

12 July 2004

Dear Colleague,

CONSULTATION PAPER ON DOMESTIC VIOLENCE AND SENTENCING

The Sentencing Advisory Panel has been directed by the Home Secretary to propose sentencing guidelines to the Sentencing Guidelines Council on the issue of sentencing in domestic violence cases. There is no specific offence of domestic violence. It will be appropriate to charge any one of a range of offences, such as assault, harassment or criminal damage. This consultation paper sets out some of the key issues that are raised for sentencers when dealing with offences that have been committed in a domestic context.

The Panel starts from the premise that an incident of violence is not less serious because it takes place in a domestic context. There may be circumstances in which an offence in a domestic context is more serious than one in a non-domestic context. Yet, should the relationship between the victim and perpetrator of violence justify different approaches to sentencing? The attached consultation paper discusses some of these very difficult issues and their impact on sentencing.

In addition, this paper is written at a time when the Domestic Violence, Crime and Victims Bill is making its way through Parliament. In anticipation of the changes being brought in under the Bill, a section has been included on sentencing for breach of protective orders.

The Panel would like to canvass your views through a number of questions that are posed in the paper (a final list is attached at annex A). Please feel free to send in responses to all of the questions or those most relevant to your area of work or interest. It is hoped your answers will help to identify an *approach* to sentencing cases in domestic contexts that can be used to guide decisions made in courts.

Please send your response to Mrs Lesley Dix, Secretary to the Panel, at the Sentencing Guidelines Secretariat, either by post to Room G11, Allington Towers, 19 Allington Street, London SW1E 5EB, or by email to info@sentencing-guidelines.gsi.gov.uk. **Responses should be received by Tuesday 12th October 2004**

The Panel does not routinely publish responses to its consultation papers, but respondents' names will be published in the Panel's advice to the Council. In addition, all responses will be treated as public documents and will be made available to third parties on request. Anonymous responses will be accepted.

Yours sincerely,

Professor Martin Wasik
Chairman of the Sentencing Advisory Panel

SENTENCING GUIDELINES ON DOMESTIC VIOLENCE CASES

CONSULTATION PAPER

INTRODUCTION

1. The Home Secretary has directed the Sentencing Advisory Panel under section 81(3) of the Crime and Disorder Act 1998¹ to propose to the Sentencing Guidelines Council that it frame sentencing guidelines addressing the issue of sentencing in domestic violence cases. As pointed out in *Safety and Justice*² domestic violence can be harder to tackle than street violence. It occurs in “relationships where emotions may be high and loyalties divided; myths and outdated attitudes remain about a form of violence that was historically acceptable; and much of the violence takes place behind closed doors”.³ This consultation paper explores the issues that affect sentencing in domestic violence cases generally and more specifically suggests guidelines for breach of non-molestation and restraining orders.⁴ Guidelines on sentencing for breach of non-molestation orders are being provided in anticipation of the changes being brought in under the Domestic Violence, Crime and Victims Bill which will make any such breach a criminal offence subject to a maximum penalty of 5 years imprisonment. This consultation will in due course provide the basis for our advice to the Sentencing Guidelines Council on sentencing in domestic violence cases.
2. It has been argued that guidelines are needed because the sentencing courts do not treat domestic violence cases as seriously as cases of violent crimes involving strangers.⁵ The extent to which this is true is difficult to measure reliably. As domestic violence is not a specific criminal offence it cannot be compared and contrasted directly to cases involving general violence. Neither do general sentencing statistics identify whether an offence has been committed in a domestic or non-domestic context. Some research (see paragraphs 25 and 26) suggests that sentencers may be more lenient towards offenders who commit a violent offence within a domestic context, but that research must be interpreted with care.⁶
3. Sentencing courts can, of course, only deal with offenders who are brought before them, and who plead guilty or are convicted. The Panel recognises that very many cases of domestic violence are unreported, or for various reasons do not come to court. We understand the concern over this, and note the work that has been done recently to support vulnerable or intimidated witnesses throughout the whole process of reporting crime to giving evidence in court. We also note the efforts that have been made, both locally and nationally, to ensure that more of the perpetrators of domestic violence are brought to justice.⁷ These are essentially matters for the police and prosecution authorities, with

¹ Now repealed and replaced by section 170(2) of the Criminal Justice Act 2003

² Home Office (2003) *Safety and Justice : the Government's proposals on Domestic Violence*

³ *Ibid* p.10

⁴ The panel, in a separate exercise, is consulting on breach of community sentences which may also be imposed for offences committed in a domestic context.

⁵ Home Office (2003)

⁶ These studies are based on small sample sizes and do not reliably represent sentencing patterns across the Judiciary.

⁷ See, for example, CPS, *Policy for Prosecuting Cases of Domestic Violence*, 2002.

assistance from organisations such as Women’s Aid, the Witness Service, and Victim Support. Sentencing policy has a limited role here, though of course it is important that cases of violence are sentenced appropriately, whatever the context in which they are committed.

4. There is no specific statutory offence of domestic violence; instead, domestic violence can be charged as one of a wide range of offences (see paragraphs 13-14 below). The Panel has recently issued consultation papers on two such topics, manslaughter by provocation and the whole range of sexual offences under the Sexual Offences Act 2003.⁸ This paper, however, covers issues which are relevant across the range of offences that might be committed in the domestic context.

WHAT IS DOMESTIC VIOLENCE?

Definition

5. The Home Secretary’s referral suggests that the Panel follows the broad definition of domestic violence used by the Crown Prosecution Service (CPS), which is: “any criminal offence arising out of physical, sexual, psychological, emotional or financial abuse by one person against a current or former partner in a close relationship, or against a current or former family member.”
6. This definition includes all forms of violent and controlling behaviour, and includes male victims abused by females, victims in same-sex relationships and victims of abusive family members. It is a very broad definition. It provides a useful reminder of the wide range of circumstances in which such offences can occur but, as the CPS states in its policy document, ‘In most cases, the relationship will be between current or former partners [where] the abuser is male and the victim female’.⁹

FACTS ON DOMESTIC VIOLENCE

Prevalence

7. Getting a true picture of the extent and nature of domestic violence is somewhat problematic. It is an area that suffers from under reporting for a number of complex reasons not least because some victims perceive it as a private family matter to be kept within the home. In many cases, given the broad definition of domestic violence to include non-physical behaviour - abuse that is psychological, emotional or financial - many victims may not recognise that a criminal offence has occurred. There may be a fear that police involvement could result in the situation getting worse, with further abuse or violence taking place, or the victim suffering embarrassment if the police presence brings the abuse to the attention of neighbours or others. The controlling behaviour of the perpetrator of violence may also create barriers to reporting (see issues raised in paragraphs 41,43-44).

⁸ These are available at www.sentencing-guidelines.gov.uk
⁹ CPS (2002), para 2.4.

8. The most accurate estimates of the prevalence of domestic violence are available through the 2001 British Crime Survey (BCS) which included a self-completion module on domestic violence.¹⁰ Defining domestic violence as abuse, threats or force of a non-sexual form, the survey shows that 26% of women and 17% of men, aged 16-59, have experienced at least one incident of domestic violence since they were 16.¹¹ Younger people are most at risk of domestic violence, particularly women aged between 16-25 (see Annex B). In the year prior to interviews for the survey, there were an estimated 1.01 million victims of domestic violence and 15.4 million incidents of domestic violence acts in England and Wales (threats or force). The number of incidents would be even greater if the many sexual assaults that take place within the domestic context are included.¹²

Nature of domestic violence

9. Domestic violence occurs across society, regardless of age, gender, race, sexuality, wealth and geography and often involves a pattern of abusive and controlling behaviour through which the abuser seeks to exercise power over the victim. The behaviour can take a variety of forms. Some are directly or indirectly physical such as assault, indecent assault, rape, destruction of property and threats. Some are non-physical, such as criticism, pressure tactics, belittling, breaking trust, isolation, oppressive control of finances and harassment.¹³ At its most serious, violent domestic incidents can lead to death. Nearly half of all female murder victims (116 females in 2001/2) are killed by their partners or ex-partners.¹⁴ Even when women kill their partners it is not uncommon for this to occur following a long period of being the victims of violence at the hand of their partners.
10. The BCS provides figures on the type of abuse, threats or force that are experienced by victims. It shows that experiences of domestic violence differ significantly between men and women. The rate of domestic violence (threats or force) experienced by men is around half of that for women and women are also more likely to be the victims of more serious types of violence (see Annex B). Fifteen per cent of women said they had been subject to being pushed, held down or slapped (since age 16) compared to 5.1 per cent of men. One-tenth as many men as women reported the potentially life threatening form of violence of being choked or attempted strangulation. In addition, substantially more women (11.3 per cent) than men (1.4 per cent) reported frightening threats either towards them or someone close to them – an important element in understanding domestic violence and the exertion of control.¹⁵
11. A factor that distinguishes domestic violence from other forms of violence is that it is rarely just a one-off incident. Domestic violence has the highest rates of repeat victimisation compared to any other violent crime. In the BCS, two-thirds of women in the survey had experienced more than one incident of

¹⁰ A nationally representative sample of 22,463 adults aged 16-59 were asked whether they had been subject to domestic violence since the age of 16 and during the preceding year via self-completion questionnaire. Those subject to incidents were asked further questions.

¹¹ Walby and Allen (2004) Domestic Violence, Sexual Assault and Stalking: Findings from the British Crime Survey, Home Office Research Study 276.

¹² Ibid. It is not possible to obtain figures for the broader definition of domestic violence.

¹³ Home Office (1999) Domestic Violence: Break the Chain Multi-Agency Guidance for Addressing Domestic Violence.

¹⁴ Flood-Page and Taylor (eds) Crime in England and Wales 2001/2002: Supplementary Volume. Home office.

¹⁵ Walby and Allen (2004)

domestic violence in the form of threats or force. Among those experiencing domestic violence in the year prior to being interviewed, the average number of incidents per woman was nearly 20 or, if confined to incidents in which force was used, 16. This includes a small number of women who experienced a very high number of incidents (see Annex B).

12. The survey also showed that while leaving a violent partner brings an end to the violence for the majority of women (63%), for a very significant minority (18%) it was replaced with other forms of harassment such as stalking. Of female victims who had been in contact with the perpetrator since the separation, because of access to their child(ren), 29% had been threatened, 13% abused in some way, 2% had had their children threatened and in one per cent of cases the perpetrator had hurt the children. This suggests that protection (e.g. through a restraining order) at the point of leaving can be very important to some victims.

THE PRESENT LAW

Criminal law

13. There is currently a range of criminal offences that may be committed in the context of domestic violence. These include physical assault (with or without a weapon), harassment, threats to cause injury or to kill, destroying or damaging property, locking the victim in a room or preventing that person from leaving the house, and sexual offences within the family. Domestic violence may also be associated with putting pressure on the victim, or a witness, not to report the matter or to give evidence. Analysis of domestic violence case files in an evaluation of specialist domestic violence courts shows that the offences most frequently charged are common assault (45%), assault occasioning actual bodily harm (32%) and criminal damage (14%).¹⁶
14. The Protection from Harassment Act 1997 (PFHA) makes it an offence to behave in a way which a person knows, or ought to know, causes someone else harassment (section 2) or fear of violence (section 4). This makes abuse of a psychological nature a criminal offence and can include conduct which takes place in a domestic context. The offending behaviour is primarily the unwanted attentions of ex-partners, and the most common reason given for the harassment is that the complainant has ended an intimate relationship with the perpetrator.¹⁷ Under this Act, a restraining order is available which can regulate the offender's future behaviour. In 2002, a total of 1,586 restraining orders were made: 1,381 were made under section 2 of the act and 205 under section 4.¹⁸ A breach of the restraining order can result in imprisonment for up to five years. Just over half of all convictions under the PFHA (1997) are accompanied by a restraining order.¹⁹ The Domestic Violence, Crime and Victims Bill (DVCV Bill), currently before Parliament, contains very broad powers to impose restraining orders on conviction of any offence, or even after acquittal.
15. The DVCV Bill also contains powers to amend the Family Law Act 1996 (FLA) (see below). At the moment, a breach of a non-molestation order under Part IV

¹⁶ CPS/DCA (2004) An Evaluation of Specialist Domestic Violence Courts/Fast Track Systems.

¹⁷ Harris (2000) The Protection from Harassment Act 1997 – An evaluation of its use and effectiveness, Home Office Research Finding No. 130.

¹⁸ Figures supplied to the Panel by Research, Development and Statistics at the Home Office

¹⁹ Harris (2000)

FLA is dealt with as a contempt of court in the civil jurisdiction. The DVCV Bill will make such a breach a criminal offence subject to a maximum penalty of 5 years imprisonment,²⁰ although it will also remain punishable as a contempt.

Civil law

16. Victims of domestic violence may seek protection in civil proceedings in the family jurisdictions of Magistrates' Courts, County Courts and the High Court (with the majority of these cases being dealt with in a County Court). In civil proceedings, it is the responsibility of the victim to instigate the proceedings which are under Part IV FLA. This Act provides for civil orders dealing with non-molestation and with the occupation of the family home.
17. A *non-molestation order* prevents a person from molesting another person associated with him/her or any relevant child. This order is normally made for a specified period of, for example, six months.
18. An *occupation order* regulates the occupation of the family home. The length of this order varies depending on the nature of the relationship between the parties, and on whether the applicant has an existing right to occupy the home.
19. A power of arrest may be attached to non-molestation and occupation orders; currently a breach of an order is punishable with up to 2 months imprisonment (if at a magistrates' court) or up to 2 years imprisonment (if at a County Court).
20. In 2002, 22,053 non-molestation orders and 10,310 occupation orders were made. The court attached a power of arrest to 87% of non-molestation orders and 85% of occupation orders.²¹
21. While one of the main purposes of criminal sanctions is to punish the offender and make clear that an unlawful act has taken place, civil proceedings aim to provide protection to the victim and any children. Quite often, civil proceedings may be a more desirable avenue for victims of domestic violence as they can provide protection more quickly and more effectively than in criminal courts. S.45 FLA provides that, in certain circumstances, the court may make a non-molestation or occupation order without notice to the alleged perpetrator.²² In criminal proceedings any condition of bail that prohibits contact with the victim and/or children is only effective until the next hearing or the conclusion of the case. Civil orders can provide victims with longer periods of protection.
22. Victims of domestic violence often express the view that they do not wish to see the perpetrator sent to prison, especially where he is a partner or the father of their child(ren); they ask for protection, rather than punishment. Imprisonment is only an option in civil courts if a breach of an order has taken place and the victim chooses to inform the police/courts, which again may make a civil action more attractive to victims. If a breach is proved, the court has the power to make a suspended committal order which means the offender is not sent to prison immediately, provided he complies with the terms of the order.

²⁰ The FLA 1996 will be amended to include section 42A which will state "a person who without reasonable excuse does anything he is prohibited from doing by a non-molestation order is guilty of an offence"

²¹ Department for Constitutional Affairs (2002) Judicial Statistics

²² Ibid. In 2002, 12,555 applications for non-molestation orders were received ex-parte (without notice to the alleged perpetrator) and 4,996 on notice.

23. In practice, victims can instigate civil proceedings at the same time as criminal proceedings are being pursued. Where this happens, it is very important that civil and criminal courts share information as decisions in one court may impact on decisions in the other. For example, if the CPS learn of any breaches of civil injunctions or occupation orders, they will usually consider this relevant in providing extra weight in the prosecution of criminal cases.²³ In *Lomas v Parle*,²⁴ guidance was given on the interaction between criminal and civil jurisdictions and the management of concurrent proceedings in cases of harassment in a domestic context. Where an act amounted to both a breach of an injunction made in family proceedings and a crime under the PFHA (1997) it was said that the first court to sentence must not anticipate or allow for a likely future sentence. It is for the second court to reflect the earlier sentence in its judgment in order to ensure that the defendant is not punished twice for the same act. Recent investigation into court procedures has shown that information sharing between courts is weak and requires development.²⁵

SENTENCING DOMESTIC VIOLENCE

Sentencing patterns

24. A breakdown of sentences passed, from the limited research available on sentencing patterns, shows that non-custodial sentences are the most common disposals given in domestic violence cases. An analysis of cases where sentences were passed in specialist domestic violence courts (see table below) shows that a financial penalty is most often given followed by a conditional discharge and community rehabilitation order.

Sentence	Evaluation of cases in 5 specialist domestic violence courts (Aug-Oct 2003) ²⁶	Evaluation of cases at West London Magistrates' Court (Oct 2002 – Oct 2003) ²⁷
Imprisonment	9 (4%)	14 (14%)
Conditional discharge	21 (30%)	12 (12%)
Fine/compensation	41 (59%)	42 (43%)
Community Rehabilitation order	20 (29%)	31 (32%)
Community Rehabilitation & Punishment order	-	4 (4%)
Community Punishment Order	7 (10%)	6 (6%)
Total sentenced	69	97

Note:

- Columns do not add up to 100 as compensation is likely to have been given in addition to another sentence
- Common assault, assault occasioning actual bodily harm and criminal damage were the most common charges brought in cases at the 5 specialist courts
- Common assault and harassment were the most common charges brought in cases at WLMC
- In the WLMC cases, 26 offenders were ordered to attend a violence prevention programme

²³ Department for Constitutional Affairs, Domestic Violence: a guide to civil remedies and criminal sanctions.

²⁴ [2003] EWCA Civ 1804; [2004] 1 FLR 812

²⁵ CPS/DCA (2004). An integrated civil and criminal court system is being evaluated in Croydon.

²⁶ Ibid

²⁷ The First Annual Review of the Specialist Domestic Violence Court at West London Magistrates Court (2004) One Year On

25. Research findings from studies indicate that courts adopt a different approach when sentencing domestic and non-domestic cases. For example, a small study conducted by Gilchrist and Blissett (2002), asked 67 magistrates to consider six vignettes involving assault occasioning actual bodily harm and to suggest the sentence. Although not statistically significant, they found that more magistrates suggested a custodial sentence where the victim was a stranger, rather than the offender's partner. For domestic violence cases they were more likely to recommend probation.²⁸
26. Utilising data from a sample of police files, Cretney and Davis (1997) compared sentences in domestic and non-domestic assault cases.²⁹ They found that a conditional discharge was more frequently used in sentencing in domestic cases (it was used in half of domestic cases, compared to just over a third of non-domestic cases). Conversely, they also found a lower use of imprisonment, community service and fines in sentencing for domestic assault. The table below shows an analysis of sentences passed in their files:

Sentence	Domestic	Non-Domestic
Prison	10 (11%)	23 (15%)
Suspended Prison	4 (5%)	0
Community Service	3 (3%)	27 (17%)
Fine	14 (16%)	31 (20%)
Probation	13 (15%)	19 (12%)
Conditional Discharge	43 (49%)	56 (36%)
Total	87	156

27. Since these two studies were carried out there are likely to have been significant changes in the way courts deal with domestic violence cases – not least because of policy and attitudinal change.
28. The difference between the sentencing patterns for domestic and non-domestic assault cases does not necessarily show more lenient sentencing in one type of case than another. There may be certain characteristics of domestic violence cases, such as the victim and offender wanting to continue their relationship, which mean that a non-custodial sentence may be a more appropriate sentence to pass (see section below on factors influencing sentencing). A recent study looking at the benefits to women from sanctions imposed by the legal system found that those which were directed at rehabilitation were significantly more effective at stopping men's violence and abuse than those which were directed at punishment or deterrence. According to female victims of domestic violence in the study, a third of men (33%) who completed an abuser programme and 70% of men who were given a traditional sanction, such as a fine or imprisonment, committed a subsequent violent act against their partner in the 12 months after sentencing.³⁰

²⁸ Gilchrist, E. and Blissett, J. (2002) Magistrates' Attitudes to Domestic Violence and Sentencing Options, *The Howard Journal* Vol 41 No 4. September 2002 pp348-363.

²⁹ Cretney, A and Davis, G. (1997) Prosecuting Domestic Assault: Victims Failing Courts, or Courts Failing Victims? *The Howard Journal* Vol 36 No 2. May 1997 pp 146-157

³⁰ Lewis (2004) Making Justice Work – Effective Legal Interventions for Domestic Violence, *British Journal of Criminology*, Vol 44, pp204-224

Current sentencing approach

29. In part, any apparently lower penalties for domestic assault (see above) may reflect charge selection and negotiation. Many victims of domestic violence may have found it hard to invoke the criminal process in the first place, and may dread the prospect of giving evidence. Reduction in charge from assault occasioning actual bodily harm to common assault, for example, may result from a willingness of the defendant to plead guilty to the lesser offence. The defendant's guilty plea removes the need for a trial and, in consequence, the need for the victim to give evidence.
30. Sometimes the victim may withdraw support for the prosecution, and no longer be prepared to testify. In the absence of supporting evidence, the prosecution may then fail, although changes to the way that evidence is now gathered reduces reliance on the evidence of the victim and will make it more likely that the prosecution can continue. Particularly where the violence was serious, the CPS is likely to want to continue the prosecution in the broader public interest.
31. The sentencer must, of course, pass sentence on the basis of the offence of which the offender is convicted and not on any assumption that the violence was in fact greater than the offence suggests. The sentence must be appropriate for the offence of conviction even if, as a result of the prosecution and charging process, that offence does not truly reflect the degree of violence involved.
32. Another important point is that the sentencer cannot pass sentence on the basis that the violence has occurred frequently, where the other incidents were not reported, or have not been charged. While recognising that victims of domestic violence may have suffered abuse over a considerable period of time, the courts can only sentence on the basis of continuing abuse if the offender is convicted of separate offences arising from different incidents (or clearly admits them), or is convicted of harassment on the basis of persistent abuse, or if the offender has a criminal record of violence against the victim or other family members.
33. The Court of Appeal has considered the general issue of sentencing in cases of domestic violence on a few occasions, and its message has always been that the domestic context does not make an offence any less serious. Most recently, in *R v McNaughten*³¹, the Court of Appeal dismissed an appeal against a sentence of nine years imprisonment for eleven counts of violence by an offender against his live-in partner. The court stated that:

“...we must firmly emphasise that the seriousness of an incident of violence is not diminished merely because it takes place in a “domestic environment”. Whenever and wherever it happens an offence of violence is an offence of violence.”
34. This principle was also applied in the Panel's advice to the Court of Appeal on sentencing for rape (2002)³² which, having examined the possibility that rape by a stranger was more serious than rape by a person known to the victim, proposed that the relationship between the victim and offender should have no

³¹ [2003] 2 Cr App R (S) 142

³² This is available at www.sentencing-guidelines.gov.uk

bearing on the seriousness of the offence. The Court of Appeal endorsed that approach in the guideline case on sentencing for rape, *Millberry and others*.³³

Factors influencing sentencing

35. There seems little doubt, given the guidance in *McNaughten*, that offences in the domestic context should be regarded as *at least* the equivalent seriousness of those offences in the non-domestic context. Given that clear statement of principle, two issues arise for sentencers. The first is to consider whether there are circumstances in which an offence in a domestic context is *more* serious than one in a non-domestic context. The second is whether the domestic context, in itself, justifies a different approach to sentencing in such cases.

The Panel seeks your views on whether there are features that arise from the relationship between offender and victim that impact on:

- i) the level of seriousness of the offence and/or***
- ii) the type of sentence passed.***

Possible factors are:

Relationship between victim and offender

36. Given that reform and rehabilitation of the offender is one of the purposes of sentencing³⁴, the state of the relationship between the offender and victim may be a legitimate factor influencing sentence in domestic cases. In those cases where, despite the offence, the offender and victim wish to continue their relationship, sentencers are more likely to pass a sentence which enables that to happen. This is particularly the case in the magistrates' courts, where the offence is not so serious as to justify the higher penalties of the Crown Court. Courts will be dependent upon accurate and up-to-date information, especially in the pre-sentence report and victim personal statement, in deciding upon the best course. The National Probation Service is currently taking steps to make available programmes targeting domestic violence perpetrators. The Integrated Domestic Abuse Programme was given full accreditation in March 2004 and is being rolled out to many probation areas.³⁵

(I) Do you think that where a victim and offender wish to continue their relationship this should influence the type of sentence passed? Why? Should the principle be the same in magistrates' courts and the Crown Court? (see paragraph 36)

Wishes of the victim

37. Sentencers may take the view that it is counter-productive to impose a sentence of imprisonment, which is otherwise justified for the offence, where much of the burden will fall upon the victim (and other family members) as well

³³ [2003] 2 Cr.App.R.(S.) 31

³⁴ Criminal Justice Act 2003, section 142

³⁵ In addition, the Community Domestic Violence Programme (CDVP) is being piloted in three probation areas from May 2004 and will go for accreditation in October 2004. If accredited, it will be rolled out to another 8 areas. By April 2005, it is planned that 40 out of the 42 probation areas will be running an accredited domestic violence programme

as upon the offender.³⁶ In some cases, for example, the offender may be the principal wage earner.

38. Courts may be made aware (through a victim personal statement) of the effect that the offence has had on the victim.³⁷ Sometimes victims take this opportunity to ask the court to impose a non-custodial sentence. Guidance from the Court of Appeal is that sentencers should be 'very cautious' in paying attention to pleas for mercy.³⁸ Sentence is a matter for the court, not the victim. Sentencing has an important public dimension and is not just a matter between the offender and the victim. Even so, if a severe sentence on the offender would increase the victim's distress, the Court of Appeal has said that the sentence may be moderated to some degree. This may shift the purpose of sentencing from punishment to rehabilitation.
39. On the other hand, in domestic violence cases, a victim who has suffered abuse may well be afraid or under pressure from the perpetrator (or other family members) to portray a picture of harmony and resolution. An ability genuinely to reflect on the situation and provide an objective statement of views may be diminished. Given these circumstances, it may be that the court chooses to rely less on the wishes of the victim.

(II) Do you agree or disagree that a custodial sentence may be inappropriate in some cases where the burden of sentence may fall indirectly upon the victim (or other family members)? Why? (see paragraph 37)

(III) How much weight do you think should be given to the views of the victim when passing sentence? Why? (see paragraphs 38 & 39)

Abuse of position:

40. In a domestic relationship (whether between partners or family members) violence may be an abuse of *power* or an abuse of *trust*.

Abuse of power

41. An abuse of power in a relationship involves exploiting an individual's right to freedom – a specific characteristic in some domestic violence cases. Domestic violence has been described as "violence within a pattern of coercive control".³⁹ It involves a perpetrator trying to gain control over an individual by means which may be physical, psychological, emotional or financial. Abuse of power might take place when a victim is denied any control over making personal decisions. Perpetrators of violence may control their victim's level of freedom by running all economic aspects of the relationship and therefore creating financial dependence. In same sex relationships, it may take the form of 'outing' or threatening to 'out' a partner to family, friends or employers. Abuse of power over a long period of time can create fear and isolation and induce a lack of self-belief and confidence. This can make it very difficult for victims to leave a relationship or take control over their life.

³⁶ Cretney and Davis (1997)

³⁷ Practice Direction (Criminal proceedings: Consolidation [2002] 1 WLR 2870, para 28 (Victim Personal Statements)

³⁸ *Perks* [2001] 1 Cr App R (S) 66.

³⁹ See defining domestic violence at www.cwasu.org. Child and Women Abuse Studies Unit, London Metropolitan University

(IV) Do you agree or disagree that where it is clear that there is an abuse of power in the relationship between victim and offender the offence should be considered to be more serious? Why? (see paragraph 41)

Abuse of trust

42. Trust in a relationship implies a mutual expectation of conduct that shows consideration, honesty, care and responsibility. An abuse of trust, whether through direct violence or emotional abuse, represents taking advantage of this agreement. An abuse of trust is a common aggravating feature for many offences and will in most cases provide the justification for a higher sentence. The Magistrates' Courts Sentencing Guidelines (2003)⁴⁰ identify "*abuse of trust (domestic setting)*" as an aggravating feature for the offences of common assault, assault occasioning actual bodily harm, wounding and grievous bodily harm. This is a view described by the Court of Appeal in *R. v McNaughten*⁴¹ :

"... given the bond of trust that should exist between people who live together or are members of the same family, repeated violence represents a betrayal of that trust which is an aggravating feature of those offences."

In our recent consultation paper on sexual offences, where abuse of trust is inherent in the offence our proposed starting point is higher than for equivalent offences where there is no need to prove such abuse.

(V) Do you agree or disagree with the view that offences should be treated as more serious given the element of abuse of trust arising from the relationship between offender and victim? Why? (see paragraph 42)

Vulnerability of the victim

43. Individual victims of domestic violence may fall into a well-recognised category of vulnerability, such as the young, the elderly, the disabled, and so on. But there is a broader sense in which many victims of domestic violence are vulnerable through being trapped in the same household as the offender and lacking the physical or psychological strength to escape. Due to cultural and religious reasons, leaving a violent relationship, for some individuals, may not be an acceptable path; in some communities, to leave one's husband would bring dishonour and shame to the family leading to a woman being ostracised by her family and community.⁴²
44. An inability to speak English may make victims more vulnerable as they are unable to access services.⁴³ Furthermore, those who come to the UK for settlement as a result of marriage or their relationship with a British Citizen or person who has indefinite leave to remain⁴⁴ may apply for settlement in their own right if they can provide evidence of domestic violence. Until they have been granted indefinite leave to remain, however, they have no recourse to public funds and, as a result, may find it difficult to get access to a refuge (a

⁴⁰ Magistrates' Association. The Magistrates' Courts Sentencing Guidelines (2003). Effective from January 2004.

⁴¹ [2003] EWCA Crim. 3479

⁴² Justice for Women, Why do Women Stay with Violent Men?: www.jfw.org.uk/leave.htm

⁴³ Ibid

⁴⁴ Indefinite leave to remain removes all the conditions/restrictions imposed by the person's previous leave to enter or remain

shelter for women providing protection against violence).⁴⁵ This makes it very difficult for women to leave their violent husbands. These barriers can be exploited by the perpetrator and enhance his position of power over the victim.

(VI) Do you agree or disagree that where victims are faced with cultural barriers and language barriers they are more vulnerable and this should make an offence more serious? Why? (see paragraph 43-44)

Impact on children

45. The impact of domestic violence on children should not to be under-estimated and a child's presence during an incident of violence is often regarded as an aggravating feature in any case. The previous BCS self-completion module (1996) showed that in just under a third (29%) of domestic violence cases, children have been aware of the latest incident of violence having taken place. Where women suffer repeated violence almost half of children are aware of the last assault.⁴⁶ The effects on children can be dramatic. There is a range of problems that children can develop as a result of witnessing (or themselves being victims of) domestic violence such as depression, anxiety, hyperactivity, eating problems, heightened aggression, difficulties with concentration and stress-related illnesses such as asthma and bronchitis.⁴⁷ The risk of emotional harm to children has influenced decisions such as *Re L and others*⁴⁸ in the Court of Appeal (Civil Division) where direct contact with their children was denied to fathers in four cases against a background of proven domestic violence or threats of violence. Relying heavily on the research of Sturge and Glaser, the judgment made clear that children are affected as much by indirect exposure to violence as by being involved in it. The researchers also identified the worrying long-term adverse effect on attitudes to violence (particularly among boys) who themselves are substantially more likely to become abusers as adults.⁴⁹

(VII) Do you agree or disagree that in cases where children are exposed to an offence (either directly or indirectly) this increases the seriousness of the offence? Why? (see paragraph 45)

Aggravating factors

46. Factors which may aggravate an offence of domestic violence include:
- A proved history of violence or threats by the offender to the victim, or to other family members
 - Offence committed against a child, or witnessed by a child
 - Physical injury caused to victim, and the extent of that injury

⁴⁵ Whilst the Government is not prepared to relax the immigration or benefit rules, the Home Office has provided a one-off grant to Women's Aid Last Resort Fund to help women in these circumstances.

⁴⁶ Mirrlees-Black (1999) Findings from a new British Crime Survey Self-completion Questionnaire, Home Office Research Study 191.

⁴⁷ Home Office (1999) Living without fear

⁴⁸ *Re L, V, M, H*: [2000] 4 All ER 609; [2001] 2 WLR 339; [2000] 2 FLR 404; [2000] 2 FLR 334; [2001] Fam 268.

⁴⁹ Sturge and Glaser, Contact and Domestic Violence – the experts' court report, September [2000] Family Law pp.615-629

- Psychological injury caused to victim, and the extent of that injury
- Premeditation
- Repetition of the violence or threats
- Violence fuelled by alcohol or drugs
- Commission of the offence while on bail (statutory aggravating factor)
- Commission of the offence in breach of a sentence (such as a conditional discharge) imposed for similar offending, or while subject to an ancillary order, such as a restraining order
- Commission of the offence in breach of a non-molestation order imposed in civil proceedings

(VIII) Do you agree that these aggravating factors make an offence more serious? Are there any additional factors that you think should be considered? If so, how might they make an offence more serious? (see paragraph 46)

Mitigating factors

47. The Panel's provisional view is that there are few mitigating features specific to offences which occur in a domestic context. A number of commonly argued mitigating factors should be considered carefully before being given weight in domestic cases.

Good character

48. As a general principle of sentencing, a sentencer will take account of a defendant's good character and if, apart from the offence in question, the defendant proves to be an exemplary citizen he or she may receive a more lenient sentence than otherwise. In the past, in the context of its advices on rape and on child pornography, the Panel has consulted on the significance of good character given the serious nature of an offence and concluded that it should not be a mitigating factor. In *Attorney General's Reference (No. 22 of 2002)*⁵⁰, a sentence of a 2 year community rehabilitation order was considered unduly lenient where an offender, in a sustained attack, subjected his wife to indecent assault and violence resulting in two fractured ribs, two black eyes and a collapsed lung. The Attorney General argued that, given the seriousness of the assault, undue regard was given to the defendant's outstanding career of public service. A sentence of 6 months imprisonment was imposed. The Panel's provisional view is that an offender's good character in relation to conduct outside the home should not be considered a mitigating feature in respect of an offence of violence in a domestic context.

(IX) Do you agree or disagree that an offender's good character should not be seen as a mitigating feature in domestic violence cases? Why? (see paragraph 48)

⁵⁰ [2002]EWCA Crim 1500

Provocation

49. In some cases, the sentencer may consider that the victim's own behaviour has in some way provoked an assault. The Panel's paper on manslaughter by provocation discusses in detail the types of behaviour that might amount to low, medium or high levels of provocation. Applying the principles in that paper to a broader set of offences in domestic cases, the Panel's view is that possessiveness, jealousy and actual or perceived infidelity (some of the factors also in domestic violence cases) should not be seen as sufficient provocation in domestic violence. In addition, an offender's culpability in a situation may only be diminished if the violence is in response to violence (or anticipated violence) from the victim, rather than to abusive behaviour or offensive words.⁵¹

SENTENCING GUIDELINES FOR BREACH OF PROTECTIVE ORDERS

50. The Domestic Violence, Crime and Victims Bill contains amendments to the Family Law Act 1996 and Protection from Harassment Act 1997. At the moment, a breach of a non-molestation order under part IV of the FLA 1996 is dealt with as a contempt of court in the civil jurisdiction. If enacted in its present form, the Bill will make such a breach a criminal offence subject to a maximum penalty of 5 years imprisonment (as it is for breach of a restraining order under the PFHA 1997).⁵² As well as matching the maximum custodial period to that for breaches of a restraining order and for some of the more serious offences of violence, criminalising the breach of a non-molestation order will increase the sentencing options available to include, for example, a community sentence. The Bill also contains powers to impose restraining orders on conviction for any offence, or even after acquittal.
51. This part of the paper (paragraphs 55 – 67) considers guidelines for sentencing for a breach of either a non-molestation order (once it has become a criminal offence) or a restraining order. As mentioned above (see introduction), this is the first time that the Panel has attempted to anticipate a change in the law but does so because the issues are so closely related to those arising under the current (and continuing) provisions. These two breaches are being dealt with together as they both seek to provide protection to vulnerable people in a similar way.

(X) Do you know of any reason why guidelines for breach of non-molestation orders should not be the same as those for restraining orders? If so, what are these? (see paragraph 51)

52. The Magistrates' Courts Sentencing Guidelines (2003)⁵³ draw attention to the potential consequences of a failure by the courts to respond to breaches appropriately, such as a decline in public confidence, an undermining of the decisions made by the court and an offender being able to feel that he has 'got away with it'. Both non-molestation and restraining orders are made with the aim of protecting an individual victim from future violence and harassment. Breach therefore undermines the specific prohibition intended by the court and this seems to the panel relatively more serious than, say, breach of a

⁵¹ Sentencing Advisory Panel (2004) Consultation paper on sentencing of manslaughter by reason of provocation

⁵² The FLA 1996 will be amended to include section 42A which will state "a person who without reasonable excuse does anything he is prohibited from doing by a non-molestation order is guilty of an offence"

⁵³ Magistrates' Association (2003)

conditional discharge which had been intended to prevent future lawbreaking more generally.

(XI) Do you agree or disagree that a breach of a protective order such as a restraining order and non-molestation order is more serious than breach of a conditional discharge? Why? (see paragraph 52)

53. Research shows that a significant proportion of offenders breach an order. Roughly 40% of offenders breached a restraining order (under the PFHA 1997) in 2002. Of the 597 offenders who were sentenced for the breach, the majority were dealt with by a non-custodial sentence:

206 (35%) received given a custodial sentence

11 (2%) a fully suspended sentence

169 (28%) a community sentence

101 (17%) fined

88 (15%) an absolute/conditional discharge; and

22 (4%) were otherwise dealt with.⁵⁴

54. In 2002, the average sentence length for those given custody was 2.8 months at the magistrates court and 11.1 months at the Crown Court. Very few offenders have received a custodial sentence of more than 18 months (See Annex C).⁵⁵

Factors influencing sentence for breach of protective orders

55. The Court of Appeal has provided some guidance on sentencing for breach of restraining orders in domestic cases under the PFHA 1997 in the judgment on *Liddle* in *Liddle and Hayes*.⁵⁶
56. In the case of *Liddle*, the offender was convicted of harassment (section 2) and of harassment causing fear of violence (section 4) in relation to his ex-wife. He was sentenced to a combination order with a restraining order in relation to his ex-wife, child and parents-in-law. He breached his order on three separate occasions (mainly by contacting his ex-wife through letters and speaking to her in the street when they met accidentally) and for two of the breaches was given a sentence of 8 months and 4 months consecutively (reduced from 18 months). No separate penalty was given for his first breach.

⁵⁴ Figures supplied to the Panel by the Research, Development and Statistics Directorate, Home Office. Note that these figures are not broken down to show offenders who committed their offence in a domestic environment.

⁵⁵ Ibid

⁵⁶ [2000] 1 Cr.App.R.(S.) 131

57. The judgment indicates that the seriousness of a breach will be influenced by the following considerations:
- whether the breach related to an order made under section 2 (summary offence) or section 4 (offence triable either way)
 - any history of disobedience to court orders in the past, and whether these were orders under the Act or civil orders
 - the seriousness of the defendant's conduct (e.g. actual violence or direct contact is likely to be more serious than letters or other forms of indirect contact)
 - whether the misconduct was persistent, or a single incident
 - the physical and psychological effect of breach on the victim
 - whether the victim required protection
 - the level of risk posed by the defendant
 - the mental health of the defendant
 - whether the defendant was willing to undergo treatment or accept help from the probation service

(XII) Do you agree that these are the relevant factors when assessing the seriousness of a breach? Are there any other factors that should also be considered? Why? (see paragraph 57)

58. A breach may be gross (including one which occurs shortly after the court imposes it) or relatively minor, it may be an isolated breach or have been repeated. In some cases, the activity prohibited by a restraining or non-molestation order (such as not entering a named street) does not in itself amount to a criminal offence.
59. Where the conduct involved in breach of an order amounts to a criminal offence, it is likely that it will be charged separately from the breach and the fact that it was committed in contravention of a court order will be an aggravating factor. In such circumstances, it could be argued that a court should not sentence for both the offence and the breach since the breach is subsumed within the offence.
60. Where no separate offence is charged, the seriousness of the conduct involved in the breach of an order will need to be considered in terms of the culpability of the offender and the harm caused to the victim. The judgment in *Liddle and Hayes*⁵⁷ states that actual violence or direct contact is likely to be more serious than non-violent behaviour or indirect contact such as writing letters or calls of an unpleasant nature. The impact of indirect contact such as intrusive/threatening calls on the victim should not, however, be underestimated.

⁵⁷ Ibid.

61. Guidance from the civil courts where a breach of a non-molestation order is dealt with as a contempt of court suggests that options other than imprisonment need to be considered in cases where the court has not found any actual violence. This approach was stated in *Hale v Tanner*⁵⁸ where an ex-girlfriend continued to harass an appellant even after a non-molestation order had been sought against her. Her actions involved making prolonged and persistent threatening and abusive phone calls. Her 6 month prison sentence was suspended on appeal. The court felt that, given that this was her first breach and that cases of violence causing significant injury often received shorter sentences than 6 months imprisonment, the original sentence was manifestly excessive.

(XIII) Do you agree or disagree that the starting point for a breach of order should be custody if it involves actual violence? Why? (see paragraphs 60 and 61)

(XIV) Are there any other circumstances when you think custody should be considered? (see paragraphs 60 and 61)

62. *Liddle and Hayes* also identified the provision under which the original restraining order was made (section 2 or 4) as a factor in determining the approach to breach, suggesting that the relative seriousness of the original offence should influence the approach to any breach. However, orders are designed to promote future compliance, not to be a punishment for past conduct and it may be that the actual seriousness of the breach and the potential seriousness of future breaches should be more significant than the conduct that led to the order being made. If the DVCV Bill is enacted in its current form, there will be circumstances where there is, in any case, no original offence either because the order was made in civil proceedings or because it was made following acquittal.

(XV) In what way (if at all) should the nature of the original conduct/offence influence the sentence given for a breach of order? Why? (see paragraph 62)

63. In *Aquilina v Aquilina*⁵⁹, the Court considered the approach to a breach of a non-molestation order imposed by a civil court. The offender was in contempt of court for a third time for non-violent breach of non-molestation and occupation orders made for the protection for his wife and children and was committed to prison for 6 months. The Court of Appeal found that that was excessive given that the breaches involved the most minor of offences – driving past the appellant’s home at night - and reduced the period to 3 months commenting that:

“It is...important, especially in a family case of this kind, where the emotions are still running high, where there are problems over contact that have bedevilled and will bedevil the relationship of these parents, and of course also their children, to bear in mind that securing future compliance with the order is a more worthy objective for the court to achieve than the court standing on its dignity and imprisoning a contemnor for this contumacy.”

⁵⁸ [2000] 2 F.L.R. 879
⁵⁹ [2004] EWCA Civ 504

(XVI) What are the relevant factors in balancing the goal of future compliance with punishment for breach of an order of the court? (see paragraph 63)

(XVII) Should this principle be applied generally to breaches of restraining order and non-molestation orders? (see paragraph 63)

Suggested starting points

64. As well as indicating relevant factors in assessing seriousness, the court in *Liddle and Hayes*⁶⁰ provided some guidance on sentencing levels. A short custodial sentence might be appropriate for a first offence although the court would need to consider “repetition and breach of orders and the nature of the misconduct”. For a second offence a starting point of 15 months (on a plea of guilty) was suggested.
65. Given the discussion and principles described above, it is clear that the nature of the conduct in a breach (whether direct or indirect contact) and securing future compliance are two key factors that should influence sentencing. In order to enable a consistent approach to be developed the panel therefore proposes the following starting points to be considered. Credit for a plea of guilty is more likely in these circumstances to influence the amount of the fine, restrictions on liberty in the community sentence or length of the custodial sentence than to affect the choice of sentence type itself.

<i>Factors</i>	<i>Sentence – starting points</i>
<i>Non-custodial:</i>	
First time breach No/minimal direct contact	- Fine/Community Sentence (punitive –curfew/unpaid work)
More than one breach Minimal/some direct contact	- Community Sentence (primarily rehabilitative)
<i>Custody:</i>	
Some violence Significant effect on victim	- 4 months
Considerable violence Great detrimental effect on victim	- 12 months

(XVIII) The Panel’s tentative view is that these starting points in paragraph 65 should be adopted in cases of breach of restraining orders and non-molestation orders in domestic cases. Do you agree or disagree with this approach? Why? (see paragraph 65)

⁶⁰ Ibid.

66. The seriousness of the offence would be aggravated by the following factors:
- history of disobedience to court orders
 - the seriousness of the defendant's conduct eg type of violence, weapon used etc
 - persistent conduct (as opposed to a single incident)
 - conduct in the presence of a child
 - premeditation
 - serious physical or psychological impact on the victim
 - victim required protection
 - breach committed immediately or shortly after the order is made

(XIX) Do you agree that these features aggravate the seriousness of the offence? Are there any other factors that should be considered? Why? (see paragraph 66)

67. Subject to the application of the principle that the overall sentence should reflect the totality of the offending, consecutive sentences will be imposed for each breach of which the offender is convicted.

LIST OF QUESTIONS FOR CONSULTEES

- (I) Do you think that where a victim and offender wish to continue their relationship this should influence the type of sentence passed? Why? Should the principle be the same in magistrates' courts and Crown Courts? (see paragraph 36)
- (II) Do you agree or disagree that a custodial sentence may be inappropriate in some cases where the burden of sentence may fall indirectly upon the victim (or other family members)? Why? (see paragraph 37)
- (III) How much weight do you think should be given to the views of the victim when passing sentence? Why? (see paragraphs 38 & 39)
- (IV) Do you agree or disagree that where it is clear that there is an abuse of power in the relationship between victim and offender the offence should be considered to be more serious? Why? (see paragraph 41)
- (V) Do you agree or disagree with the view that offences should be treated as more serious given the element of abuse of trust arising from the relationship between offender and victim? Why? (see paragraph 42)
- (VI) Do you agree or disagree that where victims are faced with cultural barriers and language barriers they are more vulnerable and this should make an offence more serious? Why? (see paragraph 43-44)
- (VII) Do you agree or disagree that in cases where children are exposed to an offence (either directly or indirectly) this increases the seriousness of the offence? Why? (see paragraph 45)
- (VIII) Do you agree that the aggravating factors identified in paragraph 46 make an offence more serious? Are there any additional factors that you think should be considered? If so, how might they make an offence more serious? (see paragraph 46)
- (IX) Do you agree or disagree that an offender's good character should not be seen as a mitigating feature in domestic violence cases? Why? (see paragraph 48)
- (X) Do you know of any reason why guidelines for breach of non-molestation orders should not be the same as for restraining orders? If so, what are these? (see paragraph 51)
- (XI) Do you agree or disagree that a breach of a protective order such as a restraining order and non-molestation order is more serious than breach of a conditional discharge? Why? (see paragraph 52)
- (XII) Do you agree that the factors identified in paragraph 57 are relevant when assessing the seriousness of a breach? Are there any other factors that should also be considered? Why? (see paragraph 57)

- (XIII) Do you agree or disagree that the starting point for a breach of order should be custody if it involves actual violence? Why? (see paragraphs 60 and 61)
- (XIV) Are there any other circumstances when you think custody should be considered? (linked to question XIII) (see paragraph 60 and 61)
- (XV) In what way (if at all) should the nature of the original conduct/offence influence the sentence given for a breach of order? Why? (see paragraph 62)
- (XVI) What are the relevant factors in balancing the goal of future compliance with punishment for a breach of order? (see paragraph 63)
- (XVII) Should this principle be applied generally to breaches of restraining order and non-molestation orders? (linked to question XVI) (see paragraph 63)
- (XVIII) The Panel's tentative view is that the starting points in paragraph 65 should be adopted in cases of breach of restraining orders and non-molestation orders in domestic cases. Do you agree or disagree with this approach? Why? (see paragraph 65)
- (XIX) Do you agree that the features identified in paragraph 66 aggravate the seriousness of the offence? Are there any other factors that should be considered? Why? (see paragraph 66)

Annex B

2001 BRITISH CRIME SURVEY DATA

The following data is based on a self-completion module in the British Crime Survey designed to measure experience of inter-personal violence in England and Wales. These are self reported incidents of domestic violence.

Domestic violence - Prevalence of domestic violence by age of victim									
Per cent victims of domestic violence									
	16-19	20-24	25-29	30-34	35-39	40-44	45-49	50-54	55-59
Women	7.2	8.8	5.9	5.1	3.6	3.3	2.5	1.5	0.8
Men	3.4	3.6	2.6	3.0	2.5	2.3	1.0	1.2	0.7

Notes:
 1. Domestic violence is non-sexual force or threats
 2. Prevalence here include 'don't want to answer / don't know' responses in the base

Detailed prevalence of domestic violence								
Per cent victims of domestic violence								
Nature of violence	Women				Men			
	Ever	Since age of 16	Last year	Est'd no. of victims in last year (000's)	Ever	Since age of 16	Last year	Est'd no. of victims in last year (000's)
Non- sexual domestic violence								
Domestic abuse, threats or force	...	25.9	6.0	931	...	16.6	4.5	681
Prevented you from having your fair share of household's money	...	7.7	1.5	232	...	3.2	0.7	103
Stopped you from seeing friends or relatives	...	9.1	2.0	311	...	7.0	2.1	317
Either prevented from share of household money or stopped seeing friends / relatives	...	13.3	2.9	456	...	9.3	2.6	396
Domestic threats or force	...	20.8	4.2	657	...	10.1	2.3	356
Frightened you by threatening to hurt you or someone close to you	...	11.3	2.0	310	...	1.4	0.2	27
Domestic force	...	18.6	3.4	529	...	9.6	2.2	338
Minor (pushed you, held you down or slapped you)	...	15.4	2.6	410	...	5.1	1.1	174
Severe	...	11.3	1.6	242	...	6.6	1.2	186
Kicked, bit or hit you with a fist or threw something at you to hurt you	...	9.7	1.3	205	...	5.9	1.2	177
Choked or tried to strangle you	...	4.6	0.4	65	...	0.4	<0.1	6
Threatened you with a weapon such as a stick or knife	...	2.6	0.2	36	...	1.6	0.1	16
Threatened to kill you	...	3.4	0.5	82	...	0.6	0.1	13
Used a weapon against you e.g a knife	...	1.2	0.1	13	...	0.7	0.1	11
Used some other kind of force against you	...	4.9	0.6	88	...	1.5	0.4	57

Notes:
 1. '...' Not available
 2. Estimated number of victims are rounded to nearest 1,000.
 3. Prevalence estimates are based on the total sample including those who said they did not know or did not want to answer the question.

Estimated number of incidents of domestic violence acts in previous 12 months						
	Estimated no. of incidents ^{2,3}	Estimated no of victims	Mean no. of incidents per victim	Median no. of incidents per victim ⁴	% victims with one incident only	Unw'ted N (no. of victims in sample)
Women						
Domestic violence (non-sexual)						
- domestic threat or force	12,900,000	657,000	20	4	28	509
- domestic force	8,280,000	529,000	16	3	32	398
- minor	3,970,000	410,000	10	2	37	331
- severe	4,300,000	242,000	18	4	27	211
Men						
Domestic violence (non-sexual)						
- domestic threat or force	2,500,000	356,000	7	2	47	209
- domestic force	2,240,000	338,000	7	2	48	199
- minor	1,070,000	174,000	6	1	50	109
- severe	1,170,000	186,000	6	2	49	123
Notes:						
1. Estimates of the number of incidents are rounded to the nearest 10,000. Estimates of number of victims are rounded to the nearest 1,000, and the mean and median to the nearest whole number.						
2. The estimates of incidents here are summations of the number of times different acts occurred. It is of course possible that more than one act could have occurred in the same event, so these may not all constitute separate 'incidents'.						
3. The estimates of the number of incidents were generated from follow up questions in the IPV module. The response categories for these questions were banded, so appropriate values needed to be taken to represent each of the various bands (where possible midpoints were used, except in cases for domestic violence of 'more than 50' where the number estimated was 51 and 'too many times to count' where 60 was used; however where victims did not know or want to say the number of last year incidents they were excluded from the analysis). For the types of domestic violence incidents, financial and emotional abuse was not followed up (hence their exclusion here) and choked / threatened to kill / threatened with a weapon / and other force not otherwise mentioned were all grouped as one for the follow-up question seeking numbers of incidents. Mid-2001 ONS population estimates were then used to apply these estimates to the population (aged 16-59) in England and Wales, these figures being 15,497,000 for women and 15,229,500 for men. These factors should be borne in mind in interpreting the subsequent results.						
4. The median value is one of three measures typically used to represent the average. It is the 'middle value' with fifty per cent of cases falling on either side of it. The median value is less likely to be skewed by a small number of extreme values.						
5. Prevalence here include 'don't want to answer / don't know' responses in the base.						

Frequency of domestic violence victimisation for victims, since age 16							
Percentages							
	Once	Twice	3 to 5	6 - 50	More than 50	Too many to count	Unw'ted N (no. of victims in sample)
Female							
Frightening threats	20	10	25	32	3	12	1562
Pushed, held, pinned down or slapped	25	14	27	25	2	8	2111
Kicked, bit, hit, threw something that hurt	21	12	22	31	2	11	1362
Choked, tried to strangle, threatened with or used a weapon, threatened to kill	36	14	18	20	2	10	993
Male							
Frightening threats	35	13	26	19	1	5	157
Pushed, held, pinned down or slapped	34	24	27	13	1	1	505
Kicked, bit, hit, threw something that hurt	43	17	26	12	<1	1	617
Choked, tried to strangle, threatened with or used a weapon, threatened to kill	50	17	20	9	1	2	259
Notes:							
1. These represent frequency of victimisation since the age of 16.							

Annex C

Number of persons sentenced to immediate custody for breaching a restraining order by length of sentence and average custodial sentence, England and Wales

Magistrates' court										
	Total	14 days and under	15 days up to 21 days	22 days up to 30 days	Over 1 month up to 2 months	Over 2 months up to 3 months	Over 3 months up to 4 months	Over 4 months	Average sentence length (months)	
1999	136	16	7	15	28	33	20	17	2.6	
2000	146	13	2	21	23	23	39	25	3.0	
2001	116	7	1	23	24	16	23	22	2.9	
2002	131	10	1	19	25	33	24	19	2.8	

Crown Courts												
	Total	4 months and under	Over 4 months up to 6 months	Over 6 months up to 1 year	1 year	Over 1 year up to 18 months	Over 18 months up to 2 years	Over 2 years up to 3 years	Over 3 years up to 4 years	4 years	Over 4 years up to 5 years	Average sentence length (months)
1999	70	12	16	13	15	9	3	1		1	-	10.3
2000	80	30	6	16	12	6	6	4	-	-	-	9.5
2001	77	12	10	19	9	18	4	3	-	2	-	12.6
2002	75	8	16	17	12	17	3	2	-	-	-	11.1

Source: Offending and Criminal Justice Group, RDS

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Practice Direction

Criminal proceedings: Consolidation [2002] 1 WLR 2870, para 28 (Victim Personal Statements)

LIST OF CONSULTEES

Copies of the consultation paper have been sent to the people and organisations listed below. In addition, copies have been sent to the Resident Judge at each Crown Court Centre in England and Wales.

Association of Black Probation Officers	Justice for Women
Association of Chief Police Officers	Justices' Clerks' Society
Association of Directors of Social Services	Law Commission
Cardiff Women's Safety Unit	Law Society
Centre for Crime and Justice Studies	Legal Action Group
Children and Women's Abuse Unit (London Metropolitan University)	Dr Ruth Lewis, Women's Sports Foundation (previously University of Newcastle-upon-Tyne)
Commission for Racial Equality	Liberty
Council of Her Majesty's Circuit Judges	Local Government Association
Crime Concern	London Criminal Courts Solicitors' Association
Crown Prosecution Service	Magistrates' Association
Professor Rebecca Dobash and Professor Russell Dobash (University of Manchester)	National Association for the Care and Resettlement of Offenders
Equal Opportunities Commission	National Association of Asian Probation Staff
Fawcett Society	National Association of Probation Officers
General Council of the Bar	National Black Police Association
HM Prison Service	National Probation Service
Howard League for Penal Reform	New Scotland Yard
Justice	Parole Board

Penal Affairs Consortium

Police Federation of England and
Wales

Police Superintendents'
Association

Prison Governors' Association

Prison Officers' Association

Prison Reform Trust

Prison Service Trade Union Side

Probation Boards' Association

Probation Managers' Association

Refuge

Senior District Judge (Chief
Magistrate)

Society of Black Lawyers

Society of District Judges
(Magistrates' Courts) for England
and Wales

Society of Legal Scholars

Southall Black Sisters

Victim Support

Sylvia Walby, Professor of
Sociology (University of Leeds)

Women's Aid

Victims of Crime Trust

Victims' Voice

Youth Justice Board for England
and Wales

