



House of Commons
Home Affairs Committee

**Draft Sentencing
Guidelines—
*Overarching Principles:
Domestic Violence and
Breach of a Protective
Order***

Third Report of Session 2005–06

*Report, together with formal minutes and
written evidence*

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Home Affairs Committee

The Home Affairs Committee is appointed by the House of Commons to examine the expenditure, administration and policy of the Home Office and its associated public bodies; and the administration and expenditure of the Attorney General's Office, the Treasury Solicitor's Department, the Crown Prosecution Service and the Serious Fraud Office (but excluding individual cases and appointments and advice given within government by Law Officers).

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Committee staff

The current staff of the Committee are Dr Robin James (Clerk), Mr Mark Etherton (Second Clerk), Kate Akester (Adviser (Sentencing Guidelines)), Martha Goyder (Committee Specialist), Ms Arabella Thorp (Inquiry Manager), Mr Ian Thomson (Committee Assistant), Jenny Pickard (Secretary) and Alison Forrester (Senior Office Clerk).

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Footnotes

In the footnotes of this Report, references to written evidence are indicated by the page number as in 'Ev 12'.

Contents

Report	<i>Page</i>
1 Introduction	3
2 Background	5
3 Summary of the draft guideline on <i>Overarching Principles: Domestic Violence</i>	6
Definition of domestic violence	6
Assessing seriousness	6
Aggravating and mitigating factors	6
Other factors influencing sentence	7
The wishes and interests of victims and children	7
Factors to take into consideration	7
4 Summary of the draft guideline on <i>Breach of a Protective Order</i>	8
Statutory provisions	8
Sentencing for breach	8
Factors influencing sentencing	8
Aggravating and mitigating factors	9
5 General approach	9
6 Specific issues	9
Alternatives to custodial sentences	9
History of the relationship	10
Preservation of the relationship as a mitigating factor	11
Good character	12
Aggravating factors	12
Training, specialist courts and advisers, and review	13
Conclusions and recommendations	14
Formal minutes	16
List of written evidence	17
List of unprinted written evidence	18
Reports from the Home Affairs Committee since 2001	

1 Introduction

1. In November 2003, the then Home Secretary, the Rt Hon David Blunkett MP, invited the Sentencing Advisory Panel to consider sentencing in domestic violence cases. His concern was that courts should treat domestic violence as seriously as other cases of violence, and for sentencing to reflect this.¹

2. Two draft guidelines on domestic violence were published by the Sentencing Guidelines Council on 11 April 2006. *Overarching Principles: Domestic Violence* deals with the general principles relevant to the sentencing of cases involving violence that has occurred in a domestic context. There is no specific offence of domestic violence, and conduct amounting to domestic violence can be covered by a wide range of offences: not only assaults, but criminal damage, harassment, threats to injure or kill, false imprisonment, and sexual offences. The list is not exhaustive.

3. *Breach of a Protective Order*, the second draft guideline, addresses breaches of restraining or non-molestation orders imposed in order to prevent harassment or fear of violence, or the molestation of others. It anticipates the implementation of the relevant sections of the Domestic Violence, Crime and Victims Act 2004 which will make restraining orders available following acquittal, and non-molestation orders punishable by up to five years' imprisonment.

4. The Sentencing Guidelines Council took into account advice it had received from the Sentencing Advisory Panel (also published on 11 April 2006), based on wide consultation initiated by its Consultation Paper of 12 July 2004. There were 45 responses. We received our own responses (see List of written evidence) to the consultation guidelines after publication, and are grateful to those who supplied them. We express our thanks to Ken MacDonald QC, Director of Public Prosecutions, Deputy Chief Constable Brian Moore of the Association of Chief Police Officers, Nicola Harwin, Chief Executive of Women's Aid and Jo Todd, Director of RESPECT, for giving us an informal briefing on developments in the broader domestic violence context.

5. In the last Parliament our predecessor Committee agreed to a request from the Government that it should undertake regular scrutiny of draft sentencing guidelines issued by the Sentencing Guidelines Council. Our predecessors produced a report on the initial draft guidelines.² This described the Committee's role, which is consultative, as follows:

“We do not envisage our function as being to give or withhold formal approval of each guideline, or to provide extended analysis of its contents, but to focus on particular issues of concern or interest to Parliament or the public. Where we consider that a draft guideline raises major issues, we will make a report to the House on these. In the case of other guidelines we will supply our comments to the Council

1 Foreword to *Overarching Principles: Domestic Violence*

2 Home Affairs Committee, Fifth Report of Session 2003–04, *Draft Sentencing Guidelines 1 and 2* (HC 1207), published on 4 November 2004. The guidelines were on *Reduction in sentence for a guilty plea* and *Overarching principles: Seriousness/New Sentences: Criminal Justice Act 2003*.

in the form of a letter from the Chairman, which we will also publish on our website”.³

6. In the present Parliament we have produced a report on the *Robbery* draft guideline, and have written to the Lord Chief Justice, Chairman of the Sentencing Guidelines Council, with our responses to the *Custody Plus* draft guideline.⁴

7. This Report contains some preliminary background, a brief resume of the two draft guidelines relating to domestic violence, and then our comments on particular issues of concern.

3 Ibid., para 9

4 Home Affairs Committee, Second Report of Session 2005–06, *Draft Sentencing Guideline: Robbery* (HC 947), published on 7 March 2006; letter dated 16 May 2006 from the Chairman of the Committee to the Lord Chief Justice giving the Committee’s response to the draft guideline on *Custodial Sentences of Less Than 12 Months: Criminal Justice Act 2003* (published on the Committee’s website). The Committee did not make substantive comments on the draft guidelines on *Manslaughter* (which was issued when the Committee was unappointed following the General Election of 2005) or *Allocation*.

2 Background

8. Domestic violence is a social problem of enormous proportion. It accounts for a quarter of all violent crime, and has wide-ranging consequences not only for victims, but also for children and others living in violent households. One woman in four experiences domestic violence at some point in her life, two women per week are killed by violent partners; but still only 5% of recorded cases of domestic violence result in conviction.⁵ It is rarely a one-off incident, but is rather a course of conduct: occurring across society, regardless of age, race, sexuality, wealth, and geography.⁶ Many abused women describe the psychological effects as having an even more profound effect on their lives than the physical violence.⁷ Reporting rates are low, and on average women are assaulted 35 times before making reports.⁸

9. The costs to society are high. They have recently been estimated as amounting to £3.1 billion for services for survivors: including absence from employment, medical, psychiatric and addiction treatment; housing and other social and legal assistance. The loss to the economy has been estimated at £2.7 billion per year.⁹

10. According to the most recent British Crime Survey figures, in 2000 there were an estimated 12.9 million incidents of domestic violence, and 1.2 million women were affected by stalking.¹⁰ Police came to know about less than one in four of the worst cases of domestic violence in the year before the survey. Reasons for non-reporting were that it was considered too trivial, it was a private family matter, victims did not want any more humiliation, and either feared more violence, or that the situation would deteriorate as a result of police involvement.

5 Fawcett Society report, *Women and the Criminal Justice System* (2004), p 3

6 Home Office, *Domestic Violence: a National Report* (2005)

7 British Medical Association, *Domestic Violence: A healthcare issue* (1998)

8 Fawcett Society report, *Women and the Criminal Justice System* (2004), p 11

9 Professor Sylvia Walby, (University of Leeds [subsequently University of Lancaster]), *The Cost of Domestic Violence* (September 2004). This research was commissioned by the Women and Equality Unit of the Department of Trade and Industry.

10 Sylvia Walby and Jonathan Allen, *Domestic violence, sexual assault and stalking: findings from the British Crime Survey*, Home Office Research Study 276 (March 2004)

3 Summary of the draft guideline on *Overarching Principles: Domestic Violence*

SUMMARY

The following section summarises the content of the draft guideline.

Definition of domestic violence

11. The draft guideline begins by setting out the Government’s definition of domestic violence:

“any incident of threatening behaviour, violence or abuse (psychological, physical, sexual, financial or emotional) between adults who are all have been intimate partners or family members, regardless of gender or sexuality”.¹¹

This definition is wide enough to include family members, forced marriage, genital mutilation, and so-called ‘honour crimes’. Offences involving domestic violence are most commonly charged as assaults, but as already noted, appear in a range of other charges.

Assessing seriousness

12. The starting point for assessing seriousness is that offences should not be regarded as being any less serious than those committed in a non-domestic context. Indeed, the domestic environment may well involve more aggravating factors than other offences, making them more serious.

Aggravating and mitigating factors

13. Aggravating factors are listed in the draft guideline as: abuse of trust or power, the vulnerability (including pregnancy) of the victim, the impact on children (including the abuse of contact arrangements to offend), a history of violence, threats, or breaching court orders, and where the victim is forced to leave home.

14. The draft guideline states that good character is not likely to have its usual relevance to mitigation; and will be of no more than minor relevance where there is a proven pattern of behaviour. It is recognised that a respectable front may allow domestic violence to continue undetected for lengthy periods. However, if courts are satisfied that particular offences were isolated incidents, good character will have greater relevance.

15. The history of the relationship may be taken into account, and may reveal relevant aggravating or mitigating factors, but courts will have to approach this exercise with caution, ensuring that they have a factual basis on which to proceed.

11 Taken from Crown Prosecution Service, *Policy on Prosecuting cases of Domestic Violence* (2005)

Other factors influencing sentence

The wishes and interests of victims and children

16. Seriousness, rather than the wishes of victims, should be the main determining factor in sentencing. In a domestic context, it is particularly important that victims do not feel responsible for sentencing; and there is a risk that victims will ask for clemency in response to threats by, or ongoing fear of, offenders. This risk would be exacerbated if it is believed that the severity of the sentence may be affected by the wishes of the victim.

17. However, if courts are satisfied that victims genuinely wish relationships to continue, and that they will not be at significant risk of further violence, they may properly mitigate the sentence, taking into account detailed information in pre-sentence reports and victim personal statements, as well as the seriousness of the offending and the history of relationships.

18. Courts must consider the best interests of the child, and must weigh up the effect of disrupted relationships with the possibility of further violence. These interests will be relevant when considering sentence.

Factors to take into consideration

19. Many offences are dealt with in the magistrates' courts as common assaults or assaults occasioning actual bodily harm, involving relatively minor injuries. Offences involving serious violence will usually warrant custodial sentences. Some offences will attract the dangerous offender provisions, and be sentenced to indeterminate or extended sentences.¹²

20. However, in some cases where a short custodial sentence is being considered, it may be appropriate to impose a suspended sentence or community order that will allow for rehabilitation if the court is confident that the offender genuinely intends to reform, and there is a real prospect of success. Examples of circumstances in which this would be a proper option are where there is genuine remorse and where the preservation of the relationship is important. In such instances a suspended sentence or community order with a requirement to attend a domestic violence programme might be appropriate. Responses to any previous sentences/programmes will be taken into account.

4 Summary of the draft guideline on *Breach of a Protective Order*

SUMMARY

The following section summarises the content of the draft guideline.

Statutory provisions

21. Restraining orders may be imposed following conviction for causing harassment (Section 2 Protection from Harassment Act 1997) or fear of violence (Section 4 of that Act). The Domestic Violence Crime and Victims Act 2004 provides for such orders to be made on conviction for any offence or following acquittal.¹³

22. The 2004 Act also amends the Family Law Act 1996, to provide that failure to comply with non-molestation orders (prohibiting the molesting of named persons or relevant children) is punishable with a maximum of five years' imprisonment. It can also be dealt with as a contempt of court.

Sentencing for breach

23. Where breaches constitute separate offences they should be charged as separate counts, and result in consecutive sentences where necessary. If only the new substantive offence is charged, the fact that it is also a breach of a protective order should be treated as an aggravating factor. If only the breach is charged, the sentence should reflect the nature of the breach, aggravated by the fact that it also breaches the order. Finally, if the breach does not involve the new offence, the sentence should reflect the circumstances and consequences, including psychiatric injury or distress to the person protected by the order.

Factors influencing sentencing

24. Protective orders are intended to protect victims from harm, and their terms must be necessary and proportionate. Sentencing for breaches should aim to achieve future compliance where that is realistic. The nature of the original offence is relevant, and if it was serious, any breach is likely to have more severe consequences for the victim. Nevertheless, it is the breach alone that is the concern of the sentencer. Where physical violence is involved, the starting point should normally be a custodial sentence. Where a high degree of harm and anxiety has been caused, even though no violence has been used, it is probable that the custody threshold will be crossed.

25. Non-molestation orders, made in civil proceedings, may be designed to modify behaviour; and it may be disproportionate to impose a custodial sentence for breach, if no threats or violence were involved.

13 by amending the Protection from Harassment Act 1997

26. Rehabilitative sentences are unlikely in this context; but where a short custodial sentence is being considered, and the offender shows both real remorse, and a commitment to addressing his or her behaviour, it may be appropriate to impose a suspended sentence order or community order, where appropriate with a requirement to attend a domestic violence programme.

Aggravating and mitigating factors

27. These are largely the same as those considered in the drafting guideline on *Overarching Principles*, but in addition further breaches, breaches committed shortly after orders were made, and a history of breaches will be aggravating.

28. If there has already been a substantial period of compliance, this may be a mitigating factor; and contact initiated by victims may also be mitigating, depending on circumstances.

5 General approach

29. **We endorse the general approach in both draft guidelines. We welcome in particular the explicit recognition that courts should treat domestic violence no less seriously than other cases of violent crime. Our evidence indicates that there is an increasing consensus on the desirability of more special domestic violence courts, independent advocates, and training. We note that there is also some support in some circumstances for accredited specialised perpetrators' programmes. We welcome this, and note that as they develop, these initiatives will inevitably affect sentencing decisions. The new Custody Plus sentence, scheduled to be introduced on 6 November 2006, may also prove popular with sentencers in domestic violence cases.**

30. In the paragraphs that follow we explore a number of specific issues arising from two draft guidelines.

6 Specific issues

Alternatives to custodial sentences

31. The draft guideline on *Overarching principles* proposes that either a community order or suspended sentence order with a requirement to attend a domestic violence programme may be imposed instead of a short custodial sentence, where—for example—the preservation of the relationship is important, or where the offender shows genuine remorse and a willingness to address his or her behaviour.

32. There is some degree of controversy over the usefulness of domestic violence programmes. These nine-month long programmes have not yet been fully evaluated. However, it has been reported in the press that “a study based on a sample of 134 female victims of domestic violence showed that a third of men completing an abuser programme and more than two thirds jailed or fined committed a further act of domestic violence

within a year of being sentenced”.¹⁴ The women’s organisation Refuge told us that they have—

“concerns about the effectiveness of perpetrator’s programmes, in particular anger management courses, for domestic violence offenders. There is no evidence to suggest that these programmes reduce violent behaviour in the long term”.¹⁵

33. While these programmes have their supporters, we note that they are still fairly new, and that evidence of effectiveness cannot be said to have been established yet. Lessons should be learned from the experience of offending behaviour courses in prisons: once thought to be so promising, but now somewhat discredited. Our predecessor Committee in 2005 noted the disappointing results of recent research into the impact of these programmes, and recommended that they should be given a reduced priority.¹⁶ We hope the same will not be said of domestic violence programmes in time to come; but **we recommend a cautious approach to domestic violence perpetrators’ programmes until more evidence is available as to their effectiveness. We therefore recommend that perpetrators’ programmes should not be seen as part of an alternative sentence to a custodial sentence where the latter would otherwise be justified. Instead, we recommend that accredited perpetrators’ programmes should be an additional sentencing option for both custodial and non-custodial sentences.**

34. We do not dispute that in some cases the referral of offenders to domestic violence programmes may be appropriate as an alternative to custody. However, we do not support the proposal in the draft guideline that a criterion for such referral should be that “the offender shows genuine signs of remorse”. This proposal was criticised by many of those who briefed us orally or submitted evidence in writing.¹⁷ We concur with those who pointed out that remorse is impossible to measure, particularly in the light of the recognised domestic violence cycle of violence followed by remorse, followed by violence. This may make this phrasing sensitive for victims. **We recommend that the wording “the offender shows genuine signs of remorse and wishes to address his/her behaviour” be deleted.**

35. **We recommend that the guidelines should recognise the possibility of an offender entering an early guilty plea and participating in a perpetrator programme. Under these circumstances the courts should be allowed to take progress on such a programme into account in sentencing.**

History of the relationship

36. We welcome the inclusion of the history of relationships in assessing the gravity of offences, and therefore in sentencing. Domestic violence often involves a pattern of repeat offending, and it is likely that many of these earlier offences will not have been reported to the police. Our respondents made suggestions as to how courts could take account of the

14 The Times, 12 April 2006

15 Ev 7

16 Home Affairs Committee, First Report of Session 2004–05, *Rehabilitation of Prisoners* (HC 193-I), published on 7 January 2005, paras 227–34

17 See, for instance, Ev 7, Ev 9 and Ev 18

history of a relationship, given the difficulties for courts in establishing facts not specifically related to charges before them. Options might include accessing information held in police and medical records, or relating to residence in a refuge, contact with domestic violence support services, and any past protection orders.

37. We agree that it is desirable that the draft guideline should contain some specific guidance on exactly how courts should take into account the history of relationships. However, the guideline should also make clear that courts should take great care in assessing the weight to be given to information on this subject.

38. Professor Sylvia Walby of Lancaster University argued in her submission to us that at present it is impossible to track cases of domestic violence as they are processed by the criminal justice system. Domestic violence appears in a wide range of offences; and official statistics do not differentiate between what is domestic violence and what is not. Yet, Professor Walby points out, “in practice, the police do keep such records privately, in order to respond to demands for performance indicators on arrest rates for domestic violence incidents. It is time that the statistics on domestic violence in the criminal justice system were made systematic and public, so that the public scrutiny that is a prerequisite of policy improvement can operate effectively”. We accept this argument. **We recommend to the Government that relevant recorded crime and criminal statistics should be differentiated by whether or not they are domestic, and that the information be routinely reported within official statistics on recorded crimes and criminal statistics.**

39. The draft guideline on *Overarching Principles* states that any assertions that the offence has been provoked by the conduct of the victim should be treated with great care:

“both in determining whether they have a factual basis and in considering whether in the circumstances the alleged conduct amounts to provocation sufficient to mitigate the seriousness of the offence”.

40. A number of our respondents expressed a preference for the alternative wording set out in the original Advice published by the Sentencing Advisory Panel:

“for provocation to be a mitigating factor, it will need to involve actual or anticipated violence including psychological bullying. Provocation is likely to have more of an effect as mitigation if it has taken place over a significant period of time”.

41. We agree that the Panel’s original wording gives clearer and more specific guidance to the courts on this sensitive matter, and we recommend that that wording be reinstated in the guideline.

Preservation of the relationship as a mitigating factor

42. The preservation of the relationship as a mitigating factor was seriously called into question by many of our respondents;¹⁸ but the more-wide ranging consultation by the Sentencing Advisory Panel produced mixed views. It concluded that, in circumstances where the parties wish to remain together “the protection of the victim, and the prevention

18 Ev 6, Ev 7, Ev 10 and Ev 15

of further violence, must be paramount. The court may want to consider action that will help to promote a safer relationship”.

43. The draft guideline stresses the importance of sentence being determined by the seriousness of the offence, not by the wishes of the victim—pointing out, for instance, that:

- It is undesirable that a victim should feel a responsibility for the sentence imposed.
- There is a risk that a plea for mercy made by a victim will be induced by threats made or by a fear of the offender.
- The risk of such threats will be increased if it generally believed that the severity of the sentence may be affected by the wishes of the victim.

44. The draft guideline concludes, however, that a victim’s wish to continue the relationship may be a mitigating factor if courts are satisfied by up-to-date information in pre-sentence reports and victim personal statements that such wishes are genuine, and that there is no significant risk of further violence.

45. We support this general approach, but **recommend to the Government that in cases where preserving the relationship may act as a mitigating factor, facilities should be made available to give victims the opportunity of consulting privately with a support worker or advocate in a safe environment, so that the genuineness of their expressed wishes may be more securely assessed. This is particularly important for victims from minority ethnic communities, some of whom may feel additional cultural pressure to continue their relationships.**

Good character

46. The draft guideline makes clear that in domestic violence cases, good character is not likely to have its usual relevance to mitigation; and will be of no more than minor relevance where there is a proven pattern of behaviour. However, it adds that “positive good character is of greater relevance where the court is satisfied that the offence was an isolated incident”.

47. We are dubious about the wisdom of including this sentence in the draft guideline. We fear that it may send the wrong message to the courts. We note the evidence, cited in paragraph 8 above, that on average women are assaulted 35 times before they report domestic violence to the authorities. There are grounds for scepticism about how often “isolated incidents” in this contest will prove to be genuinely isolated rather than part of a concealed pattern. **We recommend that the sentence: “Positive good character is of greater relevance where the court is satisfied that the offence was an isolated incident” be deleted from the draft guideline.**

Aggravating factors

48. Vulnerability of the victim is listed as an aggravating factor in the draft guideline, but we identified some support for disability being explicitly included (as is pregnancy) in this category.¹⁹ Other additions to the aggravating factors proposed were: putting pressure on

¹⁹ Ev 1, Ev 6, Ev 7, Ev 11 and Ev 16

victims not to report; interfering with victims or witnesses after reports have been made; and the humiliation of victims. We think these are sensible suggestions.

49. We recommend that the section on vulnerability should be amended to read: “A victim should be regarded as particularly vulnerable if pregnant, or disabled, at the time of the offence”. We further recommend that putting pressure on victims not to report, interfering with victims or witnesses after reports have been made, and the humiliation of victims be considered as additions to the list of aggravating factors.

Training, specialist courts and advisers, and review

50. We support moves currently in train to increase training in domestic violence issues across the criminal justice system, to create more specialist domestic violence courts and an even supply of advocates and perpetrator programmes. Although we advocate caution in expanding the provision of perpetrator programmes until their effectiveness has been properly assessed (see paragraph 33 above), we believe that it is important that work should proceed on adapting the programmes to ensure that they are suitable for minority ethnic and learning disabled defendants. All these measures will facilitate the better implementation of the guidelines. We recommend that when this package of changes has been introduced, the guidelines should be revised as necessary to take account of these developments.

Conclusions and recommendations

1. We endorse the general approach in both draft guidelines. We welcome in particular the explicit recognition that courts should treat domestic violence no less seriously than other cases of violent crime. Our evidence indicates that there is an increasing consensus on the desirability of more special domestic violence courts, independent advocates, and training. We note that there is also some support in some circumstances for accredited specialised perpetrators' programmes. We welcome this, and note that as they develop, these initiatives will inevitably affect sentencing decisions. The new Custody Plus sentence, scheduled to be introduced on 6 November 2006, may also prove popular with sentencers in domestic violence cases. (Paragraph 29)
2. We recommend a cautious approach to domestic violence perpetrators' programmes until more evidence is available as to their effectiveness. We therefore recommend that perpetrators' programmes should not be seen as part of an alternative sentence to a custodial sentence where the latter would otherwise be justified. Instead, we recommend that accredited perpetrators' programmes should be an additional sentencing option for both custodial and non-custodial sentences. (Paragraph 33)
3. We recommend that the wording "the offender shows genuine signs of remorse and wishes to address his/her behaviour" be deleted. (Paragraph 34)
4. We recommend that the guidelines should recognise the possibility of an offender entering an early guilty plea and participating in a perpetrator programme. Under these circumstances the courts should be allowed to take progress on such a programme into account in sentencing. (Paragraph 35)
5. We agree that it is desirable that the draft guideline should contain some specific guidance on exactly how courts should take into account the history of relationships. However, the guideline should also make clear that courts should take great care in assessing the weight to be given to information on this subject. (Paragraph 37)
6. We recommend to the Government that relevant recorded crime and criminal statistics should be differentiated by whether or not they are domestic, and that the information be routinely reported within official statistics on recorded crimes and criminal statistics. (Paragraph 38)
7. We agree that the Panel's original wording gives clearer and more specific guidance to the courts on this sensitive matter [alleged provocation by victims], and we recommend that that wording be reinstated in the guideline. (Paragraph 41)
8. We recommend to the Government that in cases where preserving the relationship may act as a mitigating factor, facilities should be made available to give victims the opportunity of consulting privately with a support worker or advocate in a safe environment, so that the genuineness of their expressed wishes may be more securely assessed. This is particularly important for victims from minority ethnic communities, some of whom may feel additional cultural pressure to continue their relationships. (Paragraph 45)

9. We recommend that the sentence: “Positive good character is of greater relevance where the court is satisfied that the offence was an isolated incident” be deleted from the draft guideline. (Paragraph 47)
10. We recommend that the section on vulnerability should be amended to read: “A victim should be regarded as particularly vulnerable if pregnant, or disabled, at the time of the offence”. We further recommend that putting pressure on victims not to report, interfering with victims or witnesses after reports have been made, and the humiliation of victims be considered as additions to the list of aggravating factors. (Paragraph 49)
11. We support moves currently in train to increase training in domestic violence issues across the criminal justice system, to create more specialist domestic violence courts and an even supply of advocates and perpetrator programmes. Although we advocate caution in expanding the provision of perpetrator programmes until their effectiveness has been properly assessed (see paragraph 33 above), we believe that it is important that work should proceed on adapting the programmes to ensure that they are suitable for minority ethnic and learning disabled defendants. All these measures will facilitate the better implementation of the guidelines. We recommend that when this package of changes has been introduced, the guidelines should be revised as necessary to take account of these developments. (Paragraph 50)

Formal minutes

Tuesday 13 June 2006

Members present:

Mr John Denham, in the Chair

Mr Richard Benyon	Bob Russell
Mr James Clappison	Martin Salter
Mrs Janet Dean	Mr Richard Spring
Mr Shahid Malik	Mr Gary Streeter
Margaret Moran	Mr David Winnick
Gwyn Prosser	

Draft Report (Draft Sentencing Guidelines—*Overarching Principles: Domestic Violence and Breach of a Protective Order*), proposed by the Chairman, brought up and read.

Ordered, That the Chairman's draft Report be read a second time, paragraph by paragraph.

Paragraphs 1 to 50 read and agreed to.

Resolved, That the Report be the Third Report of the Committee to the House.

Ordered, That the Chairman do make the Report to the House.

Ordered, That embargoed copies of the Report be made available, in accordance with the provisions of Standing Order No. 134 (Select committees (reports)).

Ordered, That the Appendices to the Report be reported to the House.

Two Memoranda were ordered to be reported to the House.

[Adjourned till Tuesday 20 June at 9.45 a.m.]

List of written evidence

	<i>Page</i>
1 Child and Woman Abuse Studies Unit, London Metropolitan University	Ev 1
2 Crown Prosecution Service	Ev 2
3 Refuge	Ev 5
4 Respect	Ev 7
5 Southall Black Sisters	Ev 10
6 Professor Sylvia Walby	Ev 14
7 Women's Aid	Ev 15: Ev 19

List of unprinted written evidence

Additional papers have been received from the following and have been reported to the House but to save printing costs they have not been printed and copies have been placed in the House of Commons Library where they may be inspected by Members. Other copies are in the Record Office, House of Lords and are available to the public for inspection. Requests for inspection should be addressed to the Record Office, House of Lords, London SW1 (Tel 020 7219 3074). Hours of inspection are from 9.30 a.m. to 5.00 p.m. on Mondays to Fridays.

Association of Chief Police Officers

Margaret Moran MP

Written evidence

1. Memorandum submitted by the Child and Woman Abuse Studies Unit, London Metropolitan University

We summarise our responses below.

Overall we welcome the guidance that asserts that assaults in the home should not be considered less serious than those occurring in public. We also welcome the recognition that much domestic violence (DV) constitutes a course of conduct, and that this should be considered an aggravating factor.

Our more specific comments refer to page numbers and paragraphs below.

OVERARCHING PRINCIPLES: DOMESTIC VIOLENCE

Page 3

We have a number of criticisms of the definition, not the least being that it is certainly not a legal definition and a number of the actions referred to are not actually criminal offences. The incident based element, whilst reflecting a police perspective, does not reflect the practice and research knowledge base which would be from “a pattern of coercive control”. However, we recognise that this is currently the definition in use by government.

Page 4

The notion that there can be an “abuse of power” which includes forms of physical and sexual control, implicitly suggests that there may be acceptable “uses of power over” another person.

The notion that abuse of trust or power is no longer relevant on separation reveals a profound misunderstanding of the dynamics and content of DV, not least that most domestic homicides take place in the context of actual and threatened separation. The betrayal of trust is still relevant in terms of its impacts, and may continue with respect to children in common, and breaking of promises—including through the courts—to not commit further offences. It is only prolonged safety that changes power relations.

Page 5

- (ii) Vulnerability should include disability, being a recent migrant and possibly being economically dependent. All of this limit the ability of victims to leave/create safety.
- (v) Given the VERY low level of convictions for DV making this the determinant of the course of conduct element will mean that this will only apply in few cases, whilst being the case in the majority. There has to be other acceptable evidence for this—police and medical records, residence in a refuge, a protection order at the very least.
- (vi) Surely breaking of a court order to protect the victim should be aggravating without having to prove significant harm/anxiety.

Page 6

- (ii) This appears to introduce provocation into all DV cases, not just those involving murder. This is deeply troubling given the disputed way in which it has been used in homicide and the fact the DCA has even floated removing it as a defence altogether. There are, for example, occasions when victims resist control or fight back, or where the assault takes place in the context of decisions to leave. Are these to be mitigation?

Page 7

- (i) Our understanding of government policy is that it is moving away from victims having control over prosecutions, so the issue is not so much them “feeling” responsible, but not “being” or “being seen” as this. Relationships continue despite a variety of sentences in all sorts of contexts, and this is not considered significant in other jurisdictions. Whether it continues or not is a matter for the parties not the court. The court should not become a party by seeking to “facilitate reconciliation”.
- (ii) Some children—and our research found a significant proportion—did not want to see the offender. Most felt that adults and courts in particular did not take their views seriously.

Page 8

1. One could argue that those in a domestic context are arguably more serious.
2. Need to refer to likelihood of course of conduct here.

- 4(b) These may apply but there be no appropriate resources—such as a perpetrator programme—to act as containment.

Page 9

1.22 Why is gender not included in this list, especially in light of the impending gender duty?

1.23 Surely the home should be a location where levels of harm—which are not just injury—are enhanced.

BREACH OF A PROTECTIVE ORDER

Page 5

1.14 Meaning is unclear here—surely the course of conduct and the breach are significant, especially if the victim is attempting to effect separation. Here the breach is an exercise in control—a message that “I will not let you go”, “I decide if you are safe or not”.

1.16 The threat of potential or future harm can be very subtle in DV cases, and courts need to be mindful that even sending a bunch of flowers or a card with a specific picture may have meanings that carry threats and significance.

Page 6

- (i) vulnerability is more widely defined here than in the first document, they should be similar and both should also specify disability.

Professor Liz Kelly

April 2006

2. Memorandum submitted by the Crown Prosecution Service

INTRODUCTION

1. The Crown Prosecution Service (CPS) provides an independent public prosecution service for most criminal cases in England and Wales.

2. The CPS is in the midst of far-reaching modernisation that entails the embedding of statutory charging, the implementation of an advocacy strategy and the roll out of a network of witness care units. The CPS has undertaken these and other reforms against a very significant programme of community engagement, in particular with the domestic violence community, in a way that was not done historically.

3. Domestic violence has been taken increasingly seriously by the CPS over the past few years. This has seen an increase in successful convictions from 46% in 2003 to 59.7% by April 2006, against a background of increasing numbers of prosecutions and a reduction in the withdrawal rate of victims. Details are given below.

4. The CPS has played an influential key role in developing the government-wide domestic violence agenda, with policy, practice and evaluation of the innovative new specialist domestic violence court systems.

KEY MECHANISMS FOR ENHANCED PERFORMANCE

5. Over the past five years the CPS has:

- (a) integrated domestic violence into
- (i) ways of charging cases—Code, Guidance on Charging, Proactive Prosecutor Training.
 - (ii) support systems for victims—through the Victims’ Code, Prosecutors’ Pledge and links with Witness Care Units.

6. CPS has had a Domestic Violence Policy and Guidance for Prosecutors since 2001, which was revised in 2005—informed by key stakeholders.

7. Every CPS Area has a lead DV coordinator—a champion and local lead.

8. The first joint Training Manual with the police—CENTREX¹ was produced in 2005.

- (a) Since April 2005, 1,300 CPS staff have been trained, of which just under 900 were prosecutors;
 - (b) By March 2007, 2,500 CPS staff will have been trained; and
 - (c) All prosecutors and caseworkers will be trained by March 2008.
-

¹ Central Police Training and Development Authority.

INNOVATION

9. A two-year domestic violence project (2003–05) was undertaken to test and develop measures to improve effective prosecutions.

- (a) With DCA, five specialist DV courts were evaluated (Cardiff, Derby, Leeds, West London and Wolverhampton).
- (b) Building on this, two pilot specialist DV court systems were evaluated in Caerphilly and Croydon, for one year in 2004, which provided excellent results, see Appendix A:
 - (i) reducing victim retractions by 26% and increasing convictions by 19%;
 - (ii) Nine months after the end of the pilots Caerphilly had increased their guilty pleas by a further 34% (up to 61% from 21% at start of pilot) and reduced victim retractions by a further 10% (down to only 17%);
 - (iii) training of magistrates and development of dedicated panels was noted, by the evaluators, to deliver more “appropriate sentencing” including rehabilitation programmes.

10. CPS has worked in a tri-partite steering group with the Home Office and HMCS in implementing 25 specialist DV courts, set up in April this year and based on the model developed from the pilot results. Within this steering group a network of independent domestic violence advisors (IDVAs) is being developed to support victims, especially in specialist DV courts. CPS has set up monitoring of prosecution outcomes and the steering group is planning a further 25 courts for next year.

11. Good Practice Guidance was developed for the CPS from the pilot projects and we are now addressing the implementation of the lessons.

12. A CPS National DV Team oversees implementation of these plans and consults with an External Consultation Group, on a quarterly basis, including lead domestic violence specialists, including Women’s Aid and Respect.

PERFORMANCE DATA

13. Detailed performance management of domestic violence cases has been undertaken across all CPS Areas in England and Wales with some impressive results, see Appendix B:

- (a) From April 2004 to April 2005 the recorded volume of cases prosecuted has increased by 43% (from 34,839 to 49,782 cases);
- (b) Successful convictions has increased from:
 - (i) 46% in 2003 to 59.7% by April this year;
 - (ii) the aim is to increase this to 64% by 2007;
- (c) This lags behind the figure for wider convictions, nonetheless a 13% improvement in this complex and often challenging area of work, within 2 years is very significant;
- (d) In fact the data from the Specialist DV courts shows even more improvement—indicating 71% successful outcomes, nearly reaching the national average of 82.3% for all prosecutions (from CPS DV Snapshot Dec 2005);
- (e) Victim retractions have reduced from:
 - (i) 44% in 2004 (HMCPSI/HMIC report) to
 - (ii) 30% in our December 2005 snapshot of all Areas;
- (f) CPS has also discontinued less cases and used less bindovers.

FUTURE PLANS

14. CPS plans for the coming years include:

- (a) Working with HO and HMCS in expanding the development of Specialist DV courts, with their identified improvement to successful outcomes;
- (b) Training all prosecutors and caseworkers by 2008;
- (c) Continuing to improve performance as prosecutors, increasing successful outcomes;
- (d) Extending monitoring of domestic violence, ensuring a breakdown by gender and ethnicity of all cases from April 2006 and separate analysis of Specialist DV Court data.

SENTENCING GUIDELINES COUNCIL CONSULTATION DOCUMENTS

15. And lastly, in specific response to the Sentencing Guidelines issued, the CPS welcomes these guidelines and the consultation period. It is important that this consultation period is used to help inform the final guidelines.

BRIEFING ON CPS PILOT COURTS EVALUATIONS AND DATA

CROYDON PILOT

- The pilot was based in an urban setting, using a specialist DV cluster court, with trained staff, including a panel of dedicated magistrates, which led to improved evidence used in prosecutions, successful outcomes in cases where victims had withdrawn and improved penalties with compliance hearings².

CAERPHILLY PILOT

- The pilot was based in a more rural setting. It used an operational team of a dedicated prosecutor, police officer and independent DV Advisor within a multi-agency partnership fast-track system, which led to reduced victim retractions, more guilty pleas and convictions and a reduction in the time taken to conclude cases.

LESSONS FROM PILOTS—CPS GOOD PRACTICE GUIDANCE

- The good practice identified from the pilot sites was documented and formally distributed to all CPS Areas and community partners. The Guidance identified 10 key action points which would improve the prosecution of domestic violence cases. The guidance provides valuable assistance to Areas in developing their DV work plans for 2006–08

THE KEY LESSONS FROM THE VICTIMS IN THE PILOTS

- The evaluation of the seven DV courts identified that one of the key elements making SDVC systems effective is the provision of an Independent Domestic Violence Advisor (IDVA) to work alongside the court process and provide specialist support for the victim.
- Victim satisfaction, confidence and feelings of safety were integrally linked to the level of information and support they received especially from these IDVAs.
- Victims valued pre-court visits, notice of court dates, witness facilities at court and updating on court outcomes.
- Concerns were raised about vulnerability in court and the little use of special measures as well as some victims specifying they “felt that magistrates lacked understanding of the complexity of individual cases”.
- Victims in the pilots also commented on the good practice of their views being reflected through pre-sentencing reports.
- The evaluation also recommended more use of Victim Personal Statements to ensure that the views of the victim, especially in relation to their safety, were taken into account. This could be an added dimension in helping courts assess victim safety in cases.
- The evaluation of the two pilot DV courts also recommended more “appropriate sentencing” through the use of community rehabilitation orders, with perpetrator programmes³.

Pilot Results:

IN CROYDON AND CAERPHILLY WHICH RAN FOR 12 MONTHS

Reporting and prosecution of cases	Increased by up to 50%
Victim retractions	Reduced by 26%
Cases continuing with successful outcomes, following victim retractions	Increased by up to 23%
Guilty pleas	Increased by 6%
Convictions	Increased by up to 19%
Discontinuances	Decreased by up to 19%
Cases where no evidence was offered	Reduced by up to 18%
Time taken for cases to be completed	Reduced by 12%
Victim participation and satisfaction and public confidence	Increased

² A hearing after the defendant has been sentenced to a community rehabilitation order to check compliance with this order.

³ Note long waiting lists were experienced and criticised in evaluation.

CAERPHILLY

The results of Caerphilly were monitored for a further nine months with even more impressive findings. Over the whole 21 month period statistics continue to improve:

- Victim retractions reduced from 53% to 17%,
- Guilty pleas increased from 21% to 61%, and
- The overall improvement of bringing perpetrators to justice rose to 73%.

Appendix B

KEY CPS NATIONAL DOMESTIC VIOLENCE STATISTICS

DOMESTIC VIOLENCE SNAPSHOT

We have undertaken an annual snapshot of domestic violence data during the month of December over the past few years.

(2005 not yet published—due summer 2006)

<i>Year</i>	<i>Successful outcomes</i>	<i>Specialist DV courts successful outcomes</i>	<i>Victim retractions</i>
2003	46%	n/a	37%
2004	53%	n/a	35%
2005	59%	71%	30%
Change from 2003	+ 13%	n/a	− 7%

A 13% improvement in this complex and often challenging area of work, within 2 years is very significant.

NATIONAL COMPASS DATA

Since 2004 it has been possible to collect annual data using our computer and case management system COMPASS and measure the proportion of successful outcomes.

(2005 not yet published but included here)

<i>Year</i>	<i>Number of cases</i>	<i>Successful outcomes</i>	<i>Discontinuances</i>	<i>Bindovers</i>
2004–05	34,839	55.0%	37.0%	18.2%
2005–06	49,782	59.7%	33.0%	14.9%
Change from 2004–05	+ 43%	+ 4.7%	− 4.0%	− 3.3%

- Within a very significant increase in volume of cases, from 34,839 to 49,782 (a 43% increase), we have an increase in successful outcomes from 55% to 59.7%.
- We have reduced discontinuances by 4% and reduced bindovers by 3.3%.
- We also positively note that from April 2006 we will be able to breakdown the data by gender and ethnicity.
- We also will be able to specifically separate out the data ongoingly for Specialist DV courts, to enable comparison across Areas.

3. Memorandum submitted by Refuge

1.1 Refuge welcomes the Sentencing Guidelines Council's intention to review sentencing with regard to offences of domestic violence and is in broad agreement with several of the Council's recommendations. There are however, a number of proposals with which Refuge has serious concerns and both are outlined in brief below.

ASSESSING SERIOUSNESS

2.1 Refuge strongly believes that violence and abuse perpetrated over time within the context of an intimate relationship should, in principle, be considered as more serious than one-off violence perpetrated against a stranger, largely because of the gross breach of trust at the heart of such abuse.

AGGRAVATING FACTORS

3.1 Refuge agrees that the abuse of trust and of power should be viewed as aggravating factors.

3.2 Whilst Refuge believes that all victims of domestic violence are potentially vulnerable, it too considers that the co-occurrence of additional factors, such as those highlighted by the Council, might increase a victim's vulnerability. Disability, ill health and or age (eg elder abuse and or the associated abuse of any children) are additional factors which Refuge believes should be viewed as aggravating any offence of domestic violence.

3.3 Refuge agrees that exposing children to domestic violence should be viewed as a particularly aggravating factor. Refuge further believes that the court should be alert to the considerable overlap between abuse of a woman and the abuse of her child by the same perpetrator and the very real risk to both when they are considering imposing either a short custodial or non-custodial sentence upon a perpetrator. Risk assessment is absolutely crucial in such circumstances, as is on going monitoring for safety of all victims, particularly where the perpetrator is to continue to reside in the family home.

3.4 It is broadly accepted by those working in the field, that child contact arrangements are often used by domestic violence perpetrators as a means of further abusing their victims; and this has the potential to negatively impact on children as well as on the residential parent. Refuge would strongly recommend thorough assessment of any children involved, as well as the residential parent, prior to establishing contact arrangements. Close monitoring for physical and psychological safety of victims should be an integral part of any arrangements ordered by the court. If abuse is found to occur, Refuge would support a return to court on two levels: firstly, to the sentencing court, to address the perpetrator's recurrent abuse and reconsider the previous sentence imposed; secondly to the family court, to reconsider arrangements for contact.

3.5 It is positive that the Council has recognised the negative effects that cumulative abuse can have upon victims and Refuge acknowledges the necessity, in a legal context, that such a history is "proven" and or accepted. As research indicates that women are assaulted on average 35 times before calling the police, and there are few formal records to "prove" that violence occurred, Refuge hopes that "proof" on the balance of probabilities will suffice in such cases.

3.6 Refuge agrees that disobedience with respect of court orders is an aggravating factor.

3.7 Refuge agrees that violence which is so severe it causes a victim to leave home, should be viewed as an aggravating factor. If the victim has children, and they must change school in order to remain safe from further violence, then Refuge believes this should aggravate the offence even further.

MITIGATING FACTORS

4.1 Refuge would agree with the Council, that an offender's "positive good character" outside the home will be of little relevance in terms of mitigation. Furthermore, it is difficult to see how one would be able to assert that a domestic violence perpetrator was able to demonstrate "positive good character" within the home. Refuge is also concerned about the Council's suggestion "*that positive good character is of greater relevance where the court is satisfied that the offence was an isolated incident*". In Refuge's experience, single acts of violence are rarely isolated incidents but rather represent the tip of an iceberg, where a victim has been subjected to many other forms of serious abuse. Research also shows that violence escalates in frequency and severity over time and that being hit once is a strong indicator that more violence will follow.

4.2 Refuge is extremely concerned about the Council's suggestion that the provocative conduct of the victim might be presented as just mitigation in relation to a domestic violence offence. Denying responsibility and blaming the victim is one of the main vehicles by which an abuser maintains psychological power over the abused. Research has shown that only 17% of abused women view their experiences as criminal and around a third agree they are victims of domestic violence. Refuge's own experience confirms the extent to which abusers are successful in this respect, with many of our residents blaming themselves for the abuse they have suffered and spending years trying to change their own behaviour in order to avoid being hit or humiliated. It would be a great pity if the criminal justice system reinforced the negative messages of the abuser and blamed the victim for provoking the violence she has suffered.

OTHER FACTORS INFLUENCING SENTENCE

5.1 Refuge is very much in favour of ascertaining the wishes and views of service users in general, but believes this to be a potentially dangerous and counter-productive practice when applied to domestic violence victims. The Council rightly states that it must be confident that any wishes (as expressed by the victim) are genuine and presumably not coerced. Refuge would suggest that one must be more than confident, one must be convinced beyond doubt, on the basis of thorough assessment with both victim and perpetrator, that any reduction in sentence is both appropriate and safe. Refuge would go further however and suggest that any sentencing decisions should be made solely on the basis of the offence committed and not on the basis of victim's wishes.

5.2 The Council highlights the interests of children as relevant when considering whether to impose a sentence that enables the continuation of the relationship between the victim and the offender. Refuge agrees that the interests of children are extremely important, particularly with regard to protecting them and the non-abusing parent from any further harm. Refuge believes that direct assessments with children, in order to obtain their views and to explore the potential impact domestic violence might have had upon their attitudes, behaviour and development is essential to any ethical decision making process. Children must not however, be made to feel they are central to any decisions that might be made in relation to their father and the sentencing process in particular. Refuge is strongly of the opinion that the courts must make those decisions, purely on the basis of the offence committed, without recourse to the views of any victims.

FACTORS TO TAKE INTO CONSIDERATION

6.1 Refuge is most concerned by the Council's proposals to divert an offender from custody in circumstances where "*the preservation of the relationship is an important consideration*" and "*where the offender shows genuine signs of remorse and wishes to address his/her behaviour*". In addressing the first of these factors, Refuge believes that diversions from custody, downgrading of charges or reductions in sentences based on the relationship between the victim and the perpetrator, are unacceptable and out of step with the Government's emphasis on bringing perpetrators to justice more generally. If an offence warrants a custodial sentence, then this should be imposed, regardless of the nature of the relationship after the offence. In addressing the second factor, Refuge believes that signs of remorse are common place amongst domestic violence perpetrators, and indeed amongst many offenders who are about to receive a custodial sentence. But more seriously, Refuge strongly believes that signs of remorse are grossly insufficient to warrant reducing a custodial sentence to a "rehabilitation" order, with a requirement that the offender attends a domestic violence programme. Refuge would urge courts to always carry out a validated risk assessment of the offender's dangerousness and threat to the victim, prior to imposing a sentence which allows him to escape custody. Refuge would also recommend conducting a thorough assessment of the offender's suitability for specialist domestic violence intervention, including his motivation and capacity to change, prior to proposing he attend a perpetrators programme.

Refuge has concerns about the effectiveness of perpetrator's programmes, in particular anger management courses, for domestic violence offenders. There is no evidence to suggest that these programmes reduce violent behaviour in the long term. Indeed, prison managers have recently scaled down anger management courses and the Home Office now recognises that sending violent criminals on anger management courses is considered wholly inappropriate for those involved in "instrumental violence"—premeditated and purposeful acts of violence—on the grounds that the courses "have the potential to equip the offender with additional control mechanisms and increase his/her capacity to manipulate a situation to their advantage and power". Many practitioners who work with perpetrators of domestic violence in Canada and North America also believe that such courses can be counter-productive.

The provision of parallel programmes for women and children, as well as strict monitoring for safety should run in conjunction with any programmes that may—in spite of our concerns—be developed for perpetrators. Refuge also suggests that any further incidents of violence or non-compliance with group processes, should occasion a return to court, together with the strong likelihood that a custodial sentence would then be imposed.

Sandra Horley
Chief Executive

May 2006

4. Memorandum submitted by Respect

C. AGGRAVATING AND MITIGATING FACTORS

AGGRAVATING FACTORS

- (i) *Abuse of trust and abuse of power (page 4)*
 - Agree that these should be aggravating factors.
 - Disagree that where the offender and victim have been separated for a long period of time that the issue of power is necessarily diminished.
- (ii) *Victim is particularly vulnerable (pages 4–5)*
 - Suggest 2nd paragraph is moved to become first and then some of the vulnerabilities are listed.
 - Include victims with disabilities, and age as well as cultural, religious, language and financial vulnerabilities and pregnancy.

(vi) *Victims is forced to leave home (page 6)*

- Suggest include forced to use sanctuary scheme as well as forced to leave home.

MITIGATING FACTORS

(i) *Positive good character (page 6)*

- Agree that “one of the factors that can allow domestic violence to continue unnoticed for lengthy periods is the ability of the perpetrator to have two personae”.
- Therefore public good character should not be rewarded. It should be of no relevance (not “no more than minor relevance”).
- This should be for all offences including what may appear an isolated incident but rarely is (particularly as the definition being used includes a wide range of criminal and sub-criminal behaviour).
- Pre-sentence report assessment of future risk (and ongoing risks highlighted in the victim personal statement) should be of much greater relevance than past public positive good character.

(ii) *History of the relationship (page 6)*

- Agree that the court should “take into account anything occurring within the relationship as a whole”.

(iii) *Provocation (page 6)*

- The Sentencing Advisory Panel (SAP) advice to the Sentencing Guidelines Council (SGC) is clearer than what has been stated here.
- Suggest use SAP advice wording: “for provocation to be a mitigating factor, it will need to involve actual or anticipated violence including psychological bullying. Provocation is likely to have more of an effect as mitigation if it has taken place over a significant period of time”.

D. OTHER FACTORS INFLUENCING SENTENCING

(i) *Wishes of the victim and the effect of the sentence (page 7)*

- Suggest that a distinction needs to be made between the interests of the victim and the wishes of the victim. See Human Rights Act (HRA) distinction between wishes and interests.
- Agree that the seriousness of the offence should generally determine the sentence, not the wishes of the victim—agree with all 3 bullet points.
- Suggest that a victim’s interests, but not wishes, should be taken into account—particularly when related to future risk.
- Disagree strongly that a victim’s expressed wish for the relationship to continue should be a mitigating factor. This should not be a factor for the court:
 - There is no way of determining if it is genuine and won’t expose the victim to further risk.
 - It takes no notice of risk posed to other victims—children and future victims.
 - Gondolf’s⁴ research showed that repeat assault is more likely when couples stay together. Apart from the immediate risk of separation and in cases of ongoing stalking/harassment, victims are at greater risk if they stay in a relationship—so a continuing relationship should not be seen as a mitigating factor.

(ii) *Interests of children (page 7)*

- Courts should not be imposing sentences with the aim of continuing the relationship between victim and offender—this is not the role of the court!
- See above (i) wishes of the victim and effect of sentence.
- Sentencers are not equipped to determine what the best interests of the child are based on general guidance—this is the job of the family courts and requires detailed and specialist assessment.
- It is not appropriate to balance the harm of a disrupted relationship with the harm of further domestic violence—the Children Act views domestic violence as “significant harm” and a child protection issue in and of itself.
- The safety of the child should be paramount.

⁴ Gondolf, E *Batterer Intervention Systems* (2002).

E. FACTORS TO TAKE INTO CONSIDERATION

Paragraph 4(a)

- *Respect* disagrees that an offender's expression of genuine remorse should have an impact on sentencing and believe that this section needs to be changed.
- The court has no way of measuring whether an offender's remorse is genuine. Indeed it is a feature of domestic violence that perpetrators of domestic violence demonstrate remorse. They should not be rewarded for something which is a feature of their offending!
- Some perpetrators are genuinely remorseful but remain high risk—it is the risk that needs to be the priority in sentencing.
- If the offender knows that expressing remorse will mean that he avoids custody, there is a huge incentive to express remorse.

Paragraph 4(b)

- *Respect* strongly disagrees that the preservation of the relationship and/or the demonstration of genuine signs of remorse by the offender should result in a non-custodial sentence when the custody threshold has been reached. We are very concerned that these two issues have been highlighted as the only reasons a non-custodial sentence might be considered—neither are appropriate.

Paragraph 4(c)

- The sentencing of convicted offenders has several functions:
 - Justice.
 - Punishment.
 - Rehabilitation.
 - Reducing risk of future harm.
- Sentencing needs to take all of these into account—*Respect* believes that the most important of these is reducing future harm.
- *Respect* is not aware of any research into the effect of different sentencing options in domestic violence cases in the UK—so it is hard to predict whether short custodial sentences have any impact on risk of future harm. However, what we know about domestic violence (being about entrenched patterns of behaviour based on power, control and entitlement) tells us that a short custodial sentence on its own is unlikely to bring about lasting change in a perpetrator and is therefore unlikely to reduce the risk of future harm (to the victim, children and future victims).
- However, when the custody threshold has been reached, a custodial sentence should not be dismissed (particularly as to have reached the custody threshold a serious crime such as GBH or ABH is likely to have been committed). A custodial sentence may well have a deterrent effect and gives a clear message to the victim, perpetrator and the community that domestic violence is taken seriously. It will also ensure that justice is seen to be done and adequate punishment for the crime is imposed.
- We would suggest a case by case basis to sentencing.
- If an offender has both offered an early guilty plea and shows willingness to participate in a perpetrator programme it may be appropriate to impose a suspended order or a community order, in either case with a requirement to attend a domestic violence perpetrator programme.
- Pre-sentence report risk assessment is key to determining whether such a sentence is appropriate.
- In cases where the custody threshold has been reached, *Respect* would like to see exploration of the use of Custody Plus or other such means by which justice/punishment and rehabilitation/risk of future harm are addressed jointly—by use of both custody and community rehabilitation orders.
- There should be clear guidance that fines and bindovers are not appropriate sentencing options in domestic violence cases.

Paragraph 4(d)

- If the perpetrator has previous convictions for domestic violence (or other violence against women or children) related offences and the custody threshold has been reached, then a custodial sentence should always be imposed.

Jo Todd
 Director
 May 2006

5. Memorandum submitted by Southall Black Sisters

Southall Black Sisters (SBS), a not-for-profit organisation, was established in 1979 to meet the needs of black and minority women. Although based in West London, our reach is national. Through advice, casework and campaigning, our aims are to empower women to gain more control over their lives; live without fear of violence or racism; and assert their human rights to justice, equality and freedom.

SBS welcomes the consultation and acknowledges that many of the principles which underpin the guidelines are sound and will be a considerable improvement on the current situation. We particularly welcome the Council's definition of domestic violence and the understanding of domestic violence that is promoted throughout the consultation, especially the view that it cannot be considered any the less serious than violence between strangers.

SBS does not seek to address each and every question raised. Instead, we make some general comments and observations.

SAFETY IS PARAMOUNT

Our starting point is that any view on sentencing must be driven first and last by the need to ensure that victims of domestic violence will be safe from the risk of further violence and harassment. To this extent, a court must consider all the risk factors present in a case before making a decision as to what sentence to give within the range of permissible sentences that may be available for the offence in question.

Where non-custodial sentences are considered appropriate, measures must be in place to ensure that the victim will be safe, either by placing additional conditions or by granting a victim the appropriate protection orders or by ensuring that she has the appropriate help to obtain these orders.

Perpetrator Programmes

We agree that in principle, perpetrator programmes should not be excluded in the disposal of cases involving domestic violence. But as the guidelines suggest they should be limited to the less serious offences. In view of the significance given to perpetrator programmes in sentencing, we also wish to highlight some concerns.

First, for perpetrator programmes to be effective in ensuring that all women and men irrespective of race, culture and religion are treated in the same way, there must be national minimum standards laid down. We suggest that at the very least, they should all comply with the national minimum standards laid down by Respect, and have as their starting point, the need to ensure the safety of all victims. We are extremely concerned that if such programmes are not governed by overriding principles which recognise the fundamental right of women and children to live free from violence and for abusers to be held accountable, a relativist approach to rights and responsibilities will emerge which could signal the view that some women and children are more deserving of state protection than others or that domestic violence is more excusable if it occurs in a different cultural context.

Secondly, perpetrator programmes must be funded by central government and form part of an overall nationally co-ordinated strategy on domestic violence, which takes account of the need for more resources, such as specialist refuges for children and minority women, adequate funding for probation and social services and legal aid for injunctions. Without such resources in place, disposal by way of perpetrator programmes will be inconsistent and discriminatory.

Our main concern is that at present there is a severe shortage of such programmes generally and they are non-existent for abusers from minority communities. Few if any of the existing programmes have the expertise, language skills or knowledge to address abuse and violence in minority communities. This begs the vital question of what should happen to perpetrators from minority communities? One consequence of the proposal to make more or better use of perpetrator programmes rather than impose short custodial sentences, is that black and minority abusers who cannot be directed to such schemes will be the subject of disproportionate custodial sentences. This will result in the over-representation of black and minority men in the prison population. On the other hand, there is a fear that in order to avoid custodial sentences and in the absence of perpetrator programmes, abusers from minority communities may receive relatively lenient sentences. None of these outcomes are desirable and in the interest of ensuring that guidelines can be applied equally across race and class divisions, it is imperative that the need for sufficient perpetrator programmes be addressed as a matter of urgency.

The significance of an absence of perpetrator programmes for abusers within minority communities cannot be underestimated. There is severe underreporting of domestic violence in minority communities, where the incidence of domestic violence, homicides (including honour killings) and suicides are high due to cultural pressures on women to maintain silence.

For example, research shows that the suicides rates amongst Asian (subcontinent) women in the UK are up to 3 times the national average especially amongst those aged between 15 and 24.⁵ The research shows that pressures which lead to suicide, including the need to maintain cultural identity and tradition are intensified in young Asian women, given their rigidly defined roles in Asian society. ‘Submission and deference to males and elders, the financial pressures imposed by dowries, and ensuing marital and family conflicts have been contributory factors to suicide and attempted suicide in young Indian women’⁶. In our experience, in the face of violence or abuse, many Asian women feel that they have no option but to self harm or kill themselves. Culturally powerful obstacles of *izzat* (honour) and *sharam* (shame) prevent women from disclosing violence or leaving their marriage. Many women are rejected and isolated if they break with the cultural norms of their community. In extreme cases they are killed in what are termed ‘honour killings’. Religion and popular culture reinforce the notion that a woman should suffer her fate in silence and that it is preferable to die than to dishonour family name. Outside the community, significant obstacles such as racism and discrimination, lack of English and lack of access to appropriate support services, compound the obstacles faced. Many therefore internalise the abuse and violence they are subjected to and this finds expression in psychiatric or psychological illness or harm including suicidal thoughts.

We would also like to point out that in many minority communities, abuse and violence in the domestic context is often perpetrated by other women. In many extended Asian families for instance, perpetrators of abuse are often other members of a husband’s family, including female members, who perpetrate abuse with or without the collusion of the husband. We are unsure as to how perpetrator programmes will address this problem.

It is therefore incumbent upon the Sentencing Guidelines Council to ensure that guidelines are implemented in a context where there are perpetrator programmes for all abusers, in order to avoid discrimination in the outcome of sentencing for both men and women.

AGGRAVATING FACTORS

We agree with the list of factors outlined which go to determining whether or not there are aggravating features. We particularly welcome the inclusion of the impact on children and using contact arrangements with a child as aggravating features. However, we make the following comments.

Vulnerability

We suggest that issues of disability, lack of language, lack of immigration status (which is often ruthlessly exploited and leads to the perpetuation of some of the worst cases of violence imaginable such as imprisonment, starvation and domestic slavery), should be taken into account as aggravating features where it is clear that such vulnerability was deliberately exploited. In cases, where victims have insecure immigration status for example, our experience and that of other organisations show that perpetrators subject women to violence with virtual impunity. They retain all essential documents including passport and threaten them with deportation if they report to any outside body. They know that such women fear deportation and have nowhere to go, even in an emergency because they cannot access social housing including women’s refuges, and welfare benefits—the necessary pre-requisites to reporting abuse.

A proven history of violence or threats by the offender in a domestic setting

We agree that an assessment of the seriousness of an offence should recognise the cumulative effect of a series of violent incidents or threats over a prolonged period, where such conduct has been proved or accepted.

Factors which should go to proving or accepting a history of violence should include previous convictions for offences involving domestic violence, court orders, police involvement, findings of fact in another court, witness statements, victim statements, medical reports, divorce proceedings on the grounds of violent or abusive behaviour etc.

MITIGATING FACTORS

Positive good character

Positive good character should not be any more than a minor if not negligible mitigating factor. Even where the court is satisfied that the offence was an isolated incident, good character has to be balanced against other more important factors such as history of the relationship and risks to the safety and well being of the victim or her children.

⁵ See for example, VS Raleigh: “Suicide Patterns and Trends in People of Indian Sub-Continent and Caribbean origin in England and Wales”. *Ethnicity and Health* (1996); VS Raleigh, L Bulusu and R Balarajan “Suicide and Self-burning Among Indians and West Indians in England and Wales”. *British Journal of Psychiatry* (1992).

⁶ VS Raleigh *et al*, “Suicide and Self-burning Among Indians and West Indians in England and Wales”, *op cit*.

History of the relationship

We agree with the view that assertions that an offence, at least in part, has been provoked by the conduct of the victim need to be treated with great care, both in determining whether they have a factual basis and in considering whether in the circumstances the alleged conduct amounts to provocation sufficient to mitigate the seriousness of the offence.

Whilst the history of a relationship must be taken into account, there is a danger of the excuse of provocation being used inappropriately. It is vital that there are clear directions as to how provocation is to be perceived. Perhaps the term “gross provocation” should be used since this is consistent with the use of the term elsewhere in criminal law.⁷ We agree with the Sentencing Advisory Panel’s advice in this respect and suggest that this advice should define the circumstances in which provocation will be taken into account:

“For provocation to be a mitigating factor, it will need to involve actual or anticipated violence including psychological bullying. Provocation is likely to have more of an effect as mitigation if it has taken place over a significant period of time.”

In addition, there should not be an automatic presumption that a short relationship will mitigate against a harsh sentence. As stated above, some of the most horrific incidents of domestic violence occur within the first six months or year of a marriage in cases where foreign women join their spouses in the UK. Within a short period, they are often starved, isolated, imprisoned, denied medical services, forced into domestic servitude as well as subject to intense psychological abuse and sexual and physical violence. If the duration of a relationship is considered in isolation of other factors, the gravity of the offence may be overlooked.

OTHER FACTORS INFLUENCING SENTENCE

Wishes of the victim and effect of the sentence

In assessing whether or not a victim’s wishes are genuine, at the point of sentencing, a victim must be given the opportunity to consult with a supporter worker or advocate separately, away from the glare of her abuser(s), in a safe environment. This is in addition to obtaining an up to date victim statement and pre-sentence report.

Interests of the children

Deciding what is in the best interest of children is an extremely difficult exercise, but we believe that in cases of domestic violence where children have been exposed to abuse, there ought to be a presumption that a more severe sentence will be imposed. This should apply in particular to cases where domestic violence is perpetrated against children or where children are on child protection registers or where abusers have been denied contact by the family courts or where there is a long history of domestic violence in which the perpetrator has not cared whether the children have been indirectly affected. Our experience and research shows that children are adversely affected by relationships in which they have witnessed violence and abuse. Most children feel more secure in stable relationships even if that involves living with only one parent.

Ultimately, the best interest of children should be determined by the existence of risk factors which compromise safety and well being, and the question of whether a positive relationship between children and the offender will be disrupted. The determination should not be based on the question of whether or not a custodial sentence will result in the continuation of a relationship between a victim and an offender.

Monitoring

As a priority, we also recommend monitoring sentencing outcomes in all domestic violence cases. Cases which involve violence and abuse within a domestic context should be identified as domestic violence cases at the sentencing stage and should be recorded as such. This will ensure that in future, there are reliable statistics with which to measure the success or otherwise of the proposed sentencing guidelines.

FACTORS TO TAKE INTO CONSIDERATION

We agree with the list of factors outlined, subject to the comments made above and below. We would add that the general underlying principle has to be a presumption of a custodial sentence for serious cases of domestic violence.

⁷ See for example the Law Commission’s Consultation Paper No 177: *A New Homicide Act for England and Wales?* which defines a new partial defence of provocation as one that involves gross provocation or leads a person to fear for her life.

Preservation of a relationship

Our view is that this is an extremely problematic factor. In most cases, women withdraw charges often at a late stage of proceedings, for a variety of reasons, including the need to ensure that their children are not deprived of their father if a custodial sentence is imposed. (Although it has to be recognised that reasons for continuing and discontinuing proceedings may vary in different communities.) Those cases that proceed are more likely than not to proceed because a victim wishes to do so in the full knowledge that a custodial sentence will be imposed. In such cases, the preservation of a relationship will not be a significant factor and should not be regarded as such. In any event, our view is that other factors such as the seriousness of the offence, the presence of risk factors which suggest that safety will be compromised and the history of the relationship between victim and the offender must take priority.

If less serious domestic violence cases are disposed of by way of suspended sentences, community orders and perpetrator programmes, then what is left are the more serious cases, in which case we do not see the relevance of this factor since the seriousness of the offence, the history of the relationship and any risk to the victim or her family will be the overriding factors in determining whether a non-custodial sentence should or should not be imposed. We accept that short custodial sentences may not achieve much, but in our experience, in a significant number of cases, the threat of imprisonment often has the desired effect of making an offender cease his abusive behaviour. We suggest that in serious cases where only a short custodial sentence is possible, suspended sentences coupled with a requirement to attend a perpetrator programme should be the norm. Moreover, where perpetrators are removed to perpetrator programmes, care must be taken to ensure that they do not have access to the victim including any children involved. Sanctions for non-compliance must also be in place.

We are also concerned that women from minority backgrounds in particular, who usually face intense internal pressures to conform to their cultural traditions, which includes maintaining their marriage at any cost, will fall under even greater pressure to preserve their relationships. Consideration of the need to preserve relationships in a culture where women face immense obstacles to reporting and ending an abusive relationship, will compound their difficulties and will represent a significant step backwards in their efforts to assert their right to live free from violence and abuse.

Expressions of remorse

In our experience, a typically abusive relationship often involves outbursts of violence followed by a period of contrition and remorse. This is often the case in the early stages of a relationship. Expressions of remorse often make a situation even more confusing for the victim. Most women are tempted into thinking that the violence will stop but it very rarely does. Contrition is often less evident where there is a history of violence and abuse. The use of remorse as a mitigating factor must therefore be questioned since it is itself a common feature of abusive relationships and therefore inappropriate.

Our view is that in cases, where the threshold for a custodial sentence has been crossed, instead of factors such as “preservation of a relationship” or the “expression of remorse”, the key factors determining whether a custodial sentence should be imposed should be any likelihood of the safety of the victim being compromised, the history of the relationship and whether there is a genuine desire on the part of the offender to change his behaviour (evidenced by willingness to attend a perpetrator programme and to comply with any other sentencing conditions).

BREACH OF PROTECTIVE ORDERS*The nature and context of the conduct that caused the breach*

We do not agree that the starting point for a custodial sentence should be circumstances where an order is breached by the use of physical violence only. Sometimes, even threats of violence and retaliation may be alarming and chilling, causing a victim to become fearful, anxious or distressed. In other instances, persistent harassment may cause significant psychological harm. We suggest that threats of violence, persistent harassment and direct violence should be the starting point for a custodial sentence, especially where such threats have been made against a background of a history of abuse.

We agree that where a breach of a protective order is concerned, reconciliation is an irrelevant issue. In any event, reconciliation should never be a guiding factor at any stage of a domestic violence case. Our concern about reconciliation arises directly from our casework experience of Asian and other minority women who are already subject to immense family and community pressure to reconcile with abusers for the sake of preserving family honour. Encouraging or facilitating reconciliation in a context where women have already been through informal methods of resolution within their communities, will be unjust and discriminatory since such women will be denied the protection that is available to other women in the wider society.

Expressions of remorse

See our comments above. Even if remorse appears to be genuine, where there is a history of abuse and where risk factors are present, a breach should invoke the presumption of a suspended sentence with a requirement to attend a perpetrator programme.

Aggravating and mitigating factors

Many of the comments made above in relation to the overarching principles in domestic violence cases are also pertinent to this section.

Southall Black Sisters

May 2006

6. Memorandum submitted by Professor Sylvia Walby

SYLVIA WALBY

Professor Sylvia Walby is author (with Jonathan Allen) of *Domestic Violence, Sexual Assault and Stalking: Findings from the British Crime Survey* (Home Office Research Study 276), <http://www.homeoffice.gov.uk/rds/pdfs04/hors276.pdf>, which produced nationally representative statistics on the extent and nature of domestic violence. She is the author of the report *The Cost of Domestic Violence* (Department of Trade and Industry, Women and Equality Unit), http://www.womenandequalityunit.gov.uk/research/cost_of_dv_Report_sept04.pdf, which estimated the cost of domestic violence to the public purse, business and individual victims. She is a Professor in the Department of Sociology at Lancaster University.

THE IMPLICATIONS OF REPEAT OFFENCES FOR SENTENCING

1. These comments concern one aspect of sentencing, that of the implications of the nature of domestic violence as a repeat offence. Domestic violence is often a repeat offence and there is a recognised need to address this in sentencing.

2. The British Crime Survey found that women suffering from domestic violence experienced on average 20 incidents in the last year.

3. The British Crime Survey found that the police came to know about domestic violence only in a minority of what were usually the most serious cases. The police learnt about domestic violence in only 13% of cases where there was one incident in a woman's adult life, rising to 34% where she had experienced four or more incidents. The police learnt about domestic violence among women in only 7% of cases where there was no injury, 20% of cases where there was a minor injury, 33% with a moderate injury and only 45% even where there was a serious injury (Walby and Allen 2004: Table 6.6).

4. The guidelines note that in determining the seriousness of an offence the Court should take note of the "cumulative effect of a series of violent incidents or threats over a prolonged period, where such conduct has been proved or accepted . . . Where an offender has previously been convicted of an offence involving domestic violence either against the same or a different partner, this is likely to be a statutory aggravating factor." In this way the guidelines would appear to implement the need to address the way that domestic violence is often a repeat offence, producing negative effects beyond the particular incident that is the focus of the court case.

5. However, there may be a difficulty in the extent to which repeat offences are taken into account in practice. This is because many repeat offences are not reported to and recorded by the police, and, even if they are recorded, may not each be subject to arrest, detection, prosecution and conviction. While repeat offences that are subject to conviction will be taken into account in sentencing, the guideline is ambiguous as to the way in which other incidents might be so addressed. What is the meaning of the phrase "proved or accepted"? What standard of proof is required before other incidents can be taken into account in sentencing?

6. Where only one incident is sufficiently proven to provide the basis for a court sentence, this may well underestimate the seriousness of the offence.

7. The Sentencing Advisory Panel had drawn attention to this difficulty in their advice to the Sentencing Guidelines Council. "Sentencers are sometimes faced with difficult decisions to make in domestic violence cases where there is a discrepancy between what is known generally about the nature of these cases and the facts of the specific incident as presented in court." It goes on to note that "the sentencer cannot pass sentence on the basis that violence has occurred frequently where the other incidents were not reported or charged, or have not been proved or admitted."

8. There are at least two ways that this difficulty, of how to address the repeat nature of the offence in sentencing, might be addressed. One is that the court might be allowed to take into account evidence of repeat offences different from and possibly at a lower standard of proof than that of a police record or a criminal conviction. The other is to make recommendations to the police as to the importance of recording, charging, and prosecuting multiple incidents within the course of conduct that constitutes domestic violence.

9. There are many forms of evidence of repeat incidents of domestic violence. For example, there may be a documented medical history or of seeking refuge or of contacting domestic violence support services. The development of a systematic way in which such evidence of multiple previous incidents might be submitted to the courts in a manner routinely acceptable to the CJS may help to address this issue.

10. There is a tension in policy as to whether domestic violence should be considered as a single course of conduct made up of a series of events, which is the usual approach in services supporting the victim, or whether each separate incident should be separately addressed, as is the requirement of the criminal justice system if the seriousness of domestic violence is to be adequately taken into account during sentencing. If sentencing is to reflect the seriousness of the repeat offences, then some way needs to be found within the criminal justice system to address this issue. If a lower standard of proof for repeat offences is regarded as unacceptable to the courts, then it is necessary for the recording, charging, and prosecuting of multiple incidents to become routine practice among the police and prosecution services.

11. One recommendation here is that the police and related agencies in the criminal justice system be encouraged or required to separately document and process each incident of domestic violence in order that its seriousness can be addressed in sentencing, while recognising the nature of domestic violence as a course of conduct.

12. In order that the effects of policy reforms, including but not only this reform of sentencing, can be assessed, it is necessary to be able to track, in a publicly accountable way, cases of domestic violence as they are processed by the criminal justice system. At the moment this is impossible. There is no specific offence of domestic violence and so crimes of domestic violence are dispersed across a range of offences, including various forms of violence against the person as well as others such as criminal damage. Official statistics on recorded crime, by the police, and criminal statistics on convictions and sentencing, by the courts, are not differentiated by whether they are domestic. Yet, in practice, the police do keep such records privately, in order to respond to demands for performance indicators on arrest rates for domestic violence incidents. It is time that the statistics on domestic violence in the criminal justice system were made systematic and public, so that the public scrutiny that is a prerequisite of policy improvement can operate effectively.

13. I recommend that relevant recorded crime and criminal statistics are differentiated by whether or not they are domestic, and that the information be routinely reported within official statistics on recorded crimes and criminal statistics.

14. Sentencing in cases of domestic violence will underestimate the seriousness of the offence unless improved ways are found to take previous incidents into account. This could be addressed by accepting a wider range of proof that such incidents have occurred, and by encouraging or requiring the police to record and process multiple incidents more systematically.

May 2006

7. Memorandum submitted by Women's Aid

INTRODUCTION

Women's Aid Federation of England (Women's Aid) is the leading national domestic violence charity which co-ordinates and supports a network of over 370 local organisations in England, providing over 500 refuges, helplines, outreach services and advice centres. Women's Aid's work is built on 30 years of campaigning and working in partnership with national and local government, health authorities, the justice system and voluntary organisations to promote the need for an integrated approach to prevent domestic violence and to protect abused women and children.

SUMMARY OF KEY ISSUES AND RECOMMENDATIONS

A. DEFINITION OF DOMESTIC VIOLENCE

Women's Aid's defines domestic violence as physical, sexual, psychological or financial violence that takes place within an intimate or family-type relationship and that forms a pattern of coercive and controlling behaviour.

Crime statistics and research both show that domestic violence is largely gender specific (ie predominantly experienced by women and perpetrated by men) and that any woman can experience domestic violence

regardless of race, ethnic or religious group, class, sexuality, disability or lifestyle. The British Crime Survey (Walby and Allen 2004) noted that when four or more incidents of domestic violence, sexual assault or stalking were reported, 89% of victims were women.

Domestic violence is recognised by the United Nations as having its roots in the historical status of women in the family and in society, and as a violation of women and children's human rights. Domestic violence has until recently been acceptable within UK culture. For example—it was only 1991 when rape in marriage was criminalised.

Women's Aid recommends that the definition within the Sentencing Guidance recognises the fact that domestic violence is frequently based on a pattern of coercive and controlling behaviours and is largely gender-specific.

Although the Court will focus on particular incident(s) of offending behaviour, it is also important to recognise that this is likely to be part of a pattern of coercive and controlling behaviour by the perpetrator over the victim. This would help inform the Court in its consideration of aggravating or mitigating factors.

B. ASSESSING SERIOUSNESS

Women's Aid welcomes the fact that these guidelines acknowledge that sentences for offences committed in a domestic context should be no less serious than offences committed in a non-domestic context.

C. AGGRAVATING AND MITIGATING FACTORS

(i) *Abuse of trust and power (page 4)*

Women's Aid agrees that these should be aggravating factor.

Women's Aid disagrees that the abuse of power is necessarily diminished after separation—research and experience show that in many domestic violence cases harassment, violence and abuse often continues long after separation and recommends that this should be removed.

(ii) *Victim is particularly vulnerable (pages 4–5)*

Women's Aid recommends that the second paragraph is put first since this is the general point and then the second paragraph should go on to describe the factors that are listed in the first paragraph. Disability, age, cultural and religious factors should also be included as affecting vulnerability.

Paragraphs (iii) & (iv)

Women's Aid welcomes the recognition that the impact on children and using child contact arrangements are considered to be aggravating factors.

(vii) *Victim forced to leave home (page 6)*

Women's Aid recommends that where a victim has been forced to make use of sanctuary schemes and civil remedies, this should also be included in this section.

MITIGATING FACTORS

(i) *Positive good character*

Women's Aid welcomes the statement that 'one of the factors that can allow domestic violence to continue unnoticed for lengthy periods is the ability of the perpetrator to have two personae'.

However, Women's Aid is very concerned that public good character should be taken into consideration. This should not be rewarded, and should not be taken into consideration in any incident even if it appears isolated, as most domestic abuse is repeated and serial abuse but is private and hidden. An assessment of victim interests and needs to be considered rather than character.

Women's Aid recommends that pre-sentence report assessment of future risk (and ongoing risks highlighted in the victim personal statement) should be of much greater relevance than past public "good character".

(ii) *History of the relationship*

Women's Aid agrees that the court should take account of the whole relationship in assessing the gravity of the offence. In this context, an explicit summary of what constitutes "coercive control" within the relationship may be helpful to the court.

Women's Aid agrees that assertions of provocation need to be treated with great care and supports the wording of the Sentencing Advice Panel advice to the Council:

"for provocation to be a mitigating factor, it will need to involve actual or anticipated violence including psychological bullying. Provocation is likely to have more of an effect as mitigation if it has taken place over a significant period of time".

Women's Aid believes that it is vital that conduct such as infidelity, adequacy as a parent or housekeeper, etc, should not be admitted as mitigating factors (as has sometimes been the case in the past).

D. OTHER FACTORS INFLUENCING SENTENCE

(i) *Wishes of the victim and effect of the sentence (page 7)*

Women's Aid recommends that:

- A distinction needs to be made between the interests of the victim and the wishes of the victim. See Human Rights Act (HRA) distinction between wishes and interests. This is particularly relevant when considering future risk.
- The seriousness of the offence should generally determine the sentence, not the wishes of the victim—agree with the guidance points on this.

Women's Aid disagrees strongly that a victim's expressed wish for the relationship to continue should be a mitigating factor.

- This should not be a factor for the court as there is no way of determining if it is genuine and won't expose the victim to further risk, and it also ignores the risk posed to other victims—children and future victims
- Research by Gondolf⁸ showed that repeat assault is more likely when couples stay together. Apart from the immediate risk of separation and in cases of ongoing stalking/harassment, victims are at greater risk if they stay in a relationship—so a continuing relationship should not be seen as a mitigating factor. It is important to focus on the crime and not the relationship.

(ii) *Interests of the Children (page 7)*

Women's Aid is concerned that the Children Act concept of the best interests of the child should be used in this limited context.

- The interests of children (and the continued relationship/contact with children etc) would not be considered in the sentencing of offenders convicted of violent crimes to strangers—this is a double standard.
- It is not the role of the criminal court to determine the best interests of the child and this section makes no reference to Section 120 of the Children Act 2002 (witnessing violence is a significant harm factor for children) nor to the considerable child protection issues. This is more rightly understood and managed within the family courts with detailed and specialist assessment by agencies such as CAFCASS.
- The management of risk and of victim safety (adults and children) should be the paramount considerations for the court.

E. FACTORS TO TAKE INTO CONSIDERATION

Paragraph 4(a)

Women's Aid disagrees that an offender's expression of remorse should have an impact on sentencing—this section needs to be changed.

- It is a feature of domestic violence that perpetrators frequently show remorse after their attacks in order to prevent victims leaving them.
 - Even if there is remorse the perpetrator may be highly unstable and remain high risk—this is what needs to be assessed.
 - If expressing remorse brings rewards (eg avoidance of custody), then this is a big incentive.
-

⁸ Gondolf, *E Batterer Intervention Systems* (2002).

Paragraph 4(b)

Women's Aid disagrees strongly that:

- The preservation of the relationship should be a consideration, as already stated there is evidence that shows the longer the relationship continues the more likely the violence is to recur.
- This suggestion of allowing remorse as a mitigating factor undermines previous guidelines set out in B and C. Remorse should not be used as a mitigating factor since as is already acknowledged in this document that domestic violence perpetrators often demonstrate “two personae”. It would be difficult to set criteria for or to measure “remorse” in cases of domestic violence.

Women's Aid recommends that:

- Safety has to be the paramount consideration and Risk Management measures are implemented as a matter of course.
- Remorse should not be considered as a mitigating factor.
- Sentencing should be based on the sentencing threshold (as stated in B. Assessing Seriousness) combined with Risk Assessment and Risk Management measures that need to be put in place alongside any sentence.

Paragraph 4(c)

Women's Aid support Respect's position on the sentencing of convicted offenders, as follows:

The sentencing of convicted offenders has several functions:

- Justice;
- Punishment;
- Rehabilitation;
- Reducing risk of future harm.
- Sentencing needs to take all of these into account—Women's Aid believes that the most important of these is reducing future harm.
- Women's Aid is not aware of any research into the effect of different sentencing options in domestic violence cases in the UK—so it is hard to predict whether short custodial sentences have any impact on risk of future harm. However, what we know about domestic violence (being about entrenched patterns of behaviour based on power, control and entitlement) tells us that a short custodial sentence on its own is unlikely to bring about lasting change in a perpetrator and is therefore unlikely to reduce the risk of future harm (to the victim, children and future victims).
- However, when the custody threshold has been reached, a custodial sentence should not be dismissed (particularly as to have reached the custody threshold a serious crime such as GBH or ABH is likely to have been committed). A custodial sentence may well have a deterrent effect and gives a clear message to the victim, perpetrator and the community that domestic violence is taken seriously. It will also ensure that justice is seen to be done and adequate punishment for the crime is imposed.
- We would suggest a case by case basis to sentencing.
- If an offender has both offered an early guilty plea and shows willingness to participate in a perpetrator programme it may be appropriate to impose a suspended order or a community order, in either case with a requirement to attend a domestic violence perpetrator programme.
- Pre-sentence report risk assessment is key to determining whether such a sentence is appropriate.
- In cases where the custody threshold has been reached, *Respect* would like to see exploration of the use of Custody Plus or other such means by which justice/punishment and rehabilitation/risk of future harm are addressed jointly—by use of both custody and community rehabilitation orders.
- There should be clear guidance that fines and bindovers are not appropriate sentencing options in domestic violence cases.

Paragraph 4(d)

- If the perpetrator has previous convictions for domestic violence (or other violence against women or children) related offences and the custody threshold has been reached, then a custodial sentence should always be imposed.
- Any suspended sentence or community order must be accompanied with a Risk Assessment and implementation of Risk Management measures.

- Fines may have a direct negative impact on victim & children. There should be clear guidance that fines and bindovers are not appropriate sentencing options in domestic violence cases.
- The safety and welfare of the victim is paramount and compliance with Risk Management of the perpetrator is crucial.
- The sentencing of convicted offenders has several functions:
 - Justice;
 - Punishment;
 - Rehabilitation;
 - Reducing risk of future harm.

Sentencing needs to take all of these into account.

- A case by case approach forms the basis of sentencing since when the custody threshold has been reached, a custodial sentence should not be dismissed (particularly as to have reached the custody threshold a serious crime such as GBH or ABH is likely to have been committed). A custodial sentence may well have a deterrent effect and gives a clear message to the victim, perpetrator and the community that domestic violence is taken seriously. It will also ensure that justice is seen to be done and adequate punishment for the crime is imposed. However a short custodial sentence on its own is unlikely to bring about lasting change in a perpetrator and is therefore unlikely to reduce the risk of future harm (to the victim, children and future victims).
- If an offender has both offered an early guilty plea and shows willingness to participate in a perpetrator programme it may be appropriate to impose a suspended order or a community order, in either case with a requirement to attend a domestic violence perpetrator programme.
- Pre-sentence report Risk Assessment is key to determining whether such a sentence is appropriate.
- In cases where the custody threshold has been reached, exploration of the use of Custody Plus or other such means by which justice/punishment and rehabilitation/risk of future harm are addressed jointly—by use of both custody and community rehabilitation orders.

ANNEX A OF GUIDELINE

(i) *Aggravating factors*

Women's Aid recommends that:

Paragraph 1.22 Factors indicating higher culpability must include hostility to the victim based on gender, addition to acknowledgement of race, religion and disability.

Paragraph 1.23 Factors indicating a more than usually serious degree of harm

Women's Aid recommends that in cases of domestic violence the Court should also consider:

- Violence in previous relationship;
- Other victims;
- Threats from other family members;
- Threats to children or other family members.

Nicola Harwin
Chief Executive

May 2006

8. Supplementary memorandum submitted by Women's Aid

NB this response complements our response to the Guidance on Overarching Principles for Sentencing in Domestic Violence Cases.

INTRODUCTION

Women's Aid Federation of England (Women's Aid) is the leading national domestic violence charity which co-ordinates and supports a network of over 370 local organisations in England, providing over 500 refuges, helplines, outreach services and advice centres. Women's Aid's work is built on 30 years of campaigning and working in partnership with national and local government, health authorities, the justice system and voluntary organisations to promote the need for an integrated approach to prevent domestic violence and to protect abused women and children.

We welcome the new provisions within criminal and civil law that form the basis of this guideline.

KEY COMMENTS

B. SENTENCING FOR BREACH

Women's Aid believes that the breach and any substantive offence should always be treated as separate offences and sentenced consecutively.

C. FACTORS INFLUENCING SENTENCING

1.15 Women's Aid agrees that the sentence should be for the breach or any substantive offence, rather than any further punishment for the original offence. However, if the offender was given a non-custodial sentence e.g. community perpetrator programme requirement, for an original offence that did reach the custody threshold, then custody for breach should be implemented.

1.18 Women's Aid welcomes the recognition that violent behaviour that is non-physical can also cause a high degree of harm and anxiety (and indeed is usually intentional in this respect), and should also attract a custodial sentence.

1.19 However we are concerned that this is not the view of the Council in relation to civil orders. In our experience, orders are breached in many ways that do not involve obvious threats or physical violence but which can terrify and terrorise. For example, a victim arriving home to find (supposedly innocuous) flowers on her pillow, or other evidence that her ex-partner/abuser has entered her home without permission, receives a clear controlling message about her lack of privacy and safety and his continuing access to her life.

1.20 In the view of Women's Aid, it should never be the role of the court to facilitate reconciliation between offenders and victims in cases of domestic violence as this may put the victim (and in some cases her children) at serious risk. As noted in our response to the Overarching Guideline on Domestic Violence, rehabilitative sentences e.g. domestic violence community perpetrators programmes should not be considered on the basis of the relationship but on the basis of an assessment of risk, and risk management, the interests (not wishes) of the victim and her children, and whether any such programme is considered suitable or appropriate for the particular level of crime and the individual offender.

1.21 Women's Aid reiterates our view that remorse should not be a factor in sentencing for domestic violence as this is frequently used by perpetrators as part of a pattern of abusing and controlling behaviour and in order to prevent victims leaving them. Even if there is remorse the perpetrator may be highly unstable and remain high risk—this is what needs to be assessed. If expressing remorse brings rewards (e.g. avoidance of custody), then this is a big incentive. As noted above, where the custody threshold has been met, a suspended sentence or community order should only be used where the above criteria in relation to risk and safety are considered, and should always involve a community re-education programme. Again, the use of Custody Plus should be considered in serious cases.

D. AGGRAVATING AND MITIGATING FACTORS

1.24 Criteria for vulnerability should include age and disability.

1.29 We welcome the recognition of the impact on children and context offered by contact arrangements to commit further offences.

1.32 Breach committed after long period of compliance. In our view it would be important to assess that this was the only breach, or whether the only recorded one, as the offender may have been stalking for some time. Again the impact on the victim and any children may be substantial in terms of renewed fears and anxiety for the future and should be taken into account. It would be helpful to have an indication of the nature of "long period".

1.33 Victim initiated contact. Women's Aid strongly disagrees that victim initiated contact should be considered mitigation, as this falls into victim-blaming. Firstly, the offender is responsible for his own behaviour and choices and the victim should not be held responsible for these. Secondly, she may be under pressure to resume contact with the offender from children, other family members and the offender himself, as well as constrained by family court orders which make management of contact very difficult. If some informal contact has taken place, the victim may well feel pressured or threatened into allowing this. Even if she has done so (e.g. because of financial or other pressures), if the order is therefore breached and especially if another substantive offence is committed, then this should not be treated as a mitigating factor.

Nicola Harwin
Chief Executive

May 2006

Reports from the Home Affairs Committee since 2001

The following reports have been produced by the Committee since the start of the 2001 Parliament. Government Responses to the Committee's reports are published as Special Reports from the Committee or as Command Papers by the Government. The reference number of the Government's response to each Report is printed in brackets after the HC printing number.

Session 2005–06

First Report	Draft Corporate Manslaughter Bill (First Joint Report with Work and Pensions Committee)	HC 540
Second Report	Draft Sentencing Guideline: Robbery	HC 947
First Special Report	Memorandum from the Home Office: Progress in implementing accepted Committee recommendations 2001–05	HC 1007

The following reports were produced by the Committee in the 2001–05 Parliament.

Session 2004–05

First Report	Rehabilitation of Prisoners	HC 193 (<i>Cm 6486</i>)
Second Report	Work of the Committee in 2004	HC 280
Third Report	Home Office Target-Setting 2004	HC 320 (<i>Cm 6592</i>)
Fourth Report	Police Reform	HC 370 (<i>Cm 6600</i>)
Fifth Report	Anti-Social Behaviour	HC 80 (<i>Cm 6588</i>)
Sixth Report	Terrorism and Community Relations	HC 165 (<i>Cm 6593</i>)

Session 2003–04

First Report	Asylum and Immigration (Treatment of Claimants, etc.) Bill	HC 109 (<i>Cm 6132</i>)
Second Report	Asylum Applications	HC 218 (<i>Cm 6166</i>)
Third Report	The Work of the Home Affairs Committee in 2003	HC 345
Fourth Report	Identity Cards	HC 130 (<i>Cm 6359</i>)
Fifth Report	Draft Sentencing Guidelines 1 and 2	HC 1207 (<i>HC 371</i>)

Session 2002–03

First Report	Extradition Bill	HC 138 (<i>HC 475</i>)
Second Report	Criminal Justice Bill	HC 83 (<i>Cm 5787</i>)
Third Report	The Work of the Home Affairs Committee in 2002	HC 336
Fourth Report	Asylum Removals	HC 654 (<i>HC 1006</i>)
Fifth Report	Sexual Offences Bill	HC 639 (<i>Cm 5986</i>)

Session 2001–02

First Report	The Anti-Terrorism, Crime and Security Bill 2001	HC 351
Second Report	Police Reform Bill	HC 612 (<i>HC 1052</i>)
Third Report	The Government's Drugs Policy, Is it Working?	HC 318 (<i>Cm 5573</i>)
Fourth Report	The Conduct of Investigations into Past Cases of Abuse in Children's Homes	HC 836 (<i>Cm 5799</i>)