



Standing Together's Response to CPS DA Legal Guidance & CPS Policy Statement Consultation

June 2022

Submitted on 24/06/22 via weblink: <https://www.cps.gov.uk/consultation/consultation-domestic-abuse-legal-guidance>

<https://www.cps.gov.uk/consultation/consultation-domestic-abuse-policy-statement>

Consultation on the Domestic Abuse legal guidance

Introduction

- A. The CPS is conducting a public consultation on the revisions to its legal guidance on Domestic Abuse (DA). The purpose of the consultation is to provide interested persons with an opportunity to provide comments and to ensure the final version of the guidance is informed by as wide a range of views as possible.
- B. The proposed revisions are intended to provide guidance to prosecutors when dealing with cases where DA has taken place.
- C. The CPS regularly reviews and updates our legal guidance to ensure it supports our prosecutors. A review of the DA legal guidance identified that there was the need to update the guidance as the publication of the Directors Guidance on Charging (DG6) and introduction of the Domestic Abuse Act 2021 ('DA Act 2021') in April 2021, meant the guidelines were outdated. Adherence to these guidelines will ensure that there is transparency and consistency of decision making across the CPS.
- D. The guidance is being published as interim guidance, whilst this consultation takes place and the final guidance will be published following review of the responses from this consultation.
- E. As part of the drafting process the CPS has conducted pre-consultation with interested groups.

Background

- F. The Domestic Act 2021 received Royal Assent on 29 April 2021 and is being commenced in stages. As a result, the CPS decided to update the legal guidance in two stages. Stage one focused on technical updates required by changes in legislation introduced by the DA Act 2021 and was published on 29 September 2021. This stage two update is intended to develop guidance in relation to how prosecutors should approach DA cases, myths and stereotypes and develop the guidance to ensure prosecutors consider the use of protective orders in all cases.
- G. Our legal guidance is an important aspect of our work and provides support to our prosecutors to make effective Code compliant decisions in all cases, thereby helping to ensure the delivery

of justice. Crown Prosecutors to whom the decision-making function is delegated need to be given the clearest possible guidance about the legal test that they must apply when making charging decisions or reviewing cases. The police, who apply the Code when exercising an important discretion as to whether to bring a case to the attention of the Crown Prosecutors for a charging decision, also need guidance to ensure a fair and consistent approach to these difficult and sensitive cases.

H. Once the consultation is concluded all responses will be considered and any necessary amendments will be made, before the guidance is published as finalised guidance.

Consultation Questions

Question 1 – Do you think the terminology used is appropriate and sensitive to the issues addressed? If not, please identify concerns and share how it can be improved.

N/A – appropriate and sensitive language used.

Question 2 – Do you think that the guidance in the section titled: ‘Applying the Code’ in relation to the principles to consider when applying the evidential test will assist prosecutors in arriving at Code compliant charging decisions in DA cases?

No comments

Question 3 -Is the new content in the section titled ‘Offences available to prosecutors’ accurate and comprehensive and do you think it will assist prosecutors in making decisions reflecting all the potential background in DA cases?

No comments

Question 4 – Will the new content in the section titled ‘Case building and approach to prosecuting DA cases’ regarding factors to consider when making charging decisions assist prosecutors with identifying actions and building cases for charge?

No comments

Question 5– Will the new content in the section titled ‘Case building and approach to prosecuting DA cases’ regarding evidence led prosecutions assist prosecutors when making charging decisions and building cases for charge?

No comments

Question 6 – Is the content in the section titled ‘Sentencing & Ancillary Orders’ accurate and comprehensive? Will it assist prosecutors with better awareness of orders to be considered in DA cases?

Page 38: this section refers to restraining orders and additional guidance that needs to be read separately. It would be beneficial to include a more detailed summary in reference to restraining orders, to ensure that the basic information is included and readily available as part of this guidance.

Question 7 – Do you think the new content on DA myths and stereotypes at Annex C is accurate and comprehensive and do you think it will assist prosecutors in making decisions which are not clouded by myths and stereotypes?

Point 14: It would be useful to add some further information about victim/survivor’s previous experience of the process and the negative impact that this may have had, for example, if they have previously been through the CJS, been discriminated against by the police or other services, etc.

Overall, the content on DA myths and stereotypes in Annex C are very comprehensive and if consulted, would be very beneficial for prosecutors.

Question 8- Do you think Annex E has all the correct details for the relevant national support organisations? If not, please identify concerns and share the correct details.

Please consider adding the following service to this list:

IKWRO: IKWRO helps Middle Eastern and Afghan women and girls who are living in the UK. We speak Farsi, Kurdish, Arabic, Dari, Pashto, Turkish, and English. More information can be found here: <https://ikwro.org.uk/advocacy/>

Mon to Fri, 9.30 to 5.30: 0207 920 6460.

For out-of-hours emergencies call: Kurdish / Arabic/ English: 07846 275246 or Farsi / Dari / English: 07846 310157.

Question 9- Do you have any other feedback you wish to share around the how the guidance can be improved?

Overall, the guidance appears to be very clear and comprehensive, although quite lengthy. The document was also quite difficult to navigate due to the lack of page numbers, which we imagine will be added during the next stages of amendments.

We have a few comments regarding specific parts of the guidance, which we have included below.

Within the self-defence and counter allegations section, the guidance states “Prosecutors should consider whether an offence(s) that has not been prosecuted previously has sufficient nexus to be joined with the latest indictment or charge(s), having in mind any statutory time limits on prosecutions”. This is a good addition to the guidance in holding perpetrators to account, as they may have thought that previous offences would be ignored. In this section, the guidance also states, “Prosecutors should also consider if previous incidents assist in demonstrating a pattern of behaviour that supports additional charges such as controlling and coercive behaviour”. This is also a much-needed addition, as coercive and controlling behaviours are not always obvious, therefore can be harder to identify.

In the ‘previous domestic abuse incidents and serial offenders’ section, it is good that the guidance states that history or intelligence reports related to DA with other victims should be obtained. Standing Together’s criminal justice team have observed many courts across England and history is not always mentioned or considered when looking at overall risk to a victim. Standing Together work alongside other criminal justice agencies in London, through coordinating the Specialist Domestic Abuse Court at Westminster Magistrates court, and ensure that history and intelligence reports are considered, where necessary, to ensure victim safety. This is recognised as best practice, and it is very positive to see this referenced in the guidance.

In the ‘Bail and Remand’ section of this guidance, it states that “arrangements regarding child contact will be managed by the family court and generally will not be a matter considered within a bail hearing”. In Standing Together’s experience, defendants often demand contact with their child(ren) and we have witnessed conditions being put in place to facilitate this contact, sometimes at the detriment of the victim. Specific consideration should be given for how child contact can be facilitated safely and appropriately within the criminal justice system, for example, contact via solicitors, children’s services or via a third party for child contact only.

Consultation on the Domestic Abuse Policy Statement

Introduction

- A. The CPS is conducting a public consultation on the new Domestic Abuse (DA) Policy Statement. There are high levels of public interest and concern around the criminal justice response to domestic abuse, particularly the disparity in reports and criminal justice outcomes.
- B. The policy statement sets out how we intend to increase the volume of domestic abuse prosecutions and improve criminal justice outcomes for victims.
- C. We expect that this statement will be of most interest to those who work within and alongside the criminal justice system – for example support services who work with victims of domestic abuse, but it may also be of interest to victims and the wider public.
- D. The consultation will provide interested persons with an opportunity to provide comments, so the final version is informed by a wide range of views.
- E. It's available as a webpage and a downloadable PDF in English and Welsh

Questions

Please use the questions below to frame your review and provide us with feedback.

Where you've identified something, we need to improve please use specific examples. These help to make it clear what the problem is so we can make the changes we need to.

1. Language

We have tried to strike a balance between using the official language of the justice system and explaining things in language that is clear and easy to understand.

How well do you think we've done this on a scale of 1 (very poor) to 5 (excellent)?

1 2 3 4 5

Is there anything you particularly like?

The guidance is easy to understand and read in most places.

Is there anything you think we could improve?

On page 1 in the second paragraph, it states that the CPS “are working across the criminal justice system and with victim support groups”. Generally, services that support victim/survivors of domestic abuse are referred to as ‘front-line DA organisations’ rather than ‘victim support groups’. The use of ‘victim support groups’ to describe these services may be confusing, due to the existence of Victim Support.

In paragraph 1 of page 3, it states “summary or either way case” could be confusing to anyone who is not familiar with the criminal justice system, and therefore should be explained further.

In paragraph 4 of page 3, it states “all decisions we make should be fair”, however, “should” should be replaced with “will”, as all decisions must be fair.

In paragraph 1 of page 5, it states “we are committed to working jointly with criminal justice partners and the third sector”, which could be reworded to “criminal justice and third sector partners” to ensure that joint working with both the criminal justice and third sectors are usual process.

In paragraph 2 of page 6, the word “adjustments” is used, which feels out of place and as though victim/survivors are asking for special treatment. This sentence could be reworded to: “The judge should consider ‘special measures’, which are aimed at making victims and...” This puts the emphasis back on the justice system to ensure that appropriate measures are considered as usual practice.

2. Content

The policy statement sets out how we intend to increase the volume of domestic abuse prosecutions and improve criminal justice outcomes for victims whilst focusing on casework quality.

How well do you think it does this on a scale of 1 (very poor) to 5 (excellent)?

1 2 3 4 5

Was there anything that surprised you or that you didn’t already know in the content?

N/A

Is there anything missing? For example, have we provided links to the most relevant legislation, policies, practices and guidance?

N/A