

# The Decision to Prosecute - Supplemental Code of Guidance

## Domestic Violence

### **1. Introduction**

- 1.1 The following guidance is issued by the Law Officers of the Crown as a supplement to The Decision to Prosecute – Code of Guidance document (“the Code”) that was published previously and does not modify or amend it. Instead, it offers more specific guidance as to how the Code might be applied in relation to allegations of domestic violence.
- 1.2 The purpose is to ensure consistency of approach when applying the evidential and public interest tests in relation to allegations of domestic violence.

### **2. What is domestic violence?**

- 2.1 There is not a specific offence of domestic violence but it has been described as any incident or pattern of incidents of controlling, coercive, threatening behaviour, violence or abuse between those aged 16 or over who are, or have been, intimate partners or family members, regardless of gender or sexuality. Family members are generally defined as mother, father, son, daughter, brother, sister and grandparents, whether directly related, in-laws or step-family. The same evidentiary and public interest considerations apply irrespective of the gender of the parties.
- 2.2 Although the above definition of domestic violence refers to persons aged 16 year or over this policy will also apply to criminal allegations which occur in a domestic context involving victims and abusers whatever their age.

### **3. Evidence**

- 3.1 Whilst it is often the best evidence a victim's account in a statement to the police is not always the only evidence that can be used to prove a case. It is possible, for example, that a friend, neighbour or child or young person may have been nearby and may be able to give direct evidence of what they saw or heard. Active consideration will therefore be given to what other evidence may be available and we will work with the police to make sure that all available evidence has been gathered and brought to our attention.
- 3.2 The evidence will then be considered carefully and we will endeavour to make our decisions as quickly as possible.
- 3.3 We will always prosecute cases where there is sufficient evidence and it is in the public interest to do so. We understand that some complaints of domestic violence are not made straight away for fear of reprisals, intimidation or a number of other factors. When considering whether the evidential test is passed, the fact that the victim of domestic violence has not made a statement of complaint will not, in itself, be conclusive and serious consideration will be given to what other evidence is present. However, the fact that an

allegation involves domestic violence does not mean the evidential threshold for prosecution is any lower.

**4. Assessing the Evidential Test when a Victim who has made a written Statement of Complaint subsequently seeks to withdraw that complaint.**

- 4.1 Sometimes victims will ask the police not to proceed any further with the case and tell them that they no longer wish to give evidence. That does not necessarily mean the offence did not take place or that it cannot still be proved and subject to the evidential and public interest tests continuing to be passed, the case should be prosecuted. This is because in cases where there is sufficient other evidence it might be possible to proceed without relying on the evidence of the victim at all.
- 4.2 If this happens, the reason why the victim has asked the case to be stopped must be ascertained. The victim should be invited to make a written statement which explains the reasons for wishing to withdraw support for the prosecution, indicating whether they have been pressurised to withdraw support and providing any other relevant information. The victim should also be invited to indicate whether the contents of their original statement were true. The victim should also state whether, notwithstanding their wish to drop the case, whether they will attend court to give evidence if asked to do so. If in a subsequent statement a victim indicates that the contents of their original statement were untrue in whole or in part, the effect of any inconsistency needs to be assessed in determining whether the evidential test is passed.
- 4.3 If it is suspected that the victim has been pressured or frightened into withdrawing the complaint, the police shall investigate further. If it is found that the victim's withdrawal was based on fear or intimidation, the evidence will be considered and it will be decided whether further charges should be brought.

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

- 5.1 Generally, the more serious the offence (for example, where children or young people were present, or where there was considerable violence, or where there is the real and continuing threat to the victim or others), the more likely it will be that a decision is made to prosecute in the public interest, even if that goes against the wishes of the victim.
- 5.2 In cases where there is sufficient other evidence, we may decide to proceed without relying on the evidence of the victim at all. In those cases where we think the matter should continue but it would be necessary to rely on the victim's evidence to prove the case, we have to decide:
  - (a) whether we should apply to the court to use the victim's statement as evidence without the victim having to give evidence in court (although in most cases this is likely to be refused);

(b) whether we can proceed with the prosecution by helping the victim to attend court by the use of special measures (such as a live TV link or the use of screens); or

(c) whether we should require the victim to give evidence in person in court against their wishes.

## 6. **Public Interest**

6.1 It is important to understand that although we always think very carefully about the interests and safety of the victim when we decide where the public interest lies we prosecute cases on behalf of the public at large and not on behalf of any particular individual.

6.2 In cases involving an allegation of domestic violence, if the evidential test is passed (with or without the victim's evidence), the public interest will be generally in favour of a prosecution even if, for example, the injury was minor or the parties have reconciled.

6.3 If the victim withdraws support for the prosecution but we have enough evidence to proceed, we have to decide whether to prosecute. The safety of the victim and any children and young person will be a key factor for us to consider at this stage. Some examples of what helps us to decide whether it is in the public interest to prosecute are:

- the seriousness of the offence;
- the victim's injuries – whether physical or psychological;
- if the defendant used a weapon;
- if the defendant made any threats before or after the attack;
- if the defendant planned the attack;
- if there are any children living in the household;
- if the offence was committed in the presence of, or near, a child or young person;
- the chances of the defendant offending again;
- breaches of any court orders;
- the continuing threat to the health and safety of the victim or anyone else who is, or may become, involved;
- the history of the relationship, particularly if there has been any violence in the past;
- the defendant's criminal history, particularly any previous violence; and
- Any other factors that are relevant to the public interest.

## 7. **Bail**

7.1 Once a defendant is charged with an offence, the police will decide whether to release the person on bail or to keep the person in custody. If they are released on bail, they will be bailed to attend a court hearing within a short period of time. If they are kept in custody by the police, they will be brought before the next available court for a bail hearing.

7.2 At the court hearing, the Judge decides whether bail is appropriate after hearing representations from both the prosecution and the defence. A defendant has a right to bail. The court can only refuse bail if it is satisfied the defendant would fail to surrender to custody, commit an offence while on bail, or interfere with witnesses or otherwise obstruct the course of justice. Bail can also be refused if the offence was committed

whilst the defendant was already on bail for another serious offence, or for the defendant's own protection.

7.3 To protect victims, children and other witnesses from the risk of danger, threats, pressure or other acts by the defendant that might obstruct the course of justice, we may ask the court to impose conditions of bail. This may include a condition that the defendant lives at a particular address or does not go to a certain address or area. This can mean that the defendant is excluded from his own home and cannot have contact with his family. Whilst we will obviously take into account all the information available to us and consider any representations that are made it must be remembered we represent the public interest and not individual complainants and therefore may ask the court to impose conditions that are against their wishes, if we believe it right to do so.

## **8. Deciding charges and accepting pleas**

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

8.2 In some cases, we may consider accepting a guilty plea from the defendant to a different charge. This might arise, for example, because new evidence comes to light. A defendant may also plead guilty to some but not all of the charges made against them. When making our decision as to how the case should proceed we will always take proper account of the victim's interests (usually through consultation with the police and considering any information in the victim's statement or elsewhere) and we will not accept a guilty plea that is put forward upon a misleading or untrue set of facts.

## **9. Special Measures**

9.1 Giving evidence can be a particularly traumatic experience for victims of domestic violence. Some find it difficult to give evidence when they can see the defendant. In some cases, the court may agree to allow a witness to give evidence with the help of "special measures". Prosecutors have to apply for special measures but the court makes the final decision about whether they will be granted. The granting of a request for special measures by the court is not automatic but it is common. Any witness, whether a child or an adult, is eligible for special measures by means of a live link and the only test that is applied is whether it is in the interests of justice that special measures should be granted. Additional or alternative safeguards can also be requested where that witness is considered vulnerable.

9.2 Examples of special measures include:

- the use of screens in the courtroom to prevent the witness and the defendant seeing each other; and
- the giving of evidence away from the courtroom through a live television link (but the defendant will often still be able to see the witness).