that criminal and civil law may need to be used in conjunction with support services for victims to address their safety. Where there are concurrent criminal and civil proceedings, we will work to prioritise the safety of victims and children.
- 1.8 We realise that victims of domestic violence – particularly those who may have suffered over a considerable time – have difficult decisions to make that will affect their lives and the lives of those close to them. We acknowledge that some victims may not wish to go through the criminal route at all, preferring to make use of civil remedies or other safety and support mechanisms.
- 1.9 We know that domestic violence is likely to become more frequent and more serious the longer it continues, and that it can result in death. Because of this, we will sometimes continue with a prosecution even if a victim asks us not to. In these cases, we will make the fullest enquiries through the police, and through them with any support services, to ensure that our decision to prosecute is made against a background of all available information and with the safety of the victim and any children at the forefront of our minds.
- 1.10 We will continue to work and train with the police, other colleagues in the criminal justice system and voluntary and community groups, both locally and nationally, to help us improve our understanding of domestic violence and make appropriate decisions that aim to ensure the safety of the victim and any children. This policy statement is supported by more detailed guidance for all CPS prosecutors, associate prosecutors and caseworkers so that they have a clear understanding of the policy and how we deal with this sort of crime.
- 1.11 We acknowledge that for some individuals, there are additional barriers that make them less likely to report offences.
- 1.12 For example, victims who are or have been in a relationship with their abuser for some time may blame themselves or feel that agencies may blame them, as well as facing wider difficulties such as disruption to the lives of their children and extended families.
- 1.13 People from Black and minority ethnic communities may have experienced racism from the criminal justice system. They may fear that they will not be believed, or that they will not be treated properly. As a result, they may be reluctant to report offences or support a prosecution. Cultural and religious beliefs may also deter people from reporting offences or supporting a prosecution.
- 1.14 Victims in same sex relationships may fear homophobic reactions from the criminal justice system. They may also fear being “outed” by the process.

- 1.15 People with physical and mental disabilities and some older people may have difficulties reporting offences to the police and accessing services, or they may feel that they will not be believed if they report offences.
- 1.16 Every person has an equal right to be protected by the criminal law and by the CPS. We recognise that equality and diversity – and by this we mean treating people fairly, whilst respecting people’s differences – is fundamental to delivering fair prosecutions and essential if we are to command the confidence of all the communities we serve. This policy statement therefore applies to people from all backgrounds and communities.

[Question to be addressed in Consultation: Does the Introduction explain the purpose of the document clearly and give a good indication of the importance the CPS places on tackling domestic violence?

If not, please suggest how we could make this clearer.]

2 WHAT IS DOMESTIC VIOLENCE?

- 2.1 There is no specific statutory offence of domestic violence. “Domestic violence” is a general term that describes a range of controlling and coercive behaviour, which is used by one person to maintain control over another with whom they have, or have had, an intimate or family relationship. It is the cumulative effect of abuse, whether physical, psychological, sexual, emotional or financial, that has a particularly damaging effect on the victim. Domestic violence occurs throughout society, amongst people of all ethnicities, sexualities, ages, disabilities, immigration statuses, religions or beliefs, and socio-economic backgrounds. Men and women can both be victims. However, the evidence shows that the overwhelming majority of victims are women and abusers men. Taking action against domestic violence is therefore included as part of the CPS Violence against Women Strategy.
- 2.2 The Government definition of domestic violence (agreed in 2004) 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.”
- 2.3 An *adult* is any person aged 18 years and over and *family members* are defined as mother, father, son, daughter, brother, sister and grandparents, whether directly related, in-laws or step-family. The definition is supported by an explanatory text that makes it clear that domestic violence includes female genital mutilation, forced marriage and so-called “honour crimes”.
- 2.4 This definition replaced the various definitions used by individual Government departments and agencies and has helped to improve joint working practices and monitoring.

2.5 **Because domestic violence amongst people of all ages needs to be dealt with seriously, and because victims' and children's safety issues and defendant accountability are so important to us, we will also apply our domestic violence policy when dealing with criminal offences that occur in a domestic context involving victims and abusers *whatever their age.***

2.6 Some examples of behaviour that might amount to a criminal offence are given at Annex A.

3 THE ROLE OF THE CPS

3.1 The CPS is one part of the criminal justice system, which includes other organisations such as the police, the courts, defence lawyers, probation, Youth Offender Teams (YOTs), the Witness Service and the Prison Service.

3.2 We are a public prosecution service for England and Wales, headed by the Director of Public Prosecutions. We were set up in 1986 to prosecute cases investigated by the police. Although we work closely with the police, we are independent of them. The independence of prosecutors is of fundamental constitutional importance. We are answerable to Parliament through the Attorney General, who is the senior Law Officer for the Crown and also a Government Minister.

3.3 We are a national organisation consisting of 43 Areas, including an out-of-hours service called 'CPS Direct'. Each Area is headed by a Chief Crown Prosecutor and corresponds to a single police force area, with one Area covering London.

3.4 The police are responsible for investigating allegations of domestic violence and for gathering the evidence. Their policy and guidance links up with that of the CPS. Police guidance states that where an offence has been committed in a domestic violence case, arrest will normally be 'necessary' to protect a child or vulnerable person, prevent the suspect causing injury, and/or allow for the prompt and effective investigation of the offence. The police will assess the risk faced by domestic violence victims and in many Areas refer them to support services. Since 2004, we have had the responsibility for deciding (in all but the most minor cases) whether a suspect should be charged with a criminal offence, and, if so, what the charge(s) should be. The CPS makes the decision to charge in all cases of domestic violence. This means that prosecutors are involved at an early stage in advising on cases of domestic violence.

3.5 Although we take into account victims' views and are concerned to make sure they are supported and kept safe, we are not their legal representative and cannot act on their behalf. The CPS is responsible for initiating domestic violence prosecutions and prosecutes cases on behalf of the state.

- 3.6 Where the CPS makes a decision not to charge on the basis of a file of evidence from the police, or decides to drop or substantially amend a charge, we will inform the victim in writing of the decision and the reasons for it (see further section 10 below). However, where matters have been dealt with very quickly, we may not always be able to give the explanation before the case is finished. In certain cases, our letter will also offer a meeting with the prosecutor where a fuller explanation may be provided. We will not be able to write a letter on the basis of a decision made by the police. A copy of our *'How prosecution decisions are reached in cases of domestic violence'* can be obtained from CPS Communications Branch or from the CPS website at:

<http://www.cps.gov.uk/publications/prosecution/domestic/index.html>

- 3.7 As part of our commitment to improve the prosecution of cases of domestic violence, in 2001 we established a network of 43 domestic violence coordinators, one in each CPS Area. They work with other agencies to implement our policy, address problems, and identify and share good practice, and they attend multi-agency meetings. All prosecutors, associate prosecutors, and caseworkers in the CPS have been trained on domestic violence.

4 THE CODE FOR CROWN PROSECUTORS

- 4.1 The Code for Crown Prosecutors sets out how we make decisions about whether or not to prosecute. The Code is a public document. We review the cases referred to us by the police in line with the test set out in the Code. The test has two stages.

The evidential stage

- 4.2 We must be satisfied first of all that there is enough evidence to provide a realistic prospect of conviction against each defendant on each charge. This means that a jury or a bench of magistrates or a judge hearing a case alone, properly directed in accordance with the law, is more likely than not to convict the defendant of the alleged charge.
- 4.3 The test that we use to decide whether or not to prosecute are different from the one applied by the court before it may convict a defendant. For there to be a conviction, we have to prove the case so that the court is sure of the defendant's guilt. This is a very high standard of proof and there are many reasons why a defendant may not be convicted. Victims and witnesses should not assume that a defendant has been acquitted because their evidence has not been believed.
- 4.4 If the case does not pass the first stage of the test (the evidential stage) based on the strength of the evidence, it must not go ahead, no matter how important or serious it may be.

The public interest stage

- 4.5 If the case does pass the evidential stage, we must decide if a prosecution is needed in the public interest. A prosecution will usually take place unless “there are public interest factors tending against prosecution which clearly outweigh those tending in favour” (Code for Crown Prosecutors).
- 4.6 When considering the public interest stage, one of the factors that Crown Prosecutors should always take into account is the consequences for the victim of the decision whether or not to prosecute, and any views expressed by the victim or the victim’s family. We always think very carefully about the interests of the victim when we decide where the public interest lies. But we prosecute cases on behalf of the public at large and not just in the interests of any particular individual. There can be difficulties in striking this balance. The views and interests of the victim are important, but they cannot be the final word on the subject of a CPS prosecution. Any future risks of the victim, their children or any other potential victim have to be taken into consideration.

The Threshold Test

- 4.7 When a person has been arrested and is considered unsuitable to be granted bail until the police enquiries are complete, the prosecutor will make a decision on whether or not that person should be charged based on whether there is a reasonable suspicion that s/he has committed the offence. This is called the ‘Threshold Test’. If a person is charged on the Threshold Test, when the police enquiries are complete, the case will only be allowed to proceed if it passes both stages of the test set out in the Code for Crown Prosecutors.
- 4.8 Cases of domestic violence should be referred to us by the police if the Threshold Test has been met and the police consider that there is sufficient evidence for the CPS to charge.

[Question to be addressed in Consultation: Is the Role of the CPS and the explanation of the tests under the Code for Crown Prosecutions clear?

If not, please suggest ways in which we could make these two sections clearer.]

5 IS THERE ENOUGH EVIDENCE TO PROSECUTE?

- 5.1 We will work closely with the police to make sure that all available evidence from all sources has been gathered and brought to our attention as quickly as possible. Effective gathering of evidence by the police may include, for example, 999 tapes, statements from other witnesses (for example, neighbours, healthcare professionals, children, etc.), CCTV footage, forensic evidence, and police observations at the scene (for example, furniture overturned and injuries sustained). We will consider the evidence carefully

and make our decisions as quickly as possible. We will also try to make sure that cases progress through the court without avoidable delay.

- 5.2 A victim's word in court or statement to the police is evidence. However, it is not the only evidence that can be used to prove a case. We will actively consider what other evidence may be available. It is possible, for example, that a friend, neighbour or child may have been nearby and may be able to give direct evidence of what they have seen or heard. In certain circumstances, a friend, neighbour or child may be able to give evidence of something that someone else told them (this is called 'hearsay' evidence). This direct or indirect information may also be important background information that will enable the prosecutor to put the offence into context.
- 5.3 In other cases, there may be medical evidence or photographs of the victim's injuries that can be used as evidence. In some limited circumstances, we may also be able to use evidence of the defendant's previous bad character (e.g. convictions or cautions) to help us prove a case.
- 5.4 Domestic violence often takes place in private and, at times, the victim may be the only witness. This can mean that unless the defendant pleads guilty or there is strong supporting evidence, it will usually be necessary for the victim to give evidence in court. We recognise that many victims of domestic violence will find this very difficult – sometimes because they fear for their safety – and may need practical and emotional support and specialist domestic violence support services.
- 5.5 In some areas, Independent Domestic Violence Advisers and other specialist domestic violence services are available to provide this type of support. Emotional and practical help for all victims of crime is also available from Victim Support and the Witness Service. Contact details for these support agencies are given at Annex C. In some cases, the CPS can make an application to the court to allow victims to use special measures to help them give their best evidence (see further below).
- 5.6 We know that some complaints of domestic violence are not made straight away for fear of reprisals, intimidation or a number of other factors. Again, specialist domestic violence support services will be able to offer help and advice to victims who are unsure about what action to take.
- 5.7 We will prosecute cases where there is sufficient evidence and it is in the public interest to do so.

What happens when the victim withdraws support for the prosecution or no longer wishes to give evidence?

- 5.8 Sometimes victims will ask the police not to proceed any further with the case and say that they no longer wish to give evidence. There may be a number of explanations for this. This does *not* mean that the case will automatically be stopped.

- 5.9 When this happens we have to find out why the victim has asked for the case to be stopped, before we can decide what action to take. This may involve applying to the court for time to investigate the facts and decide the best course of action, which may delay the proceedings. The safety of the victim, children or any other potentially vulnerable person will be a prime consideration in reaching our decision.
- 5.10 We will take the following steps:
- we will ensure that a prosecutor experienced in domestic violence matters supervises the case;
 - if the information about the victim's decision has come from the defendant, we will ask the police to make further enquiries (particularly as it may reveal a breach of bail);
 - if the victim confirms that the information is true, we will ask the police to take a written statement from the victim. This statement should explain the reasons for withdrawing support, confirm whether the original statement was true, confirm whether the victim has been put under pressure to withdraw support, and provide any other relevant information;
 - we will ask the police to give their views (and to consult with the IDVA, where there is one, for the most up to date information) about the evidence in the case and how they think the victim might react to being called to attend court against their wishes; and
 - we will ask the police to make sure that the full risk assessment of the victim, any children and any other person's safety is up-to-date. The risk assessment should include details of what support is available to the victim, what has been offered, and what the victim has accepted.
- 5.11 If the victim confirms that the complaint is true but still wants to withdraw, we will consider first whether it is *possible* to continue without the victim's evidence (the evidential stage) and then, if it is possible, whether we should continue with the case without the support of the victim or against the victim's wishes (the public interest stage).
- 5.12 If the victim's statement after withdrawing the complaint is not the same as the earlier statement, the police will ask the victim to explain why it has changed and, if necessary, investigate the background further.
- 5.13 The prosecutor will want to know the reasons why the victim no longer wishes to give evidence. This may be because the victim has reconciled with the defendant or has concerns about criminalising his or her family. It may be that s/he is experiencing feelings of embarrassment or fears that s/he may not be believed. It may be that the victim lives in a place in which they feel isolated or particularly vulnerable, where supporting the prosecution may place the victim at further risk of harm. In such cases, the prosecutor must have regard to any special measures or other support available to the victim that may help them, at least in part, to overcome their concerns.
- 5.14 If we suspect that the victim has been pressured or frightened into withdrawing the complaint, we will ask the police to investigate further. The

investigation may reveal new offences, for example, harassment or witness intimidation, or may reveal that bail conditions have been breached. If necessary, we will ask the court to delay any hearing so that a thorough investigation may take place before we decide about the future of the case. If the reason for a victim or witness's withdrawal is based on fear or intimidation, the prosecutor will consider the evidence and decide whether further charges should be brought.

- 5.15 We will explore these options fully before we decide whether or not to proceed with a prosecution. If a victim withdraws a complaint, this does not mean that s/he can no longer call the police. The victim is still entitled to future protection.

What happens when a decision is taken to continue with a prosecution against the victim's wishes?

- 5.16 Generally, the more serious the offence (because of, for example, the presence of children, or the level of violence used or the real and continuing threat to the victim or others) the more likely we are to prosecute in the public interest, even if the victims say that they do not wish us to do so.
- 5.17 In cases where we have sufficient other evidence, we may decide to proceed without relying on the evidence of the victim at all.
- 5.18 If we think that the case should continue and that it would be necessary to rely on the victim's evidence to prove the case, we have to decide:
- whether we could apply to the court to use the victim's statement as evidence without the victim having to give evidence in court; or
 - whether we should require the victim to give evidence in person in court against their wishes.
- 5.19 In very limited circumstances, the law allows us to use the victim's statement in court without calling the victim to give oral evidence (for example, where the victim is in fear or cannot be found). This is a matter for the court to decide, and the court can only make this decision if it is in the interests of justice to do so. If the victim is the only witness to the offence it may be very difficult to satisfy the court that the trial can be fair when the defence cannot cross-examine the only witness against them.
- 5.20 In some cases, we will also be able to apply to the court for special measures to assist the victim to give their best evidence (see section 10 for further detail).
- 5.21 Background information is crucial in helping a prosecutor to make the correct decision about how to proceed with a case where the victim has withdrawn their support for the prosecution. The police will provide this information to prosecutors to help them make that decision.

- 5.22 Under current legislation, we can require husbands, wives or civil partners to give evidence about an assault or threat of injury by their spouse. We can also call unmarried partners, including same sex partners, or family members to give evidence in court against their wishes about any offence.
- 5.23 In cases where it is necessary to call victims to court against their wishes, an experienced prosecutor will only make that decision after consultation with the police and once they have given consideration to the safety of the victim and any child or vulnerable person. We will also consider any further or unintended consequences (for example, repeat victimisation) that could arise as a result of the case proceeding, whether these relate to the victim or defendant's gender, sexuality, ethnicity, immigration status, age, gender identity, religion or belief, disability, or other identity.

6 IS IT IN THE PUBLIC INTEREST TO PROSECUTE?

- 6.1 We always think very carefully about the interests and safety of the victim when we decide where the public interest lies. But we prosecute cases on behalf of the public at large and not just in the interests of any particular individual.
- 6.2 We have to strike a balance. The views and interests of the victim are important but they cannot be the final word on the subject of a prosecution. The acts of an individual have to be put in the context of the wider society and balanced against the risks to other individuals.
- 6.3 The safety of children is important. If there are children living in a household where there is abuse, we will want to know about the effect it has on them. We will ask the police if the children have shared any concerns with other agencies, or if other agencies have shared concerns with the police, especially where family proceedings are taking place.
- 6.4 If the victim withdraws support for the prosecution but we have enough evidence to proceed, we have to decide whether to prosecute. The safety of the victim and any children will be a key factor for us to consider at this stage. Some examples of what helps us to decide whether it is in the public interest to prosecute are:
- the seriousness of the offence;
 - the victim's injuries – whether physical or psychological;
 - if the defendant used a weapon;
 - if the defendant made any threats before or after the attack;
 - if the defendant planned the attack;
 - if there are any children living in the household;
 - if the offence was committed in the presence of, or near, a child;
 - the chances of the defendant offending again;
 - breaches of any court orders;

- the continuing threat to the health and safety of the victim or anyone else who is, or may become involved;
- the current state of the victim's relationship with the defendant;
- the history of the relationship, particularly if there has been any violence in the past;
- the defendant's criminal history, particularly any previous violence;
- whether the offence was motivated by any form of discrimination against the victim's ethnic or national origin, disability, sex, religious beliefs, political views or sexual orientation; and
- any other factors that are relevant to the public interest.

6.5 In cases of domestic violence, if the evidential stage is passed and the victim is willing to give evidence, we will almost always prosecute, even if, for example, the injury was minor or the parties have reconciled. Police guidance states that cautions by police officers are rarely appropriate in domestic violence cases.

6.6 We will ask the police to provide information about family circumstances and the likely effect of prosecuting on the victim and children. Where social services, housing, Independent Domestic Violence Advisers or specialist domestic violence support agencies are, or have been involved, they may be able to help by providing the police with this type of information.

7 DECIDING THE CHARGES AND ACCEPTING PLEAS

7.1 The charges in domestic violence cases should reflect the seriousness of what took place, any element of pre-meditation or persistence in the defendant's behaviour, the provable intent of the defendant and the severity of any injury suffered by the victim. The charges must help us to present the case clearly and simply and they must give the court power to impose a suitable sentence.

7.2 The CPS and police have agreed "charging standards" for certain types of offences including assaults. These are guidelines that help us to make consistent decisions about the right charges. We use them when reviewing all cases, including domestic violence cases. The charging standard for offences against the person can be found on the CPS website at:

http://www.cps.gov.uk/legal/section5/chapter_c.html

Copies can also be obtained from the CPS Communications Branch.

7.3 In some cases we may consider accepting a guilty plea from the defendant to a different charge. This might arise, for example, if a defendant pleads guilty to some but not all of the charges or because new evidence comes to light.

7.4 When considering whether to accept a plea, we will, in accordance with our obligations under the 'Attorney General's Guidelines on the Acceptance of Pleas and the Prosecutor's Role in the Sentencing Exercise 2005' (revised

2007), discuss the situation with the victim or the victim's family wherever possible, so that we can explain the position and take into account their views in order to help us to make the right decision. We will keep them informed, either directly or indirectly through the police, and explain our decisions once they are made at court.

- 7.5 We will always take proper account of the victim's interests (either through consultation with the victim at court or through information from the police and the victim's statement), and we will not accept a guilty plea that is put forward upon a misleading or untrue set of facts.

[Questions to be addressed in Consultation: Is any further explanation required of the things we consider in deciding to continue a prosecution against the victim's wishes; whether it is in the public interest to prosecute; or whether to accept pleas?

If so, which parts need to be explained further?]

8 AVOIDING DELAY

- 8.1 The longer the delay, the longer the victim will be at risk and under pressure. We will make sure that cases of domestic violence are not delayed without very good reason and we will do our best to ensure that the victim is kept informed, either by ourselves or through the police or support agencies, of the reason for any delay in the proceedings.
- 8.2 We are currently working with our criminal justice partners to increase efficiency in progressing cases. We have also introduced Witness Care Units jointly with the police, to improve the service that victims and witnesses receive from us. One potential benefit from these initiatives is that trials are more likely to go ahead on the first date fixed by the court without the need for adjournments.

9 CIVIL PROCEEDINGS

- 9.1 The needs of individual victims vary, and to ensure their safety, it is possible to use the criminal and civil law in conjunction. Whilst the CPS does not have a role in civil proceedings, our guidance advises prosecutors to be aware of the options open to victims or other agencies under civil procedures so that a holistic approach can be taken in safeguarding and supporting victims. Where criminal and civil proceedings take place at the same time, the CPS will ensure that the courts have the appropriate information to enable them to make orders that prioritise the safety of victims and children.
- 9.2 The breach of civil non-molestation orders without a reasonable excuse has been a criminal offence since 1 July 2007. This change in the law has made

two options open to the victim when a non-molestation order is breached. They can call the police, who will deal with the breach as a criminal offence. Or they can choose to return to the civil court that made the non-molestation order for the breach to be dealt with as a contempt of court.

- 9.3 The CPS is responsible for prosecuting breaches of such orders where the victim calls the police and choose to have the breach dealt with in the criminal courts. The CPS will not be able to prosecute if the breach of the order has already been dealt with as contempt of court by a civil court. However, if the CPS decides not to prosecute, or if the offender is prosecuted but not found guilty, the victim can still ask a civil court to deal with the breach as a contempt of court. The CPS can still prosecute where the victim is taking other action in the civil courts.

10 SUPPORT AND SAFETY OF VICTIMS

- 10.1 When victims and witnesses have to attend court to give evidence, we know that they will be worried and might need practical and emotional support. Ensuring the safety of domestic violence victims is also of critical importance to us.
- 10.2 General and specialist support (including specialist support for minority communities) is available to victims, and this can continue throughout the life of the prosecution and beyond. Support may be available from the police, Independent Domestic Violence Advisers and other support organisations. Initiatives such as special measures meetings between the CPS and victims of domestic violence, and the creation of dedicated Witness Care Units staffed by CPS and police personnel are all designed to increase the confidence of victims within the criminal justice system and to help them to give evidence.
- 10.3 We understand that victims' experiences of domestic violence and of the criminal justice system will be different, and that they will have individual needs and safety requirements, perhaps as a result of their ethnicity, gender, gender identity, age, disability, immigration status, sexuality, religion or belief, socio-economic background or other identity. We recognise that these different experiences require specific responses from the CPS, and so we will do our best to ensure that support for victims is tailored to suit their needs (for example, by employing interpreters) and that appropriate referrals are made to other sources of support.

Specialist domestic violence services and Independent Domestic Violence Advisers

- 10.4 In some parts of England and Wales, Independent Domestic Violence Advisers have been introduced as part of a Government initiative to provide targeted professional support to high or very high risk victims of domestic violence. These professionally trained specialists will work alongside victims from the point of crisis, such as initial contact with emergency services,

throughout the legal process and beyond. They are independent of the criminal justice system. The advisers link in with essential services such as victim and witness organisations, counselling and health, whilst ensuring the safety of the victim is co-ordinated across all agencies.

- 10.5 Additionally, general and specialist domestic violence support organisations exist throughout the country, including services for victims from minority communities. Contact details for some of these can be found at Annex C.

Witness Care Units

- 10.6 We have dedicated Witness Care Units in all 42 CPS Areas, run jointly by the CPS and the police. Witness Care Officers provide a single point of contact and tailored support for each witness to ensure that they are able to give their best evidence. This tailored support is based on a needs assessment, which includes consideration of specialist support that an individual witness may need. This support can take the form of accredited interpreters for witnesses with hearing impairments or language difficulties; of enabling some older people to give their evidence whilst seated due to their frailty; or of allowing witnesses to give their evidence via a live link, to avoid the need for them to be physically present in court. Witness Care Units may also have links to specialist support services for people with specific needs.
- 10.7 In domestic violence cases, the Witness Care Unit is not always the single point of contact for victims. Areas should have agreed local protocols outlining the responsibilities of the Witness Care Unit and the police specialist domestic violence unit to ensure that the victim has a single point of contact. Where the Witness Care Officer is the single point of contact, s/he will provide information and support to the victim from the point of charge right up until the conclusion of the case and will liaise with the Witness Service to arrange pre-trial visits. In some parts of the country, it may have been agreed that it is the police officer or IDVA's responsibility to keep the victim informed.

The Prosecutors' Pledge

- 10.8 The CPS has introduced a ten point Prosecutors' Pledge that describes the level of service victims can expect to receive from prosecutors. The Prosecutors' Pledge will ensure, amongst other things, that the specific needs of victims and witnesses are addressed; that they are assisted at court to refresh their memory from their written statement or video interview; and that they are protected from unwarranted or irrelevant attacks on their character.
- 10.9 The Prosecutors' Pledge can be obtained from our website:

http://www.cps.gov.uk/publications/prosecution/prosecutor_pledge.html

The Code of Practice for Victims of Crime

- 10.10 This Code sets out the obligations of the CPS and other criminal justice agencies towards victims. One of these obligations is to tell a victim if we

decide that there is insufficient evidence to bring a prosecution (following a full evidential report from the police), or if we decide to drop a case, or substantially to alter the charges. In such circumstances, we will explain to a victim why we have made these decisions. Normally we will do this by writing a letter directly to the victim in a format that is accessible to them. In some situations, a case can be dealt with very quickly and we may not always be able to give the explanation before the case is finished. However, the victim will still be given an explanation even if the case has finished.

- 10.11 Copies of the Code of Practice for Victims of Crime can be obtained from CPS Communications Branch or from our website:

http://www.cps.gov.uk/victims_witnesses/victims_code.pdf

- 10.12 Complaints can be made for breaches of the Victim's Code. For further information, see section 17 below.

Special measures

- 10.13 Giving evidence can be a particularly traumatic experience for victims of domestic violence. In some cases the court may agree to allow a witness to give evidence with the help of "special measures". Prosecutors have to apply for special measures in both the Crown Court and magistrates' courts. The court makes the final decision about whether they will be granted. The granting of a request for special measures by the court is not automatic. These measures are designed to help the following witnesses (although not all types of special measures are available to all of these witnesses):

- children under 17 years;
- adults (17 and over for the purposes of this legislation) who may be considered vulnerable because of incapacity, such as a physical or mental disorder; and
- witnesses whose evidence is likely to be affected because they are intimidated (e.g. afraid or distressed about giving evidence).

- 10.14 Examples of special measures include:

- allowing the use of screens in a courtroom to prevent a victim or other witness and the defendant seeing each other;
- giving evidence away from the courtroom through a live television link (but the defendant will often still be able to see the witness). [*Note: It may be possible to set up a remote live link where the victim or witness is physically unable to attend court.*]
- evidence given in private;
- the use of communication aids, for example, an alphabet board or hearing loop;
- giving evidence through an intermediary (see further below);
- clearing the public gallery in sexual offence cases or cases involving intimidation; and

- playing to the court the victim or witness's video recorded statement, previously taken by the police during the investigation. [*Note: This special measure is available for children and vulnerable adults in the Crown Court, for victims in serious sexual offence cases in the Crown Court, and for child witnesses in need of special protection in the magistrates' courts.*]

10.15 The need for special measures should be investigated first by the police (drawing on information from the IDVA, where there is one) and then discussed with the prosecutor. The Witness Care Officer may also have an input following a needs assessment. The views of the victim and witnesses are taken into account, and it is important that the advantages and disadvantages of each of the available special measures are explained to the victim so that they can make an informed choice.

10.16 Victims of sexual crimes, however, are presumed to be eligible for specific special measures if they want them and they satisfy the statutory criteria. The situation is different for children (aged under 17) in that they will normally have to give their evidence by recorded video evidence and television link unless the court considers that it is not in the interests of justice to do so (for example, where the video recording contains technical faults, improper questions, or other material prejudicial to a fair trial).

10.17 The court has to take certain things into account, for example, adult witness's views, when deciding whether to allow special measures. The court needs to be satisfied that the witness's evidence is likely to be of a lower quality without the special measures that are requested.

10.18 In deciding whether the quality of the evidence is likely to be diminished, the court will consider, among other things:

- the social and cultural background and ethnic origins of the witness;
- the religion or beliefs of the witness;
- any behaviour towards the witness by the defendant or his or her family or associates.

This list is not comprehensive and the court can take account of anything else that is brought to its attention.

10.19 Decisions about whether special measures are required should be taken at the earliest opportunity, and ideally when decisions are made about whether to charge. However, circumstances may change or witnesses may change their mind and it is possible to apply at any stage of the proceedings.

Intermediaries for vulnerable witnesses

10.20 The use of an intermediary is another form of special measure, which is available to children and adults who are considered vulnerable. An intermediary is someone who is approved by the court to provide a service that enables witnesses and the court to communicate. Professional intermediaries – usually speech and language therapists or deaf

intermediaries who understand deaf culture – work with witnesses to make sure they are understood and can understand the questions put to them.

- 10.21 Intermediaries can work with defence or prosecution witnesses to assist in the initial taking of their evidence and when they are in court so that they can give their best evidence at the trial. Intermediaries come from a range of backgrounds including social work, speech, language therapy and psychology. They will normally be a specialist by training or possibly through a unique knowledge of the witness.

Special measures meeting between the CPS and domestic violence victims and witnesses

- 10.22 Where we decide to make an application to the court for special measures and where possible, we will ask the police to find out if the witness would like to meet the prosecutor. We will also consider any requests for special measures meetings that are made by victims, through the police.
- 10.23 The purpose of such a meeting is to build trust and confidence and to enable us to reassure the witness that their needs will be taken into account. We will also try to offer such a meeting if we have decided not to apply for special measures so that we can explain that decision.
- 10.24 The witness does not have to attend that meeting unaccompanied. They can bring a friend or other supporter. In order to facilitate communication with the victim, it may be appropriate for an interpreter or other similar person to attend the meeting. The victim may bring their own interpreter, or the CPS can provide one. Where possible, we will ensure that the prosecutor who will be conducting the trial attends the meeting between the CPS prosecutor and the witness.
- 10.25 Further information about meetings with the CPS for vulnerable or intimidated witnesses is contained in the leaflet: “Witnesses, Your Meeting with the CPS Prosecutor”. This leaflet is available from CPS Communications Branch or from our website:

<http://www.cps.gov.uk/publications/prosecution/witnesseng.html>

Pre-trial witness interviews

- 10.26 The CPS has introduced a scheme across England and Wales that enables the prosecutor to meet the victim or other witnesses at an early stage in the criminal process where s/he considers this to be appropriate. These meetings are different from the special measures meetings described above. The purpose of pre-trial witness interviews is to enable the prosecutor to reach a better informed decision about any aspect of the case. Pre-trial witness interviews are mainly used in the most serious cases, such as grievous bodily harm, rape or murder. We will consider every case carefully and sensitively. Our decisions will be objective but made within a framework that promotes support for victims by keeping them informed.

CPS support for victims and witnesses at court

- 10.27 The CPS is fully committed to taking all practicable steps to help victims and witnesses through the often difficult experience of becoming involved in the court process.
- 10.28 When a witness attends court, the CPS prosecutor presenting the case or the associate prosecutor or caseworker will introduce themselves and answer any general queries that a witness may have. They are not permitted to discuss the detail of the case with a witness.
- 10.29 Sometimes, the person prosecuting may be a barrister (also known as counsel) or a solicitor who is not a member of the CPS but who has been instructed by us to present the case in court. The CPS will ensure that every barrister or solicitor we instruct is familiar with our policies and procedures and acts in accordance with them.
- 10.30 If witnesses are kept waiting at court, we will make sure they are told the reasons for the delay and the estimated time when they will be required to give evidence.
- 10.31 Wherever possible, we will try, through the Witness Service or the IDVA, to make sure that separate entrances, exits and accommodation facilities are made available for prosecution witnesses so that they do not have to mix with the defendant or his or her friends or family, and vice versa.
- 10.32 The CPS will pay reasonable expenses to a witness – including childcare and travel – for attending court.
- 10.33 A witness who has made a written statement can read that statement to refresh his or her memory in court and before giving evidence. Where the evidence has been recorded on video and is to be used as evidence-in-chief, arrangements will be made for the witness to refresh his or her memory by watching the video recording before the hearing.

Victim Personal Statements

- 10.34 All victims of crime should be offered an opportunity by the police to make a Victim Personal Statement. If not, they can speak to their Witness Care Unit or other support service to ask for arrangements to be made so that they can make one. This is distinct from a statement made to the police describing the incident. It is a statement by a victim of crime explaining the effect that the crime has had on them.
- 10.35 In the statement, victims can describe how they have been affected by the crime. They can talk about their wishes or needs during the case and any concerns they may have as a result of the offence, for example, about safety, intimidation or bail. They can mention their support (or absence of support) for the prosecution and any requests they have for help from any of the support

agencies. In this way, the court can better understand not only the crime but also the context in which it occurred and its effects and consequences.

10.36 The statement is optional, and the victim should be asked whether or not they wish to make such a statement or if they need help to make a statement from a support worker or family member. This statement can be made at any time and it is possible to make more than one statement.

10.37 A leaflet is available that explains what Victim Personal Statements are and how they can be used. Copies of the leaflet can be obtained from the CPS Communications Branch or found on the Home Office website at:

<http://www.homeoffice.gov.uk/documents/victimstate.pdf>

10.38 We will take account of any information contained in a Victim Personal Statement and we will tell the court about the effects of the crime on the victim. We can also use these statements to help make decisions about cases, for example when deciding whether or not to ask the court to refuse bail or to impose bail conditions.

The Witness Service

10.39 Magistrates' courts and Crown Court centres have a Witness Service, which is a service provided by Victim Support. More information on this service can be found from the local police or local Victim Support office. Some courts also have a specialist Child Witness Service.

10.40 Members of the Witness Service are able to arrange pre-court familiarisation visits if desired and are able to explain what might happen at court. They are not, however, allowed to discuss the details of cases.

Reporting restrictions

10.41 In some cases, the law allows us to apply for an order preventing the reporting of certain details of witnesses in the media that may lead to their identification.

10.42 The court must follow a specified procedure when considering such an application and must determine whether a witness is eligible and whether the reporting restriction will be likely to improve the quality of the witness's evidence or the level of the witness's cooperation.

10.43 When deciding whether a witness is eligible, the court will look at whether the quality of the witness's evidence or the level of cooperation will be diminished because of fear or distress associated with being identified by members of the public as a witness in the proceedings. It will also take into account factors such as the circumstances of the offence, the witness's age, and behaviour towards the witness by the defendant or his or her associates.

10.44 Once these factors are considered, the court will determine whether it would be in the interests of justice to make an order, bearing in mind that it may be

in the public interest to avoid substantial restrictions on the reporting of proceedings.

10.45 Media representatives have the right to object, in the interests of early reporting, to a court order that prohibits publication of this information.

10.46 Where an order is made, the effect will be that no matter relating to the witness during his or her lifetime shall be included in any publication if it is likely to identify him or her as a witness in the proceedings.

[Questions to be addressed in Consultation: Does the section on Support and Safety of Victims make clear how important these issues are to the CPS? Do they provide all of the relevant information in a way that is easy to understand?

If not, how should it be changed?]

11 CHILDREN

11.1 We recognise that exposure to domestic violence can have devastating effects on children. Children can be victims themselves, they can be witnesses to domestic violence, or they can be affected by domestic violence simply because it took place in the house where they live. If the police tell us that there are children involved, it could affect our view of the seriousness of an offence. It is also information we can give to magistrates and judges so that they will know the impact that a crime has had on a child. That may be relevant when a defendant is sentenced.

11.2 Prosecutors will take the rights and interests of children into full account at all stages of domestic violence cases. We will always think about what is best for children in these cases. The safety and physical and emotional well-being of children are pivotal issues for those making decisions in cases of domestic violence. We realise that there is a danger that children can become victims for a second time during criminal cases because of how they are treated. Prosecutors will work hard to prevent this happening. It is also possible for child victims to give a Victim Personal Statement, describing the effect the crime had on them.

11.3 When children are witnesses, we will make sure that they are well supported and able to give their evidence in court with as little stress and anxiety as possible. We recognise that children have particular needs and wishes, not just because they are children, but because they are individuals. We will try hard to be sensitive to the fact that all children have specific needs and wishes, and that children are not all the same.

11.4 For further detail on how we will deal with cases involving children and young people as victims and witnesses, see 'Children and Young People: CPS

policy on prosecuting criminal cases involving children and young people as victims and witnesses'. This can be obtained from the CPS Communications Branch or found at:

http://www.cps.gov.uk/victims_witnesses/children_policy.pdf

- 11.5 Booklets are also available to inform children and young people of what will happen if they report a crime. Copies of 'Millie the witness' and 'Jerome: a witness in court' are available from the CPS Communications Branch or the CPS website at:

http://www.cps.gov.uk/victims_witnesses/further_info.html

[Question to be addressed in Consultation: Do we give a clear indication of how we will deal with children as victims and witnesses?

If not, please state ways in which we could do so.]

12 KEEPING VICTIMS INFORMED

- 12.1 The safety issues relevant to domestic violence cases make it important for victims to be kept informed about the progress of a case. Under the Code of Practice for Victims of Crime, Witness Care Units are responsible for letting victims and witnesses know about dates of court hearings or other important case developments where they are the single point of contact for the victim. In relation to domestic violence victims, this should be done within one working day of receiving the date from the court. We recognise that in domestic violence cases it is often important to make sure that victims are informed as soon as possible.
- 12.2 We are aware that some victims may prefer to nominate a friend, family member, IDVA or other member of the voluntary services to act as their point of contact, and we are happy to accommodate this.
- 12.3 Witness Care Officers will provide information and support to the victim from the point of charge right up until the conclusion of the case where they are the single point of contact for the victim.

[Question to be addressed in Consultation: Is the section on Keeping Victims Informed clear?

If not, how could we make it clearer.]

13 SPECIALIST DOMESTIC VIOLENCE COURTS

- 13.1 In some parts of England and Wales, domestic violence cases will be heard in specialist domestic violence courts (SDVCs). These courts represent a partnership approach to domestic violence by the police, prosecutors, court staff, the probation service and specialist support services for victims. Specialist domestic violence court systems provide a specialised way of dealing with domestic violence cases in the magistrates' courts. Specialist courts are not held in separate court buildings, but generally have:
- tailored support and advice for victims from Independent Domestic Violence Advisers;
 - domestic violence cases clustered on a particular day or fast-tracked through the system;
 - specially trained magistrates and prosecutors; and
 - separate entrances, exits and waiting areas so that victims do not come into contact with defendants.
- 13.2 Agencies work together to identify, track and risk assess domestic violence cases, support victims of domestic violence and share information better so that more offenders are brought to justice.

14 BAIL

- 14.1 Once a defendant is charged with an offence (where there has been an arrest), the police will decide whether to release the person on bail or to keep the person in custody. If they are released on bail, they will be bailed to attend a court hearing within a short period of time. If the police decide not to grant bail and keep the person in custody, they will be brought before the next available court for a bail hearing.
- 14.2 At the bail hearing, the magistrates decide whether bail is appropriate after they have heard representations from both the prosecution and the defence. A defendant has a right to bail. The court can only refuse bail if it is satisfied that the defendant would fail to surrender to custody, commit an offence while on bail, or interfere with witnesses or otherwise obstruct the course of justice. Bail can also be refused if the offence was committed whilst the defendant was already on bail for another serious offence, or for the defendant's own protection. There is an exception to the right to bail for some serious repeat offenders including those previously convicted of rape. In those cases, the court can only grant bail in exceptional circumstances.
- 14.3 At the bail hearing, the police will provide sufficient information to prosecutors to enable a decision to be made on whether to oppose bail for the defendant (for example, information about the fears of a victim or witness about harassment or repeat offending). If the victim has relevant information on bail, they should pass this to the police so it can be considered by the prosecutor at an early stage.

- 14.4 Where there has been a relationship between the victim and the defendant, the police will provide as much background information as possible. This might include such information as the number and ages of the children and the proximity of the addresses of the relations of the defendant to that of the victim. It will also include details of any civil orders in force and any other relevant information.
- 14.5 The prosecutor will take into account the Victim Personal Statement (if the victim has decided to make one) in making decisions as to whether or not to oppose bail, and what conditions could be agreed. In the Victim Personal Statement, the victim can choose to express any concerns about the defendant being granted bail.
- 14.6 We may decide to ask that the defendant be kept in custody to protect the victim or witnesses from the risk of danger, threats or pressure that might obstruct the course of justice.
- 14.7 Magistrates are required to give reasons in open court if they grant bail to a defendant. If they do not give reasons, we will ask them to state their reasons.
- 14.8 If the prosecutor opposes bail, but the magistrates grant bail, the prosecutor will make a decision about whether or not to appeal that decision. If an appeal is made, the defendant will be kept in custody until a judge at the Crown Court hears the appeal.
- 14.9 To protect victims, children and other witnesses from the risk of danger, threats, pressure or other acts by the defendant that might obstruct the course of justice, we may ask the court to impose conditions of bail.
- 14.10 Conditions that the court can impose include requirements not to make contact with any named person or to keep away from certain areas. Examples of other common bail conditions and what happens if bail conditions are breached are set out in Annex B. We will make sure that these conditions prioritise the safety of the victim and any children. We will also try to ensure that the victim retains as much freedom of movement as possible by curbing the ability of the defendant to approach or intimidate the victim, such as at home, work or on the way to school.
- 14.11 We will work closely with the police to obtain the views of victims and witnesses about bail conditions and any proposed variations to them. We will try to do this before a decision is made to agree changes to bail conditions, or before an application is made to the court if we do not agree with the proposed variations. The victim or witness will be told by the police or the Witness Care Unit of any change to the bail conditions or custody status of the accused person (or it may be that this information comes to the victim through a support service that s/he has been liaising with). In the interests of safety, this should be done as soon as possible.
- 14.12 If the defendant breaches bail conditions, the police can arrest them and the court can remand them in custody. New offences may have been committed

in addition to the conditions being breached and any new offence will be reviewed to decide whether it should be prosecuted.

- 14.13 Where there is a condition not to contact the victim, it does not matter if the victim has agreed to or initiated any contact with the defendant. It is the defendant who is subject to the bail conditions. The defendant, and not the victim, is responsible for complying with any conditions imposed by the police or the court until released from those conditions by the police or court (see Annex B).

15 SENTENCING

- 15.1 When a defendant pleads guilty or is found guilty, the court has to decide on the sentence to impose and can choose from a broad range of penalties. Magistrates' sentencing guidelines state that an abuse of trust in a domestic setting is an aggravating factor in assaults, and where there are "vulnerable" victims, this is also an aggravating feature. Crown Court judges will consider relevant case law and sentencing guidelines published by the Sentencing Guidelines Council. The penalties may be in the form of rehabilitative orders, community penalties, fines, or custody. The penalty may also be in the form of a perpetrator programme, designed to help offenders to change their behaviour and develop respectful, non-abusive relationships.
- 15.2 The prosecution has a duty actively to assist the court with the law and guidelines on sentencing. He or she must also be alert to arguments in mitigation that detract from the character of a witness, and challenge anything which is misleading, untrue or unfair.
- 15.3 We will make sure that the court has all the information it needs to sentence appropriately. If there is a Victim Personal Statement, we will advise the court of it so that it can help the court to understand the effect of the crime upon the victim. In this way we will ensure that the court is able to come to an informed decision regarding sentence. We will also consider carefully any sentence that is passed to make sure that it reflects the crime.
- 15.4 We will give the court information to help it to decide whether to make any orders it has power to make in addition to the main sentence. This includes making orders in appropriate cases for compensation for loss, injury or damage, and making restraining orders or anti-social behaviour orders. [*Note: At present, these are only available in certain harassment cases. However, the Domestic Violence, Crime and Victims Act 2004 (not yet in force) includes provisions to extend this to all offences.*]
- 15.5 Before being sentenced, a defendant is entitled to make a plea in mitigation. We will challenge defence mitigation that unfairly attacks the victim's character.
- 15.6 If the defendant pleads guilty of an offence but disagrees with the prosecution version of events, the court has to decide which version to sentence on. In

order to do this, the court may hold a 'Newton hearing', sometimes at the request of the prosecutor. The court can hear evidence from both parties, or it can make a decision based on representations from the defence and prosecution. If a Newton hearing is considered necessary, the prosecutor will:

- seek an indication from the judge as to whether it will result in a greater sentence if the prosecution version of events is proved;
- consult with the police; and
- obtain and consider the views of the victim.

- 15.7 At the end of the hearing, the judge must announce whether the prosecution has proved its version of events beyond reasonable doubt.
- 15.8 If a judge in the Crown Court passes a sentence which the prosecution considers is unduly lenient in that it does not reflect the seriousness of the offence, the CPS may be able to ask the Attorney General to review the sentence. However, this procedure only applies to a limited range of offences (for example, sexual offences and cruelty to children).
- 15.9 If the prosecution does not consider the sentence unduly lenient but the victim disagrees, s/he can ask in person for the Attorney General to consider it, but this has to be done within 28 days of the sentencing decision. If the CPS decides not to submit the case for the consideration of the Attorney General, we must notify the complainant without delay so that the complainant's option of complaining directly to the Attorney General is preserved, and the Attorney General will have sufficient time, if a complaint is made, to consider the case.
- 15.10 If the Attorney General thinks that the sentence is unduly lenient, s/he can refer it to the Court of Appeal.
- 15.11 The application to the Court of Appeal must be made within 28 days of the sentence. The Court of Appeal decides whether or not the sentence is unduly lenient and, if it is, whether to increase the sentence.
- 15.12 We will, through the Witness Care Unit (or other single point of contact), keep victims informed of any appeals by the defence against conviction and sentence (see section 6 of the Code of Practice for Victim's of Crime). The Witness Care Unit or the police will also inform victims if a defendant is granted bail following a successful application for leave to appeal, or where an appeal is granted.

[Question to be addressed in Consultation: Do the Sections on Bail and Sentencing contain the right level of detail?

If no, please explain your answer.]

16 COMMUNITY ENGAGEMENT

- 16.1 As part of our commitment to improving the service we offer, we engage with communities to understand their concerns and explain what we do. The publication of this policy statement is an important step towards achieving this goal. We have consulted widely in its preparation and will keep it under review after publication. We will put the policy into practice and monitor our prosecutions of domestic violence with community partners through Hate Crime Scrutiny Panels. By including people in this way, we hope to make sure that our service meets the needs of local communities and to build the trust of these communities in the work we do and the decisions we make.
- 16.2 We are already working locally to deepen links with representative groups and individuals. This helps us to explain the policy statement and how we expect it to operate in the criminal justice system. We will answer questions about the CPS and the criminal justice system frankly and without raising false expectations about what can be offered.

17 COMPLAINTS

- 17.1 Anyone who has a complaint about the way they have been treated by the CPS, or who feels that the criminal justice system has let them down and does not know who may be responsible, can write to the Chief Crown Prosecutor for the CPS Area where they live. The CPS has a complaints policy, and a leaflet describing the procedure to follow can be obtained from the local CPS office. Contact details for each of the CPS Areas can be found at:

<http://www.cps.gov.uk/local/index.html>

- 17.2 Any complaints regarding the Code of Practice for Victims of Crime and the Prosecutors' Pledge should be referred initially to the CPS to be dealt with under our complaints procedures. If the person remains dissatisfied, they can ask their Member of Parliament to refer the case to the Parliamentary Ombudsman.
- 17.3 Specialist support organisations or Independent Domestic Violence Advisers may be able to help victims to make complaints. Alternatively, anyone who has a complaint may wish to seek legal advice on what options are available.

[Questions to be addressed in Consultation: Do the Sections on Community engagement and Complains provide useful information for those supporting victims?

If not, how could we make them more useful?]

18 CONCLUSION

- 18.1 We are determined to play our part in stopping domestic violence and in bringing offenders to justice. We are committed to improving the way cases of domestic violence are dealt with in the criminal justice system and we want victims and witnesses to have confidence in the way in which we review and progress cases.
- 18.2 We recognise and welcome the invaluable advice, emotional support and practical help and information that may be offered to victims and witnesses by specialist domestic violence support organisations and Independent Domestic Violence Advisers. This support has been shown to help victims and witnesses remain confident and able to continue with the case.
- 18.3 We will continue to work with the police and other colleagues in the criminal justice system and the voluntary and community sector at national and local levels to help us develop best practice.
- 18.4 We will monitor the way we deal with cases of domestic violence and publish this information on the CPS website.
- 18.5 We will review this policy statement regularly so that it reflects current law and thinking. We welcome any comments and observations that help us to do this. Comments and suggestions can be sent to the Policy Directorate, 6th Floor, Crown Prosecution Service, 50 Ludgate Hill, London EC4M 7EX or HQPolicy@cps.gsi.gov.uk.
- 18.6 This policy statement is available in other languages, Braille, large print and audio format. To request a copy, please contact the CPS Communications Branch. Contact details are printed on the back cover of this document.

[Questions to be addressed in Consultation: Is the document inclusive of people from all communities?

If not please explain how we could improve it.

Is there any part of the policy statement that you strongly disagree with?

If so, please identify which paragraphs and provide a brief explanation as to why you disagree.

Have you any further comments about the document?

Annex A

Here are some examples of types of behaviour that can occur in cases of domestic violence and which **MIGHT** amount to a criminal offence. Whether any particular behaviour does amount to a criminal offence will always depend on the circumstances of the particular case. These examples should therefore be treated only as guidelines.

Examples of Behaviour	Possible Offences
Pressuring a victim/witness to “drop the case” or not to give evidence.	Witness intimidation, obstructing the course of justice, conspiracy to pervert the course of justice.
Physical violence, with or without weapons, including: punching, slapping, pushing, kicking, head butting, or hair pulling.	Common assault, actual/grievous bodily harm, wounding, attempting murder.
Violence resulting in death.	Murder, manslaughter.
Violence resulting in miscarriage.	Child destruction, procuring a miscarriage or abortion.
Choking, strangling, suffocating.	Common assault, actual /grievous bodily harm, attempting to choke, strangle or suffocate.
Spitting at a person.	Common assault.
Threatening with an article used as a weapon, e.g. a knife, tool, telephone, chair.	Threats to Kill, common assault, affray, threatening behaviour.
Throwing articles, e.g. crockery, even if they miss their target.	Common assault, actual/grievous bodily harm, wounding, criminal damage, affray, threatening behaviour.
Tying someone up.	Common assault, actual bodily harm, false imprisonment.
Threatening to kill someone.	Threats to kill, harassment.
Threats to cause injury.	Common assault, affray, threatening behaviour*.
Threats seriously to damage or undermine social status.	Harassment, blackmail.
Damaging or destroying property or threatening to damage or destroy property.	Criminal damage, threatening to cause criminal damage, harassment
Harming or threatening to harm a pet.	Criminal damage, threatening to cause criminal damage, cruelty

Examples of Behaviour	Possible Offences
	to animals, harassment.
Locking someone in a room or house or preventing him or her from leaving.	False imprisonment, harassment.
Preventing someone from visiting relatives or friends.	False imprisonment, kidnapping, harassment.
Preventing someone from seeking aid, .e.g. medical attention.	False imprisonment, actual bodily harm.
Preventing someone from dressing as they choose or forcing them to wear a particular make-up, jewellery and hairstyles.	Actual bodily harm**, harassment.
Racial abuse.	Racially aggravated threatening behaviour*, disorderly conduct* or harassment.
“Outling”, e.g. sexual orientation or HIV status.	Harassment, actual bodily harm**, blackmail.
Enforced financial dependence or unreasonably depriving someone of money.	Harassment.
Abuse related to dowry demand.	Blackmail, harassment, common assault, actual/grievous bodily harm.
Unreasonable financial demands.	Blackmail, harassment.
Enforced sexual activity.	Rape, indecent assault, harassment, living off immoral earnings.
Persistent verbal abuse, e.g. constant unreasonable criticism.	Harassment, actual bodily harm**.
Breaching the conditions of a non-molestation order.	Breach of non-molestation order.
Offensive/obscene/menacing telephone calls, text messages or letters.	Improper use of public telecommunications systems, malicious communications, actual/grievous bodily harm**, harassment.
Excessive contact, e.g. numerous telephone calls to check someone’s whereabouts.	Harassment, false imprisonment.
Secret or enforced administration of drugs.	Common assault, actual bodily harm, grievous bodily harm, administering poison.
Neglecting, abandoning or ill-treating a child.	Child cruelty.

Examples of Behaviour	Possible Offences
“Honour crimes”.	Murder, aiding and abetting suicide.
Female circumcision.	Female genital mutilation.
Forcing entry into a house.	Using violence to secure entry.

* If the threatening or disorderly words/behaviour are used in a dwelling house, the offence can only be committed if the other person is not inside that or another dwelling.

** Actual physical or mental harm must be proved to have resulted from the behaviour.

ANNEX B

BAIL

A court can remand a defendant in custody or grant bail, with or without conditions attached. Before the first court hearing, the police can also retain a defendant in custody or grant bail, with or without conditions attached, but their powers to do so are more limited than the court's. Conditions can only be imposed to ensure that the defendant attends the next court hearing, commits no new offences in the meantime, and does not interfere with any witnesses or obstruct the course of justice.

Examples of bail conditions imposed by courts

A court can impose any condition that seems appropriate in the circumstances of the particular case. Here are some examples of typical bail conditions imposed by courts:

- **the defendant must not contact, either directly or indirectly, a named person or persons, for example the victim and any children.**

This means no contact whatsoever, including by telephone, text, email, fax or letter or through another person, e.g. the defendant cannot get a relative to make contact on his behalf.

- **the defendant must not go to a named place, for example the victim's place of work, shopping area or children's school.**

This is usually a specific address, but may also be a street, a town, an area or even a whole county. It can include schools, doctors' surgeries, and addresses of family and friends. Sometimes the court will say that the defendant must not go within a specified distance of a place, e.g. within half a mile of Victoria Road. Sometimes, for practical reasons, there are exceptions attached to the condition, for example:

- **the defendant must not go to a named place except:**
 - **to attend court;**

- **to see a solicitor by prior appointment;**
 - **once to collect personal belongings at an appointed time and accompanied by a police officer or other specified person;**
 - **to see the children, under supervision, at a specified time** (the Family Court will usually be involved in assessing and making such arrangements).
- **the defendant must reside at a named address.**

This means live and sleep each night there.

- **the defendant must report to a named police station on a given day or days at a given time.**

For example, every weekday morning between 8.30am and 10.00 am

- **the defendant must abide by a curfew between certain specified hours.**

This means remain indoors, for example, from 9pm until 8am.

- **the defendant must provide a security to the court.**

If it is thought that the defendant might not attend the next court hearing, the court can order that a set sum of money be paid into the court. If the defendant does fail to attend the next hearing then the money can be forfeited.

- **the defendant must provide a surety.**

A friend or relative must agree to ensure that the defendant attends court, or the friend or relative could lose a specified sum of money

- **the defendant must wear an electronic tag.**

This condition is only available for adults or children who have reached the age of twelve years and are charged with or have been convicted of a violent or sexual offence. The tagging should ensure that any breaches are recorded and monitored by a security company who will then notify the police immediately. Breaches may result in arrest and the possibility of a remand into custody.

Breaching bail conditions

If the defendant breaches bail conditions, the police can arrest the defendant and the court can remand the defendant in custody.

Sometimes, despite bail conditions that say, for example, a defendant cannot contact the victim or return home, the victim contacts the defendant or invites or allows the defendant to return home.

There are all kinds of reasons why victims sometimes do this, but if the defendant responds in such a way as to continue the contact, then the defendant is breaching bail conditions because the police or the court have not released the defendant from the conditions of bail they imposed.

It does not matter that the victim has agreed to or initiated the contact; the victim is not subject to the bail conditions, the defendant is. The defendant is responsible for complying with any conditions imposed by the police or the court until released from those conditions by the police or court.

In addition to the breach of bail, new offences may also have been committed for which the defendant may be prosecuted.

ANNEX C

Listed below are contact details for some of the national organisations that provide help or information to victims of domestic violence. They should be able to give contact details for local organisations.

Organisation	Role of organisation	Contact Details
24 hr Domestic Violence Helpline	The confidential 24 hour national domestic violence freephone helpline is run in partnership by Refuge and Women's Aid. The helpline provides support, information and a listening ear to women experiencing (or who have experiences) domestic abuse and to those seeking help on a woman's behalf and, if appropriate, refer callers on to refuges and other sources of help and information.	The 24-hour free phone number is: Tel: 0808 2000 247
Broken Rainbow	Broken Rainbow provides assistance to lesbians, gay men, bisexual and transgender (LGBT) people in Britain who are affected by homophobic, transphobic and same sex domestic violence.	The Broken Rainbow Hotline Number is: Tel:0845 260 4460 Email: mail@broken-rainbow.org.uk
ChildLine	ChildLine is the free 24-hour helpline for children and young people in the UK about any problem, day or night.	Tel: 0800 1111
MALE (Men's Advice Line)	A confidential helpline for men who experience violence from their partners or ex-partners.	Tel: 0808 801 0327 Email: info@mensadviceline.org.uk www.mensadviceline.org.uk

Organisation	Role of organisation	Contact Details
Action on Elder Abuse	Action on Elder Abuse works to protect and prevent the abuse of vulnerable older adults.	Astral House 1268 London Road London SW16 4ER. Tel: 0808 808 8141 Email: enquiries@elderabuse.org.uk www.elderabuse.org.uk
IMKAAN	A national charity providing strategic and targeted organisational support to refuges serving the needs of Asian women and children experiencing domestic violence.	Tindlemanor 4 th Floor 52 – 54 Featherstone Street London EC1Y 8RT Tel: 0207 250 3933 Email: admin@imkaan.org.uk
NSPCC National Child Protection Helpline	<p>Helpline for people concerned about a child at risk of abuse, including children themselves. Offers counselling, information and advice about the care of children, legal issues, sexual, physical or emotional abuse, neglect etc.</p> <p>The helpline is a free and confidential service that is open 24 hours a day, seven days a week.</p>	Tel: 0808 800 5000 Email: help@nspcc.org.uk
National Association of Gypsy Women	Support group for Gypsy women and travellers experiencing domestic violence.	Meadow View Goldsmith Drive Rayleigh Essex SS6 9R5 Tel: 01268 782 792

Organisation	Role of organisation	Contact Details
Refuge	Refuge is the national charity for women and children who experience domestic violence. It is the UK's largest single provider of specialist accommodation and support to women and children escaping domestic violence.	4th Floor International House 1 St Katherine's Way London E1W 1UN Tel: 020 7395 7700 National Domestic Violence Helpline is: Tel: 0808 2000 247 Email: info@refuge.org.uk www.refuge.org.uk
Respect	Respect is a UK-wide membership organisation for practitioners and organisations working with perpetrators of domestic violence and associated work with women partners and ex-partners. Respect's key focus is on increasing the safety of those experiencing domestic violence through promoting intervention with perpetrators.	1 st Floor Downstream Building 1 London Bridge London SE1 9BG Tel: 020 7022 1801 Email: info@respect.uk.net www.respect.uk.net
Victim Support	Victim Support is the independent national charity that helps people to cope with the effects of crime. It provides free and confidential support and information to help victims deal with their experiences.	Victim Support line: 0845 30 30 900 Email: supportline@victimsupport.org.uk
Witness Service	Victim Support runs the witness service in every criminal court in England and Wales to give information and support to witnesses, victims, their families and friends when they go to court.	National Office Cranmer House 39 Brixton Road London SW9 6DZ Tel: 0207 735 9166 Fax: 0207 582 5712 Email: contact@victimsupport.org.uk

Organisation	Role of organisation	Contact Details
Women's Aid	Women's Aid is a key national charity working to end domestic violence of women and children. It supports a network of over 500 domestic and sexual violence services across the UK.	<p>PO Box 391 Bristol BS99 7WS</p> <p>Tel: 0117 944 4411 Fax: 0117 924 1703 National Domestic Violence Helpline is: Tel: 0808 2000 247 Email: info@womensaid.org.uk; helpline@womensaid.org.uk</p> <p>Welsh Women's Aid 38-48 Crwys Road Cardiff CF24 4NN Tel: 029 2039 0874 Wales Domestic Abuse Helpline is: Tel: 0808 801 0800 www.welshwomensaid.org</p>
CAADA (Coordinated Action Against Domestic Abuse)	CAADA is working to create a consistent, professional and effective response for all victims of domestic violence and in particular those at high risk. They do this through delivering services directly to advocacy projects, their local multi-agency partners and also through work with funders, policy advisers and Government. They can provide advice to professionals working with victims of domestic violence, and can also provide information about local specialist support services.	<p>CAADA PO Box 4065 Bruton Somerset BA10 0WX</p> <p>Tel: 01749 812968 Fax: 01749 813623</p>

CPS Policy Directorate London

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