



House of Commons  
Justice Committee

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# Draft Sentencing Council guidelines on intimidatory offences and domestic abuse

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**Second Report of Session 2017–19**

*Report, together with formal minutes  
relating to the report*

*Ordered by the House of Commons  
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## Justice Committee

The Justice Committee is appointed by the House of Commons to examine the expenditure, administration and policy of the Ministry of Justice and its associated public bodies (including the work of staff provided for the administrative work of courts and tribunals, but excluding consideration of individual cases and appointments, and excluding the work of the Scotland and Wales Offices and of the Advocate General for Scotland); and 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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## Summary

As statutory consultees of the Sentencing Council we have examined the draft guidelines on intimidatory offences and the draft overarching guideline on domestic abuse on which the Council was recently consulting. These guidelines are particularly challenging and complex due both to the nature of the offences concerned and their relationship to numerous other offences. We focus on particular themes that largely span all of the guidelines and appear to us to merit further consideration before the definitive guidelines are finalised. We note that the Government intends to publish a draft Bill on domestic abuse this Session which may impact on aspects of the overarching guideline but consider it important that this does not delay publication of these guidelines.

We broadly welcome the Council's approach to the guidelines, including its proposition for the overarching guideline to be cross-referenced digitally to guidelines on those offences most likely to be associated with domestic abuse. The court digitalisation programme will also provide a welcome opportunity for more robust data on such offences to be collated by Her Majesty's Courts and Tribunals Service. The existing absence of these data, and the relative novelty of some of the intimidatory offences makes it difficult for the Sentencing Council to assess with confidence the likely impact on resources once the guidelines are implemented. While the Council does not anticipate an increase in resources, we consider that in seeking—rightly in our view—to ensure that the court treats domestic abuse related offences 'particularly seriously', there is likely to be an inflationary impact on sentencing. Indeed some respondents to the consultation interpreted this to mean that such offences should be sentenced more severely. The resources for this must be provided by the Ministry within a system that we acknowledge is already stretched.

Our examination of the interplay between the overarching guideline for domestic abuse and those for related offences—including the intimidatory offences included in this consultation, and also notably those for assault and sexual offences—underlines the complexity in both offences of this nature and of the Council's approach. The broad definition of domestic abuse adopted by the Government, and co-opted by the Council, includes forms of abuse which are psychological, physical, sexual, financial, or emotional as well as violent, and which are frequently part of an enduring pattern of behaviour. We highlight some examples of significant variations between the approach adopted across the guidelines included within this consultation and in those for offences most likely to be related to domestic abuse. These include the extent to which the aggravating factors identified are reflective of the broad characteristics of domestic abuse encompassed in the definition used by the Council as well as differences in the points at which various factors characteristic of domestic abuse and intimidatory offences are considered in the sentencing process. These include the vulnerability of the victim and the practical and psychological impact of the offence both on the victim and others. Whether these factors should be considered in relation to the offenders' culpability, the harm caused to the direct victim and others, or to aggravating and mitigating factors is a crucial consideration as this will determine the seriousness of the sentence. Our analysis leads us to conclude that a more consistent approach should be taken to ensure the guidelines do not lead to unwarranted variations in sentencing. We recommend that the Council clarifies the nature of harm which may be present in each of these offences and the

stage of sentencing at which this should be considered, where possible rationalising the approach across the guidelines. This should include ensuring that physical violence and threats of physical violence are not assumed to be more serious in terms of harm and culpability than emotional and psychological manifestations of abuse and control.

We note the impact of the Council of Europe's Istanbul Convention on preventing and combating violence against women and domestic violence, which the Government is expected to make progress in ratifying following a recent Act of Parliament. We recommend that the Council should ensure that the guidelines reflect obligations under this Convention, including by adding two aggravating factors to the overarching guideline: offence committed repeatedly, and/or offence committed by two or more people acting together.

The mitigating factors of good character, provocation and self-referral for treatment elicited particularly strong views from respondents to the consultation, including those who wished to see them removed. We note the complexities involved in considering such factors and examined the means by which the Council has sought to qualify their use. While on balance we believe they should be retained we make some recommendations for strengthening these qualifications, for example, we could like to see the statement in relation to good character in the intimidatory offences guideline mirror more closely that included in the guidelines for sexual offences.

The Council has taken steps to address some of the barriers to conviction of offences related to domestic abuse and intimidatory offences. This includes emphasising in the overarching guideline that the sentence imposed should be determined by the seriousness of the offence, not by the expressed wishes of the victim. We found support for this approach and recommend that sentencers should be encouraged to ask for victim impact statements if they are absent to inform their assessment of the harm caused. We also advocate more systematic use of restraining orders in all offences covered by the guidelines.

# 1 Sentencing guidelines and the role of the Committee

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## The Sentencing Council

1. The Sentencing Council for England and Wales is an independent non-departmental body of the Ministry of Justice, set up to promote greater transparency and consistency in sentencing, whilst maintaining the independence of the judiciary. Its primary role is to issue guidelines on sentencing, which the courts must follow unless it is in the interests of justice not to do so. The Council also assesses the impact of guidelines on sentencing practice and promotes public awareness of sentencing practice in the magistrates' courts and the Crown Court.

2. Under section 120 of the Coroners and Justice Act 2009<sup>1</sup>, the Council is required to publish sentencing guidelines in draft before they are finalised. Section 120(6) of the 2009 Act lists the Justice Committee as a statutory consultee on draft guidelines. The Council must also consult the Lord Chancellor and any person that the Lord Chancellor directs should be consulted, together with such other persons as the Council considers appropriate.

## Our response to the consultation

3. In this Report we comment on two sets of draft guidelines published for consultation by the Sentencing Council on 30 March 2017.<sup>1</sup> These are the guidelines on:

- overarching principles: domestic abuse; and,
- intimidatory offences, including:
  - harassment and stalking (including offences involving fear of violence and those that are determined to be racially or religiously motivated);
  - disclosing private sexual images (often termed 'revenge porn');
  - controlling or coercive behaviour in an intimate or family relationship; and
  - threats to kill.<sup>2</sup>

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<sup>1</sup> Sentencing Council, [Intimidatory Offences and Domestic Abuse Guidelines Consultation](#), March 2017

<sup>2</sup> The offences of Harassment (putting people in fear of violence), Racially or religiously aggravated harassment (putting people in fear of violence), Stalking (involving fear of violence or serious alarm or distress), Racially or religiously aggravated stalking (with fear of violence) were created under section 4 and 4A of the Protection from Harassment Act 1997, with the racially or religiously aggravated forms coming under the Crime and Disorder Act 1998, section 32 (1)(b). The offences of Harassment, Racially or religiously aggravated harassment, Stalking, and, Racially and religiously aggravated stalking come under section 2 and 2A of the Protection from Harassment Act 1997, with the racially or religiously aggravated forms of these offences coming under the Crime and Disorder Act 1998, section 32 (1)(a). Controlling or coercive behaviour in an intimate or family relationship created by section 76 of the Serious Crime Act 2015; Disclosing private sexual images created by section 33 of the Criminal Justice and Courts Act 2015; and, Threats to kill created by section 16 of the Offences Against the Person Act 1861. The term "intimidatory" was felt to be apt to encompass this collection of offences which all intimidate, defined as to frighten, overawe, subdue or influence.

Given the crossover between the types of offences contained within this draft guideline, and some of the themes running through the revised domestic abuse guidance, it was decided to consult jointly on both guidelines.

4. We welcome the opportunity to consider these draft guidelines and are grateful to the Sentencing Council for sharing its consultation responses with us<sup>3</sup> as it did with our predecessor Committee in relation to previous consultations. We also appreciate the Council's agreement to consider our Report significantly after the consultation deadline (30 June 2017) as the Committee was not constituted until September following the General Election. We decided that it was not necessary for us to seek separate evidence, either formally or informally; we also wanted to avoid imposing duplication of effort on those who had already submitted a response to the Council's own consultation.<sup>4</sup>

5. Rather than responding to each of the Council's consultation questions, our Report focuses on particular themes that appear to us to merit further consideration before the definitive guidelines are finalised. As there are a number of matters which span all of the guidelines, we largely address these thematically rather than guideline by guideline.

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3 We do not publish the responses to the Sentencing Council that we receive.

4 The Sentencing Council's summaries of consultation responses are available in Appendices A and B

## 2 The Sentencing Council’s approach to the guidelines

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### Domestic abuse overarching guideline

6. There is an existing Overarching Principles: Domestic Violence guideline published by the Sentencing Council’s predecessor the Sentencing Guidelines Council in 2006. This is considered outdated by the Council as it “does not reflect the changes in terminology, expert thinking and society’s views”. For example, the Government broadened the (non-statutory) definition of domestic abuse in 2013 to include forms of abuse other than violence:

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. The abuse can encompass, but is not limited to: psychological, physical, sexual, financial, or emotional.

7. Relevant to this consultation is the Council of Europe’s “Istanbul Convention” on preventing and combating violence against women and domestic violence, which places obligations on States Parties to address all forms of violence against women, take measures to prevent such violence, protect its victims and prosecute the perpetrators.<sup>5</sup> Under Article 45 of the Convention, Parties must take necessary measures to ensure that violence against women is punishable by effective, proportionate and dissuasive sanctions, taking into account their seriousness. In determining the sentence for an offence, Article 46 requires Parties to take into account aggravating circumstances that do not already form part of the constituent elements of the offence.<sup>6</sup> The Istanbul Convention was signed by the UK in 2012 but has not yet been ratified. A recent Act of Parliament<sup>7</sup> requires the Secretary of State to report to Parliament as soon as reasonably practicable setting out the steps that will be taken towards ratifying the Convention and the timetable for doing so; this must be followed by an annual progress report to Parliament.

8. There is no specific offence of domestic abuse, either in common law or in statute. It can be an element within a range of offences, most commonly, but not restricted to, violent and sexual offences against the person.<sup>8</sup> Acknowledging this, the Council propose that the guideline remains standalone and overarching, and is cross-referenced digitally to other relevant guidelines. Respondents to the consultation including the Government, Victims’ Commissioner, Magistrates’ Association and local benches, Law Society, Council

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5 Council of Europe, [Council of Europe Convention on preventing and combating violence against women and domestic violence](#), April 2011

6 These factors can be summarised as follows: the offence was committed against a former or current spouse or partner or a member of the family or someone who has abused their authority; the offence, or related offences, were committed repeatedly; the offence was committed against a person made vulnerable by particular circumstances; the offence was committed against or in the presence of a child; the offence was committed by two or more people acting together; the offence was preceded or accompanied by extreme levels of violence, or with the use or threat of a weapon; the offence resulted in severe physical or psychological harm for the victim; and, the perpetrator had previously been convicted of offences of a similar nature.

7 The Preventing and Combating Violence against Women and Domestic Violence (Ratification of Convention) Act 2017. The Act received Royal Assent on 27 April 2017 and came into effect in June 2017.

8 Sentencing Council, [Consultation Stage Resource Assessment: Intimidatory Offences and Overarching Principles: Domestic Abuse](#), March 2017

of HM Circuit Judges, Criminal Bar Association and victims' charities overwhelmingly welcomed this approach, believing it to be more thorough than seeking to add related guidance to each individual guideline. Several individual magistrates disagreed with the Council's approach, regarding it as simpler to cite domestic abuse as an aggravating factor in relevant guidelines, or raising concerns that it would set a precedent for other offence-related overarching guidelines. We discuss in chapter 4 some of the implications of the Council's approach.

### **Assessing seriousness**

9. The draft guideline identifies the principles relevant to the sentencing of cases of domestic abuse. A key element of the Council's proposed approach is that such cases should be viewed by sentencers as "particularly serious", whereas the previous guideline determined that they should be regarded as "no less serious" than had they not been committed in a domestic context. This significant change in approach was thought to be necessary for several reasons set out in the guideline, most notably to reflect the violation of trust that characterises offending in the context of domestic abuse and the lasting impact it can have on victims and others exposed to it. The vast majority of respondents welcomed this shift. The Law Society equated this approach with that towards burglary in a dwelling representing a violation of safety of the home and therefore being seen as meriting a higher punishment than burglary in a commercial setting. Refuge noted that while "particularly serious" does not necessarily equate to "more serious", they believed that it ought to be treated more seriously.<sup>9</sup> The Government interpreted the Council's stance as asserting that these cases should be treated more seriously. The Magistrates Association stated that in assessing the seriousness of domestic abuse it was "crucial" that the court's sentencing is "based solely on the individual facts presented and proven to the criminal standard of proof".

**10. We welcome the Council's approach to devising guidance to sentencers on domestic abuse through a standalone guideline on overarching principles. The guideline's shift of emphasis towards treating domestic abuse offences as "particularly serious" rather than being on a par with offences committed in other contexts is significant, because it is an important signal of the violation of trust and damaging effect that characterises them. Nevertheless, there appears to be some difference of opinion as to whether this should be interpreted to mean that such offences should be treated more seriously by the courts than hitherto, and by implication sentenced more severely. We recommend that the Council should clarify this ambiguity in the definitive guideline.**

### **Gender neutrality**

11. The guideline reminds sentencers that domestic abuse occurs amongst men and women, people of all ethnicities, sexualities, ages, disabilities, immigration status, religion or beliefs, and socio-economic backgrounds and specifies that care should be taken to avoid stereotypical assumptions.<sup>10</sup> While this statement was broadly welcomed, some respondents drew attention to the wide range of abusive acts and relationships encompassed by instances of domestic abuse. The Council of HM Circuit Judges wished to see the paragraph given greater prominence. They and other respondents, including

<sup>9</sup> Others, including Paladin supported this.

<sup>10</sup> Overarching principles: Domestic Abuse draft guideline, para 5

Women’s Aid and Immigration Fraud UK, proposed that specific reference be made to a wider range of abusive acts and relationships, including against parents by adolescents, against those under 16, against transgender people, and so called honour-based abuse, for example.<sup>11</sup>

12. On the other hand, Refuge, Women’s Aid, Paladin (The National Stalking Advocacy Service), The Suzy Lamplugh Trust, Safer Leeds, and the Criminal Bar Association emphasised the gendered nature of much domestic abuse, with the latter noting that 83% of victims in related prosecutions are women.<sup>12</sup> For example, Refuge said

... assumptions of gender symmetry (where incidence, prevalence and impact are considered equivalent for males and females) should be avoided [ ... ] evidence from research shows very clearly that women are abused more severely, with more serious physical consequences (including being killed in greater numbers) than men who are abused by women. Within a gender neutral framework, it is vital that this disparity is both explained and explicit within the guidance.

Others welcomed the inclusive nature of the guideline. For example, some felt that it was important not to assume that domestic abuse is always something done by men to women.<sup>13</sup> The ManKind Initiative, a charity that supports male victims of domestic abuse, commended the Council’s approach, calling it a “very important landmark statement”.

13. Women’s Aid, among others, emphasised that the existence of the guideline is not the entire solution, citing research on the prevalence of poor judicial understanding of the dynamics and impact of domestic abuse. While judicial training is outside the remit of the Sentencing Council, several respondents called for comprehensive training on all aspects of domestic abuse and intimidatory offences, delivered by specialists.<sup>14</sup> A group of magistrates from Highbury Corner felt better informed about the nature of domestic abuse following training in recent years.

**14. We recognise that recorded offences related to domestic abuse are largely, but not exclusively, perpetrated by men and boys against women and girls. In giving a message to sentencers and (via them) to perpetrators, victims, and wider society that offences related to domestic abuse warrant a more serious response than similar offences conducted in other circumstances, the overall effect of the guideline is to condemn such behaviour in the strongest terms. But while we acknowledge the gendered nature of this issue, the gender of the victim should not, in itself, affect the sentencing outcome, because the severity of the likely impact on victims is already taken into account within the process of determining the appropriate sentence. *Understanding the various contexts in which domestic abuse may occur and the forms that it may take, some of which may be insidious and hidden, is very important for sentencers. Accordingly, we recommend that comprehensive training on domestic abuse and intimidatory offences should be provided to magistrates and the judiciary to coincide with the launch of the guideline.***

11 Central Kent Magistrates; a police officer; an individual

12 Ministry of Justice, [Statistics on women and the criminal justice system 2015](#), November 2016, p.21

13 The ManKind Initiative; an individual

14 Paladin; Prison Reform Trust; Women’s Aid

## Political context

15. The Government plans to publish a Draft Domestic Abuse Bill<sup>15</sup> to continue to strengthen the response and to act in accordance with its commitments under the Istanbul Convention. Provisions in the draft legislation would:

- establish a Domestic Violence and Abuse Commissioner;
- statutorily define domestic abuse
- create a consolidated new domestic abuse civil prevention and protection order; and,
- increase sentencing when abusive behaviour involves a child.

The definitive guideline is due to be published in spring 2018. Nevertheless, the Council has acknowledged that it will be necessary to reflect any resulting legislative changes in the definitive guideline and the Government anticipates that the Bill may affect the timing and content of the guideline. **The Government's proposed legislation on domestic abuse is likely to have some impact on the guidelines' contents. The Council's preferred approach is to publish the definitive guidelines and make any changes necessitated by the legislation when the relevant provisions come into force. Given that no guidance currently exists for some offences covered we support this approach.**

## Intimidatory offences guidelines

16. There is currently limited guidance for the sentencing of harassment and racially or religiously aggravated harassment, and threats to kill offences. There are no sentencing guidelines for stalking, disclosing private sexual images and controlling or coercive behaviour offences. There was broad agreement both to the Sentencing Council's proposition both to consider these offences as a group and to merge the guidelines on harassment and stalking. This was with the exception of the Suzy Lamplugh Trust and Paladin, who had been involved in campaigns for the creation of the offence. They believed that the differences between stalking and harassment meant that they should be treated separately. Paladin also wished to see its definition of stalking included in the guideline i.e. a pattern of unwanted, fixated and obsessive behaviour which is intrusive and causes fear of violence or serious alarm or distress.

17. Respondents wished to see clarification of this definition of coercive and controlling behaviour which was used in the overarching guideline:

Controlling behaviour is a range of acts designed to make a person subordinate and/or dependent by isolating them from sources of support, exploiting their resources and capabilities for personal gain, depriving them of the means needed for independence, resistance and escape and/or regulating their everyday behaviour.

Respondents wished the Council to ensure that it was clear that any of the factors listed could be present, by the inclusion of 'or' in between them.

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15 [Queen's Speech](#) 2017 cites the Government's intention to bring forward a draft Bill in the 2017–19 Session of Parliament

### 3 Resource implications

18. As highlighted in the previous chapter, the Council intends that courts should identify and treat cases of domestic abuse seriously. Crimes are ‘flagged’ as being ‘domestic abuse related’ by the police if the offence meets the Government definition of domestic violence and abuse; 11% of all offences in England and Wales for the year ending September 2016 were flagged in this way.<sup>16</sup> Of over 1 million domestic abuse related incidents recorded by the police in the year ending March 2016, 41% were recorded as crimes. According to Crown Prosecution Service (CPS) data, in that year, three-quarters of domestic abuse-related prosecutions were successful in securing convictions. It is estimated that 79% of those who experienced abuse did not report it to the police.

19. As part of its remit, the Council estimates the likely financial impact of the guidelines it produces on prison and probation services. While the Council states that it is not its intention to increase sentencing severity or change sentencing practice, it has identified two risks regarding the accuracy of its resource assessment in this particular case: first, that its assessment of current sentencing practice is inaccurate and secondly, that sentencers do not interpret the guidelines as intended. In relation to the former, for example, for the newer offences—coercive and/or controlling behaviour, and disclosing private images—very limited information is yet available on current sentencing practice, and for offences related to domestic abuse no detailed sentencing data is available as they are not routinely flagged as such.<sup>17</sup> Regarding the latter, the Council states that there is no strong evidence base on which to ground assumptions about changes in sentencing behaviour. It is also possible that legislative change—which doubled the statutory maximum for harassment offences involving fear of violence<sup>18</sup>—results in harsher sentences for all such offences, rather than only the most serious forms as intended. The Council concludes that it is difficult to estimate with any precision the impact that the guidelines may have on prison and probation resources. Nevertheless, sentencing trends indicate that sexual and violent offenders are receiving tougher (longer) sentences; this affects the size of the prison population which has recently seen unanticipated growth and is projected to continue to grow.<sup>19</sup> The Sentencing Council has recently found that there was an unanticipated increase in the severity of sentencing following the implementation of its definitive burglary guideline.<sup>20</sup>

**20. While the Council does not intend that the guideline will shift sentencing patterns, we consider that seeking to ensure that domestic abuse and intimidatory offences are treated particularly seriously is likely to have an inflationary influence on sentencing. We have considered whether signalling the gravity of such offences warrants a potential increase in resources for imprisonment and we believe it does. As our predecessor Committee has noted in response to consultations on previous**

16 Sentencing Council, [Consultation Stage Resource Assessment: Intimidatory Offences and Overarching Principles: Domestic Abuse](#), March 2017; The Crime Survey for England and Wales estimates that 7.7% of women and 4.4% of men experienced domestic abuse in the previous year.

17 Sentencing Council, [Consultation Stage Resource Assessment: Intimidatory Offences and Overarching Principles: Domestic Abuse](#), March 2017

18 s.175 of the Police and Crime Act 2017

19 Ministry of Justice, [Story of the Prison Population: 1993 to 2016 England and Wales](#), July 2016

20 Sentencing Council, [Assessing the Impact of the Sentencing Council’s Burglary Definitive Guideline on Sentencing Trends](#), July 2017

**guidelines, resources for the delivery of community and custodial sentences are finite and already stretched. *The Ministry of Justice must make provision for additional prison and probation resources were the guidelines to have this result.***

**21. The digitalisation of courts as part of the court reform programme provides a long-awaited opportunity to strengthen the robustness of data on sentencing in order to facilitate reliable predictions about the impact of draft guidelines or any changes in sentencing practice stemming from definitive guidelines. *We recommend that HMCTS should be required to identify criminal cases which are flagged by the police and Crown Prosecution Service as linked to domestic abuse. This would illuminate the extent of the issue and enable the Sentencing Council and others to monitor the use of the overarching principles, and to understand as fully as possible the resource impact of the widespread desire to see such offences treated more seriously by the courts.***

## 4 Key themes

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22. We consider here some key themes relating to the domestic abuse guideline and the intimidatory offences guidelines. As the former is intended to be overarching, we have examined where there is overlap in some of the factors considered to be important at various stages in the sentencing process, including as harm factors and aggravating factors. The Council intend that the overarching guideline on domestic abuse will be cross-referenced to those for all the intimidatory offences. It is therefore important to ensure that they operate coherently with one another. We also examine the interplay with other offence-specific guidelines which are known to be related to domestic abuse as outlined in chapter 2.

### The impact of domestic abuse and intimidatory offences

23. The overarching guideline recognises that a defining characteristic of domestic abuse is the harm caused. For example, it refers to the impact of the violation of trust that occurs in the context of abuse within an intimate or family relationship as the lasting trauma that this can inflict, both on victims and their children. As is evident from the definition of domestic abuse set out in chapter 2, it is typically part of a persistent pattern of behaviour and its impact on a victim can be severe, regardless of whether physical violence has been a feature of the offence. Nevertheless, the aggravating factors reflect a narrower, incident-based, view, mentioning a “proven history of violence or threats by the offender in a domestic context”. South Wales Police and South Wales Police and Crime Commissioner believed it important that it be understood that coercive and controlling behaviour which can characterise domestic abuse is not considered to be less of a crime than physical violence. Some respondents, particularly domestic abuse and intimidatory offences campaign and advocacy organisations, emphasised the need to reflect the impact of psychological harm more consistently in the guidelines.<sup>21</sup>

24. Some respondents raised concerns about how a proven history of domestic abuse should be determined. For example, one magistrates bench noted the omission of text from the existing guideline which facilitates them enquiring about the history of the relationship in assessing the gravity of the offence. The Council does include in the overarching guideline as a wider ‘factor to take into consideration’ that for offences which involve serious violence, or where the psychological harm caused is severe, a custodial sentence will be warranted in the majority of cases. Other guidelines which are likely to be cross-referenced—such as those for Common Assault, Grievous Bodily Harm, wounding with intent and Actual Bodily Harm—specifically refer to psychological harm as a factor indicating greater harm. The stage of sentencing at which these matters are considered is important as sentencers may be reluctant to move offences up a category based on aggravating factors.<sup>22</sup>

25. Respondents questioned specifically several aspects of the guideline on controlling and coercive behaviour and their relationship to the characteristics of the offence itself. This new offence, created by section 76 of the Serious Crime Act 2015, only came into force on 29 December 2015. As it is such a new offence, the Council developed the guideline on the basis of an examination of sentencing in a small number of cases. One of the factors

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21 Women’s Aid; The Suzy Lamplugh Trust; Warrington Anti-Stalking Clinic

22 A Magistrates Bench

indicative of high culpability in the controlling and coercive behaviour guideline is the use of ‘significant violence’ where it has not been separately charged. The Council of HM Circuit Judges suggested that this perhaps sets too high a bar. As the Sentencing Council noted in the consultation document, the defining elements of the offence are behaviours that cause fear of violence or serious alarm and distress, rather than violence per se. Refuge believed that it is not the extreme nature of a particular act of abuse that makes it harmful or serious, it is the meaning it holds for the victim - the impact. Another anomaly in this guideline is within the factors regarded as indicating lesser culpability, which include ‘offence was limited in scope and duration’, despite a defining characteristic of the offence being repeated or continuous abuse.

### **Particular vulnerability of victims**

26. In the intimidatory offences guidelines ‘victim is particularly vulnerable’ is used as one of the criteria by which sentencers should assess harm, with this being viewed as a reason for placing the offence in the highest category of harm. The draft guideline on domestic abuse includes the same phrase as an aggravating factor. Several respondents had apprehensions about the use of particular vulnerability, both within the domestic abuse guideline and others, stating that all victims of such offences were vulnerable.<sup>23</sup> For example Paladin said:

... domestic abuse victims are almost always vulnerable by nature of the type of abuse and dynamics. We must not allow this to focus on race, religion, job, class, economic status, or “confidence”. Many appear to be confident when they are not with their partner.<sup>24</sup>

The question of how vulnerability should impact sentencing of offences related to domestic abuse was highlighted recently in the case of Mustafa Bashir in which the judge’s sentencing remarks in relation to the victim not being particularly vulnerable were taken as an indication of their rationale for giving a sentence that was considered by some to be too lenient.<sup>25</sup> The Suzy Lamplugh Trust proposed that the term “additional vulnerabilities” be used.

27. The Criminal Bar Association highlighted anomalies between the intimidatory offences guidelines and other sentencing guidelines in the consideration of culpability and harm. For example, in the assault guidelines the vulnerability of the victim is present in the culpability factors, rather than harm ones. They believed that harm factors should be focused on the effect on the vulnerable victim. **We recommend that the Sentencing Council reconsiders the inclusion of the vulnerability of the victim as an aggravating factor in the overarching guideline on domestic abuse. The particular vulnerability of the victim is already considered in most guidelines during the assessment of harm or culpability. As part of the process of cross-referencing the overarching guideline to those for related offences, the Sentencing Council should review the point at which the court is directed to assess the vulnerability of the victim and consider the feasibility of**

23 South Wales Police and South Wales Police and Crime Commissioner; The Suzy Lamplugh Trust; Women’s Aid; Paladin; Safer Leeds

24 Paladin

25 Full fact, [Remarks made on 7 April 2017 by HHJ Mansell QC at Manchester Crown Court \(Crown Square\), published the Judicial Office on the same date as PR 1743](#), April 2017

*adopting a consistent approach. The overarching guideline itself should emphasise that regardless of how they present to the court all victims of domestic abuse are potentially vulnerable, by virtue of the abuse of power characteristic of such offences.*

### **Defining serious distress and psychological harm**

28. Similarly, the level of harm caused to the victim is classified in two different ways in the intimidatory offences guidelines. For example, “very serious distress” is included in the highest category of harm for guidelines for all such offences with the exception of that for coercive and controlling behaviour in which “very serious psychological harm” is used instead. The Council of HM Circuit Judges believed that sentencers would welcome assistance on the definition of psychological harm and whether its assessment should be dependent on medical evidence. Some respondents made comments regarding the calibration of these statements in relation to the offence in question. Regarding the disclosure of private sexual images guideline, the Criminal Bar Association suggested combining the emotional and practical harm caused into a single statement, as the court is advised to do in assessing the lowest category of harm for that offence. They also proposed that ‘limited distress or harm’ might better reflect the experience of victims in the lowest category of harm as they did not believe such offences could be described as causing ‘minimal distress or harm’.<sup>26</sup> Similarly, regarding the controlling and coercive behaviour guideline in which a key element of the offence is a ‘serious effect’ on the victim, they proposed the addition of ‘particularly serious physical or psychological harm’ and ‘particularly serious or long-term practical impact’ in the highest category of harm, and the removal of ‘minimal distress or harm’ in the lowest category of harm.<sup>27</sup>

### **Practical impact**

29. Neither the Law Society nor the Magistrates Association believed that the practical impact on victims is defined clearly or consistently enough in the guidelines. In the overarching guideline there is an aggravating factor of the victim being forced to leave home, whereas across the intimidatory offences guidelines consultation document the term is used alongside examples including impact on victims’ businesses, homes, routines, children, jobs, and finances. The Law Society proposed that the examples provided by the Council in the consultation document be added to the actual guidelines. In relation to controlling and coercive behaviour, the Law Society suggested that financial impact also be considered to reflect financially controlling behaviour that can be related to this offence.

30. **While we support the proposition of an overarching guideline for domestic abuse, we note that there are important inconsistencies both within this guideline and across related guidelines. We also note the importance of the stage at which key factors in relation to the assessment and treatment of harm are taken account. The list of aggravating factors does not include reference to coercive, abusive or controlling behaviour or patterns of behaviour forming repeated or continuous abuse. These anomalies risk creating unnecessary complexities for sentencers which may result in double-counting and unwarranted variations in sentencing. We recommend that the Sentencing Council seeks to provide more clarity about the nature of harm which may**

26 See also a Magistrates Bench

27 See also South Wales Police and South Wales Police and Crime Commissioner

*be present in each of these offences and the stage of sentencing at which this should be considered, where possible rationalising the approach across the guidelines, or otherwise highlighting the potential discrepancies to sentencers to reduce the risk of inconsistencies. This should include ensuring that physical violence and threats of physical violence are not assumed to be more serious in terms of harm and culpability than emotional and psychological manifestations of abuse and control.*

### **Impact on others witnessing the offence**

31. One of the aggravating factors in the domestic abuse guideline is the impact on children, whom the Council explain can be adversely impacted by both direct and indirect exposure to it. While this is a specific aggravating factor identified in the Istanbul Convention, some respondents proposed that this either be expanded to include other forms of dependants and other witnesses to the offence, or that a separate factor be created to capture this. The Criminal Bar Association believed that harm categories for intimidatory offences should include that caused not only to the victim but also to anyone else witnessing the threat.<sup>28</sup> The intimidatory offences guidelines make reference to: '[i]mpact of the offence on others, particularly children'. One magistrates bench noted that considering the impact of the offence on others could double-count forced changes in lifestyle which have already been taken into account in the harm assessment; they propose that adding "where not taken into account in previous steps" would prevent this.

*32. We support the inclusion of the impact on children as an aggravating factor in the guidelines but see no reason for references to the impact on others being included solely in the intimidatory offences guidelines. We recommend that the Sentencing Council find a means to reflect the wider impact on others more consistently within both the domestic abuse and intimidatory offences guidelines.*

### **Other aggravating factors**

33. The Council has taken steps to address some of the barriers to conviction of offences related to domestic abuse and intimidatory offences. The domestic abuse guideline sets out what the Council considers to be the most relevant aggravating and mitigating factors a court may need to consider, emphasising that the lists are non-exhaustive. In relation to aggravation, the list adds two factors to those included within the existing guideline: 'steps taken to prevent the victim reporting an incident' and 'steps taken to prevent the victim obtaining assistance' in recognition that intimidation or pressure may be exerted on the victim to withdraw from the criminal justice process. Earlier in the guideline, the Council also reminds the court that the victim's withdrawal from the prosecution should be no indication of a lack of seriousness and no inference should be drawn from it. These points were typically welcomed by respondents, although some suggested clarifications and additions.

34. The Council of HM Circuit Judges proposed that the domestic abuse guideline should place particular emphasis on the fact that the aggravating factors are non-exhaustive, noting that such offences are committed in a variety of ways, some of which are "deliberately subtle and insidious". For example, Paladin, among others, noted that

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<sup>28</sup> See also Queen Mary University of London Legal Advice Centre regarding the practical impact on family members

emotional and psychological threats can be used to generate fear and intimidation in an effort to prevent, deter, or dissuade a victim from reporting offences and following them through the criminal justice process, including assisting or supporting the prosecution.<sup>29</sup> Several respondents considered the list too limited and the complexities of behaviours characterising these offences are reflected in the wide range of aggravating factors they propose in addition to those set out in the Council's consultation. These included, for example: colluding or conspiring with other adult family members or friends to further control and/or abuse; misleading, lying to or cheating the victim in relation to a significant fact or issue e.g. financial abuse; the length of time over which abuse occurred; financial loss; and, abuse of a sexual nature; gratuitous humiliation and/or degradation of victim; deliberate false reporting of incidents of domestic violence as a means to control the victim; isolating the victim from their friends/colleagues/family; persistently visiting or loitering.<sup>30</sup> It should also be noted that two of the aggravating factors in the Istanbul Convention are not listed by the Council: offence committed repeatedly, and/or offence committed by two or more people acting together.

***35. We recommend that the Sentencing Council should give consideration to the inclusion of additional aggravating factors in the definitive guideline on domestic abuse and rationalising them across the guidelines to be cross-referenced. The wide range of additional factors raised by respondents illustrates the importance of considerable emphasis being placed on the fact that the list is non-exhaustive. We further recommend that the Council should ensure that the guidelines reflect obligations under the Istanbul Convention, which the UK is committed to ratify.***

### **Racially aggravated offences**

36. In respect of racially or religiously aggravated harassment and stalking offences the Council proposes including the following statement:

The sentencer should state in open court that the offence was aggravated by reason of race or religion, and should also state what the sentence would have been without that element of aggravation.

Respondents to the consultation largely endorsed this approach.<sup>31</sup> The Criminal Bar Association felt that the practice would be a welcome clarification. The Law Society suggested expanding the wording to:

The sentencer should state in open court that at the time of committing the offence, or immediately before or after doing so, the offender had demonstrated towards the victim of the offence, hostility based on the victim's membership (or presumed membership) of a racial or religious group; or that the offence was motivated (wholly or partly) by hostility towards members of a racial or religious group based on their membership of that group.

29 South Wales Police and South Wales Police and Crime Commissioner; a magistrate; a member of the judiciary

30 A Magistrates Court Bench; a Barrister; The Law Society; Suzy Lamplugh Trust

31 Criminal Bar Association; HM Council of Circuit Judges; Law Society; individual and groups of magistrates. The Council calculated that 90% of respondents agreed with the proposed approach, 10% of respondents disagreed.

In relation to how the level of racial or religious aggravation should be determined, the Law Society also made detailed comments. They, the Criminal Bar Association and the Magistrates Association felt that the means of categorising aggravating features into high, medium and low was not sufficiently addressed in the draft guideline, which the latter felt could produce inconsistent outcomes.

37. The Magistrates Association suggested that the Council could prescribe a percentage range by which a sentence should be increased, noting that in the case of high levels of aggravation raising the sentence from, say, a fine to a community sentence appeared to be a major elevation. More specifically, Oxfordshire Bench Magistrates proposed that—as the aggravated offence statutory maximum is 40% greater than the basic offence—a 40% elevation could be taken as a guide to “significantly more”, and 20% might reasonably constitute “more”. The Sentencing Council says it considered different methods of providing guidance on what increase to make to the sentence for the aggravation, including for example percentage ranges, but it concluded that this would be mechanistic and inhibited by the limited amount of sentencing data available from the very small volume of these offences that have been sentenced thus far.

**38. We agree with the Sentencing Council that the limited amount of sentencing data makes it difficult to set out ways of determining the level of racial and religious aggravation for stalking and harassment offences. We recommend that the approach set out in these guidelines be reconsidered with the benefit of more sentencing data, in about 3 years’ time, to see if a framework setting percentage increases in sentences for particular aggravating factors is workable by then. In the meantime consideration should be given to the Law Society’s views on structuring the guidance on aggravating factors to assist consistency in balancing the relative importance of each of the factors identified.**

## Mitigating factors

### *Good character and exemplary conduct*

39. In respect of the weight which sentencers should afford to the mitigating factor of good character the domestic abuse guideline states:

... an offender’s good character in relation to conduct outside the relationship should generally be of no relevance where there is proven pattern of domestic abuse.

There is no such qualification in the intimidatory offences guidelines. Several respondents questioned whether character outside the relationship should have any relevance at all, and some felt that “good character” should be removed as a mitigating factor in both the domestic abuse and intimidatory offences guidelines.<sup>32</sup> Domestic abuse and many intimidatory offences largely take place “behind closed doors” or in an otherwise insidious manner; perpetrators may be highly effective at manipulating others, creating the impression that they are of “good character”, when in fact this makes them more

dangerous.<sup>33</sup> There is precedent for an alternative means of qualifying the weight to be afforded to this mitigating factor within the definitive Sexual Offences Guidelines. These state:

Previous good character/exemplary conduct is different from having no previous convictions. The more serious the offence, the less the weight which should normally be attributed to this factor. Where previous good character/exemplary conduct has been used to facilitate the offence, this mitigation should not normally be allowed and such conduct may constitute an aggravating factor.<sup>34</sup>

**40. We agree with respondents who question the relevance of good character as a mitigating factor in relation to sentencing of domestic abuse and intimidatory offences. In relation to intimidatory offences we recommend that the Council should qualify the use of good character as a mitigating factor along the lines of the statement included in the guidelines for sexual offences.**

### **Provocation**

41. The Council include provocation as a mitigating factor but propose that it is likely that cases where this is sufficient to mitigate the seriousness of the offence will be rare. It states that any such assertions must be examined with great care, to determine whether they have a factual basis and in recognition that these assertions can be used by offenders to deflect responsibility. This aspect of the consultation understandably elicited some strong responses. These quotations from the responses of the Law Society and HM Council of Circuit Judges highlight the complexity of this issue:

On the one hand, its inclusion anticipates an element of victim blaming, and as such there is a strong argument not to include it. However, in some cases we agree that it may be fair to consider severe provocation as mitigating.<sup>35</sup>

Provocation may be a hostage to fortune, but it has been carefully limited.<sup>36</sup>

42. Several respondents were concerned about the inclusion of provocation as a mitigating factor and some called for it to be removed in recognition that there should not be an excuse for such offences and the potential for it to encourage victim-blaming by the defence and the perpetrator.<sup>37</sup> Refuge argued that denying responsibility and blaming the victim is one of the primary mechanisms by which an abuser maintains psychological power over the abused, and it did not believe the criminal justice system should reinforce this. On the other hand, the Criminal Bar Association and the Prison Reform Trust wished to see greater recognition of the small number of instances where the experience of domestic abuse has precipitated or been a key factor in the commission of an offence

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33 Women's Aid; a Magistrates Bench; The Suzy Lamplugh Trust; Refuge; Safer Leeds

34 Sentencing Council, [Sexual offences definitive guideline](#), April 2014

35 The Law Society

36 Council of HM Circuit Judges

37 Women's Aid; a Magistrates Bench; Suzy Lamplugh Trust; Refuge; South Wales Police and South Wales Police and Crime Commissioner; a magistrate; Safer Leeds; Justices Clerks' Society

by the person abused. Several respondents felt that there was a need for greater guidance on what constituted “provocation”; the Justices Clerks’ Society advocated the inclusion of a summary note of the law.<sup>38</sup>

**43. The use of provocation as a mitigating factor is especially complex in the case of domestic abuse related offences where victim-blaming can form part of the pattern of abusive behaviour. On balance we consider that the qualified inclusion of provocation as a mitigating factor is necessary only to enable a proportionate response to sentencing in the small proportion of offences which are linked directly to a history of domestic abuse having been suffered by an offender.**

### *Self-referral for treatment*

44. Another mitigating factor in the overarching guideline is self-referral for help, treatment, and counselling which is described as “recognition by an offender of the need to change and demonstration of steps taken to confront and prevent abusive behaviour”. A similar statement ‘[d]etermination and/or demonstration of steps having been taken to address offending behaviour’ is also included in the intimidatory offences guidelines, as it is in other related sentencing guidelines.<sup>39</sup> In addition, when directing the court to consider a requirement to attend an accredited domestic abuse programme, the overarching guideline states that such an option should “only be appropriate where the court is satisfied that the offender genuinely intends to reform his or her behaviour and that there is a realistic prospect of rehabilitation being successful.”

45. Respondents noted that there were likely to be differing motivations for perpetrators in referring themselves for treatment or counselling in the context of prosecution, which should be carefully considered by the court.<sup>40</sup> Others did not feel that this should be considered in mitigation at all. The Magistrates Association proposed rewording the mitigating factor in all the guidelines covered in the consultation to mention genuine intention and a real prospect of rehabilitation; others questioned whether it would be possible to determine genuine intention or a propensity to change. Some respondents wished to see this mitigating factor refer more specifically to engagement in treatment rather than simply referral to it.<sup>41</sup> Refuge stated that “spurious” evidence can be accepted by sentencers and questioned the evidence that perpetrator programmes result in the cessation of all abusive behaviour. On the other hand, a representative of the police was supportive of greater use of such programmes, stating: “[a]ll too often with domestic abuse it becomes a revolving door with offenders going on to abuse their current partner or a new partner. Behavioural change through mandatory attendance at an accredited domestic abuse programme should be considered in all cases where this has not been tried before.”<sup>42</sup> Paladin suggested sentencing should be adjourned following self-referral to see the outcome of the treatment. Some respondents noted a paucity of appropriate programmes, including for female perpetrators.<sup>43</sup> **The inclusion in the overarching**

38 A member of the public; a magistrate; HM Council of Circuit Judges; Magistrates Association; a campaign group; Criminal Bar Association; a Police and Crime Commissioner; The Law Society; Men’s Rights Activist; a Magistrates Bench

39 Sentencing Council, [Assault definitive guideline](#), March 2011; Sentencing Council, [Sexual offences definitive guideline](#), April 2014

40 Women’s Aid; Refuge; The Magistrates Association; Warrington Anti-Stalking Clinic

41 Justices Clerks’ Society

42 See also The Suzy Lamplugh Trust; Prison Reform Trust

43 Prison Reform Trust; The Mankind Initiative

**guideline on domestic abuse of a mitigating factor on self-referral for help, treatment or counselling has similarities to mitigating factors in key related offences on steps being taken to address offending behaviour. *We question whether it is necessary to include this if it duplicates what is already in other sentencing guidelines. If it is to be included we believe there should be an emphasis on the need to ensure that the motivation for self-referral is genuine and we propose that the factor should additionally refer to an assessment of whether engagement in the resulting treatment is meaningful.***

## Other matters to take into consideration

### *Taking account of the views of victims in assessing seriousness*

46. The guideline states that the sentence imposed should be determined by the seriousness of the offence, not by the expressed wishes of the victim. This is because:

- the court is sentencing on behalf of the wider public;
- 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 by, or by a fear of, the offender;
- the risk of such threats will be increased if it is generally believed that the severity of the sentence may be affected by the wishes of the victim.

47. While acknowledging the particular importance of sentencing in these cases not being influenced directly by victims' views, some respondents, including the Criminal Bar Association, the Victims' Commissioner, the Magistrates Association and Refuge, wished to see the role and importance of victim personal statements explained in the guideline. This would also encourage impact statements to be made before sentencing—preferably at the initial police interview—to assist the court in examining the effects and harm caused, whilst also mitigating the impact of coercion/fear from the offender. Paladin suggested they be used for every case and proposed that the sentencer should be encouraged to ask for them if they are absent. A Magistrates Bench suggested the addition of the following:

A court should consider, where possible, a victim personal statement which will help it assess the immediate and possible long-term effects of the offence on the victim (and any children, where relevant) as well as the harm caused, whether physical or psychological. If no victim personal statement is available, comments made in a witness statement or in evidence at trial should be taken into account.

48. **We support the Council's approach to setting out clearly in the guidelines that the victim's views have no direct bearing on the sentence. *We consider that there is merit in accompanying this with a statement clarifying the use of victim impact statements in these cases. This might encourage them to be taken more frequently when an offence is reported to the police so that they can be available for use by sentencers should they wish to use them as part of their assessment of the harm caused.***

### Psychiatric reports

49. In each of the guidelines the Council include as a descriptor of lesser culpability '[o]ffender's responsibility substantially reduced by mental disorder or learning disability'. The draft guideline for section 4/4A offences of stalking and harassment involving fear of violence states that sentencers should consider whether to ask for psychiatric reports to assist with sentencing. The Council felt it was important to note this to reflect the proportion of offenders, particularly with stalking offences, who have mental health conditions which relate to, or underpin their offending behaviour.<sup>44</sup> The majority of respondents agreed with the inclusion of this reference, although some wished to see changes to it and others noted the financial implications. For example, the Criminal Bar Association wished to see reference made to psychiatric reports at the first stage in the sentencing process. The Suzy Lamplugh Trust felt that the prevalence of mental disorders called for stronger wording i.e. that "psychiatric reports should be considered in *most* cases [emphasis added]". On the other hand Warrington Anti-Stalking Clinic urged caution, noting that there may be evidence of psychological/emotional disturbance that is insufficient to meet diagnostic criteria and that the courts should be cautious not to 'medicalise' or pathologise stalking behaviour.

50. For other intimidatory offences, including section 2/2A offences of stalking and harassment, the Council concluded that mental health conditions may not be as prominent a feature, mindful of the need for proportionate use of mental health services. The Council of HM Circuit Judges agreed that these offences will not normally involve psychiatric issues, but may warrant a reminder to the court to enquire as to whether the defendant is known to psychiatric services. While others felt that resources ought to be considered, the Criminal Bar Association, the Victims' Commissioner, The Suzy Lamplugh Trust and many of the individual respondents did not support the Sentencing Council's conclusion. The former stated "[t]he reality is that mental health conditions often underlie all forms of harassment and stalking offences regardless of their apparent severity". While acknowledging resource constraints and supporting the need for proportionality, they each believed that the court was best placed to determine whether such an assessment was warranted in individual cases. ***We recommend that the two stalking and harassment guidelines should establish a presumption that the court will obtain a psychiatric report in all cases, which may be set aside if the facts of the case indicate that getting a report would be futile or otherwise unnecessary, including, for example, if the perpetrator is already known to psychiatric services.***

### Restraining orders

51. The Council reminds sentencers to consider the option of a restraining order in each of the guidelines. Several respondents, including the Suzy Lamplugh Trust, Refuge, Women's Aid, and Paladin, wished to see restraining orders considered as standard and the reasons for not doing so documented.<sup>45</sup> For example, Paladin stated that the courts should have a positive duty to impose restraining orders unless there is evidence that it would not be in the interest of justice to do so. ***We support the Sentencing Council's direction in each of the guidelines for sentencers to consider a restraining order and***

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44 p.19

45 Suzy Lamplugh Trust; Paladin; Refuge; Women's Aid; a police officer

*recommend that this be considered in all cases. Where such an order is not granted the reasons for not doing so should be included in sentencing remarks as a matter of course in both domestic abuse and intimidatory offences cases.*

## Sentencing ranges

### *Use of statutory maxima*

52. To facilitate the entry into force of the doubling of the statutory maximum from five to ten years for offences of putting people in fear of violence in s.175 of the Police and Crime Act 2017 (i.e. section 4 and 4A harassment and stalking), the Council proposes creating a “very high culpability” category, sitting above the standard “high culpability” category. This is defined in the draft guideline as an extreme nature of the factors present for high culpability. Some respondents, including the Law Society, Criminal Bar Association and Magistrates Association, were supportive of this approach. Others questioned the need for the extra category and how “extreme” should be defined.<sup>46</sup> The Council of Her Majesty’s Circuit Judges and Paladin queried why the highest brackets for offences classified with the most serious culpability and harm is set at 8 years and does not go up to the maximum for this offence of ten years. This headroom is a standard feature of sentencing guidelines, as it facilitates a greater degree of judicial discretion. For example, it also applies for disclosing private sexual images, although not for s2/2A harassment and stalking offences.<sup>47</sup> ***We note that as with other guidelines the upper category range does not extend to the statutory maximum penalty to facilitate judicial discretion. In this case it is two years short. We recommend that this should approximate more closely to the maximum of ten years.***

## Conclusion

53. The overarching guideline on domestic abuse and the guidelines on intimidatory offences are particularly challenging and complex due both to the nature of the offences concerned and their relationship to numerous other offences. We have considered here what we consider to be some of the key issues raised by respondents to the consultation. Nevertheless, in doing so we have not addressed some of the more detailed suggestions made by respondents for revising specific aspects of the intimidatory guidelines in particular.

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46 London Criminal Courts Solicitors’ Association; a Magistrates Bench; a magistrate

47 A Magistrates Bench

## Conclusions and recommendations

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### Domestic abuse overarching guideline

1. We welcome the Council's approach to devising guidance to sentencers on domestic abuse through a standalone guideline on overarching principles. The guideline's shift of emphasis towards treating domestic abuse offences as "particularly serious" rather than being on a par with offences committed in other contexts is significant, because it is an important signal of the violation of trust and damaging effect that characterises them. Nevertheless, there appears to be some difference of opinion as to whether this should be interpreted to mean that such offences should be treated more seriously by the courts than hitherto, and by implication sentenced more severely. *We recommend that the Council should clarify this ambiguity in the definitive guideline.* (Paragraph 10)
2. We recognise that recorded offences related to domestic abuse are largely, but not exclusively, perpetrated by men and boys against women and girls. In giving a message to sentencers and (via them) to perpetrators, victims, and wider society that offences related to domestic abuse warrant a more serious response than similar offences conducted in other circumstances, the overall effect of the guideline is to condemn such behaviour in the strongest terms. But while we acknowledge the gendered nature of this issue, the gender of the victim should not, in itself, affect the sentencing outcome, because the severity of the likely impact on victims is already taken into account within the process of determining the appropriate sentence. *Understanding the various contexts in which domestic abuse may occur and the forms that it may take, some of which may be insidious and hidden, is very important for sentencers. Accordingly, we recommend that comprehensive training on domestic abuse and intimidatory offences should be provided to magistrates and the judiciary to coincide with the launch of the guideline.* (Paragraph 14)

### Political context

3. The Government's proposed legislation on domestic abuse is likely to have some impact on the guidelines' contents. The Council's preferred approach is to publish the definitive guidelines and make any changes necessitated by the legislation when the relevant provisions come into force. Given that no guidance currently exists for some offences covered we support this approach. (Paragraph 15)

### Resource implications

4. While the Council does not intend that the guideline will shift sentencing patterns, we consider that seeking to ensure that domestic abuse and intimidatory offences are treated particularly seriously is likely to have an inflationary influence on sentencing. We have considered whether signalling the gravity of such offences warrants a potential increase in resources for imprisonment and we believe it does. As our predecessor Committee has noted in response to consultations on previous

guidelines, resources for the delivery of community and custodial sentences are finite and already stretched. *The Ministry of Justice must make provision for additional prison and probation resources were the guidelines to have this result.* (Paragraph 20)

5. The digitalisation of courts as part of the court reform programme provides a long-awaited opportunity to strengthen the robustness of data on sentencing in order to facilitate reliable predictions about the impact of draft guidelines or any changes in sentencing practice stemming from definitive guidelines. *We recommend that HMCTS should be required to identify criminal cases which are flagged by the police and Crown Prosecution Service as linked to domestic abuse. This would illuminate the extent of the issue and enable the Sentencing Council and others to monitor the use of the overarching principles, and to understand as fully as possible the resource impact of the widespread desire to see such offences treated more seriously by the courts.* (Paragraph 21)

### The impact of domestic abuse and intimidatory offences

6. We recommend that the Sentencing Council reconsiders the inclusion of the vulnerability of the victim as an aggravating factor in the overarching guideline on domestic abuse. The particular vulnerability of the victim is already considered in most guidelines during the assessment of harm or culpability. *As part of the process of cross-referencing the overarching guideline to those for related offences, the Sentencing Council should review the point at which the court is directed to assess the vulnerability of the victim and consider the feasibility of adopting a consistent approach. The overarching guideline itself should emphasise that regardless of how they present to the court all victims of domestic abuse are potentially vulnerable, by virtue of the abuse of power characteristic of such offences.* (Paragraph 27)
7. While we support the proposition of an overarching guideline for domestic abuse, we note that there are important inconsistencies both within this guideline and across related guidelines. We also note the importance of the stage at which key factors in relation to the assessment and treatment of harm are taken account. The list of aggravating factors does not include reference to coercive, abusive or controlling behaviour or patterns of behaviour forming repeated or continuous abuse. These anomalies risk creating unnecessary complexities for sentencers which may result in double-counting and unwarranted variations in sentencing. *We recommend that the Sentencing Council seeks to provide more clarity about the nature of harm which may be present in each of these offences and the stage of sentencing at which this should be considered, where possible rationalising the approach across the guidelines, or otherwise highlighting the potential discrepancies to sentencers to reduce the risk of inconsistencies. This should include ensuring that physical violence and threats of physical violence are not assumed to be more serious in terms of harm and culpability than emotional and psychological manifestations of abuse and control.* (Paragraph 30)
8. *We support the inclusion of the impact on children as an aggravating factor in the guidelines but see no reason for references to the impact on others being included solely in the intimidatory offences guidelines. We recommend that the Sentencing Council find a means to reflect the wider impact on others more consistently within both the domestic abuse and intimidatory offences guidelines.* (Paragraph 32)

### Other aggravating factors

9. *We recommend that the Sentencing Council should give consideration to the inclusion of additional aggravating factors in the definitive guideline on domestic abuse and rationalising them across the guidelines to be cross-referenced. The wide range of additional factors raised by respondents illustrates the importance of considerable emphasis being placed on the fact that the list is non-exhaustive. We further recommend that the Council should ensure that the guidelines reflect obligations under the Istanbul Convention, which the UK is committed to ratify. (Paragraph 35)*
10. *We agree with the Sentencing Council that the limited amount of sentencing data makes it difficult to set out ways of determining the level of racial and religious aggravation for stalking and harassment offences. We recommend that the approach set out in these guidelines be reconsidered with the benefit of more sentencing data, in about 3 years' time, to see if a framework setting percentage increases in sentences for particular aggravating factors is workable by then. In the meantime consideration should be given to the Law Society's views on structuring the guidance on aggravating factors to assist consistency in balancing the relative importance of each of the factors identified. (Paragraph 38)*

### Mitigating factors

11. *We agree with respondents who question the relevance of good character as a mitigating factor in relation to sentencing of domestic abuse and intimidatory offences. In relation to intimidatory offences we recommend that the Council should qualify the use of good character as a mitigating factor along the lines of the statement included in the guidelines for sexual offences. (Paragraph 40)*
12. *The use of provocation as a mitigating factor is especially complex in the case of domestic abuse related offences where victim-blaming can form part of the pattern of abusive behaviour. On balance we consider that the qualified inclusion of provocation as a mitigating factor is necessary only to enable a proportionate response to sentencing in the small proportion of offences which are linked directly to a history of domestic abuse having been suffered by an offender. (Paragraph 43)*
13. *The inclusion in the overarching guideline on domestic abuse of a mitigating factor on self-referral for help, treatment or counselling has similarities to mitigating factors in key related offences on steps being taken to address offending behaviour. We question whether it is necessary to include this if it duplicates what is already in other sentencing guidelines. If it is to be included we believe there should be an emphasis on the need to ensure that the motivation for self-referral is genuine and we propose that the factor should additionally refer to an assessment of whether engagement in the resulting treatment is meaningful. (Paragraph 45)*

### Other matters to take into consideration

14. *We support the Council's approach to setting out clearly in the guidelines that the victim's views have no direct bearing on the sentence. We consider that there is merit in accompanying this with a statement clarifying the use of victim impact statements*

*in these cases. This might encourage them to be taken more frequently when an offence is reported to the police so that they can be available for use by sentencers should they wish to use them as part of their assessment of the harm caused. (Paragraph 48)*

15. *We recommend that the two stalking and harassment guidelines should establish a presumption that the court will obtain a psychiatric report in all cases, which may be set aside if the facts of the case indicate that getting a report would be futile or otherwise unnecessary, including, for example, if the perpetrator is already known to psychiatric services. (Paragraph 50)*
16. *We support the Sentencing Council's direction in each of the guidelines for sentencers to consider a restraining order and recommend that this be considered in all cases. Where such an order is not granted the reasons for not doing so should be included in sentencing remarks as a matter of course in both domestic abuse and intimidatory offences cases. (Paragraph 51)*

### Sentencing ranges

17. *We note that as with other guidelines the upper category range does not extend to the statutory maximum penalty to facilitate judicial discretion. In this case it is two years short. We recommend that this should approximate more closely to the maximum of ten years. (Paragraph 52)*

# Appendix 1: Summary of responses to the consultation on the revised domestic abuse guideline from the Sentencing Council

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There was broad general support for the revised domestic abuse guidance, and respondents welcomed the Council's decision to revise the guidance in such an important area of sentencing. Below are general points and themes which came out of the responses to section 1 of the consultation.

## Domestic Abuse guidance as a standalone, overarching principles guideline

The vast majority of respondents agreed that the guidance should be contained within a standalone guideline, whilst noting the importance of having clear cross-references to this guidance in other sentencing guidelines

### Scope of the Guidelines

A large number of respondents felt that additional information should be included within the scope of the guideline section, as set out below.

- 5 respondents felt that the guidelines should include examples or explicit references to a wider range of abusive acts and relationships as these victims are less likely to support criminal proceedings due to different dynamics and pressure from families. Examples suggested were: violence against parents by adolescents; honour-based abuse; abuse against marginalised groups of women who face multiple forms of oppression and further barriers in disclosing abuse (**Women's Aid**); abuse within same-sex relationships (**a Barrister**); within fraudulent marriages (**Immigration Fraud UK**); abuse against transgender people; and abuse against men (**a member of the public**).
- Some respondents recommended that the guidelines include some acknowledgement of the cumulative effect of domestic abuse and that the offence is likely to be "some way down the track" of a pattern of worsening behaviour. (*Note-there is a reference to the cumulative effect of abuse within paragraph 9 of the proposed guideline*).
- 2 of the respondents took issue with the definition for "controlling behaviour". They said that it was unclear whether all three elements (means of independence, resistance and escape) need to be restricted. If at least one element is necessary the guidelines need to replace "and" with "or" in the definition, and more clearly separate the examples by inserting "or": e.g. "...by isolating them form sources of support; OR exploiting their resources and capabilities for personal gain; OR depriving...etc"

- 5 wanted the guidelines to highlight the gendered nature of domestic abuse (in terms of differences in the frequency, severity and nature of the abuse between men and women), particularly within intimate partner relationships (**Women's Aid; Suzy Lamplugh Trust; Leeds City Council; member of the public; Paladin**). **Women's Aid** recommended that the guideline make clear that women survivors are *'more likely to experience repeated incidents of domestic abuse, more likely to fear for their lives and more likely to experience abuse as part of a coercive and controlling relationship'*, *'are far more likely than men to be killed by their partners or ex-partners'*.
- 3 of the responses took issue with the age range given for domestic abuse. 2 felt that the guidelines needed to acknowledge that people under 16 were also capable of committing domestic abuse, and this should be reflected in the age bracket (**Police and a magistrate**). The **Highbury Corner Consultation Committee (Magistrates)** raised concerns over the inconsistency in the guideline's definition of an adult (as over 16), and the Youth Court definition as aged 18.

Other suggested additional information included:

- Online domestic abuse should be incorporated within the scope of the guideline to reflect the diminishing divisions between online and offline forms of abuse and coercive control. Whilst there is no definition of 'online abuse' in law, the CPS recognised that the use of the internet, social media platforms, email, text messages, apps, spyware, and GPS tracking software to commit domestic abuse offences is rising. (**Women's Aid**)
- Preventing someone from learning the language as an example of a method of isolation for the definition of "controlling behaviour" (**a magistrate**)
- Making explicit that lack of involvement by the victim is no indication of the seriousness of the abuse. (**Police**)
- **One magistrate** wanted less guidance in terms of domestic abuse factors – feeling that sentencers are well aware of these factors.
- To exclude family members who don't live together from the scope (**Solicitors**)

## Assessing Seriousness

Most respondents agreed with this section within the guideline, with some respondents making suggestions for including additional information within the section, as set out below.

- **Refuge** commented that they were pleased that the guideline stated that abuse within a domestic context is particularly serious, which is an important improvement on what went before. However, they state that 'particularly serious' does not necessarily equate to more serious. Refuge's position remains the same as at the time of the 2006 SGC guideline in that they believe that abuse which takes place within a domestic context should be regarded as more serious than similar abuse committed against a stranger. *'It is the abuse of trust and the chronic nature of such experiences over time that have the potential to affect*

*victims beyond the impact of the often, single incident, which has brought the victim into the CJS and this must be acknowledged explicitly’...‘We suggest that a proper assessment of seriousness should take a holistic perspective of the abuse an individual has experienced, including chronic psychological abuse, when a history of domestic abuse is alleged by a victim’.*

- **Paladin** stated that the guidance should make it clear that a domestic abuse offence **must** (mandatory) be treated as more serious than a stranger crime. It has more serious an impact because of the breach of trust aspect as well as proven longer lasting and severe post-traumatic stress disorder (PTSD) that occurs.
- **Some** respondents felt that the seriousness section should provide more detail on the long-term effects of DA. **Women’s Aid** suggested examples of seriousness, risk and impact on victims and those around them should be given.
- Another recommended that reference be made to the fact that female victims are more likely to commit suicide than be killed by their partners when stating that DA ‘...*may result in death*’ (**Police**).

Other responses included:

- Weight must be given to the perceived notion of a relationship by the stalker, rather than whether the relationship was in fact intimate (**Suzy Lamplugh Trust**).

### **Aggravating Factors**

The vast majority of the respondents agreed with the factors proposed within this section, with some additional comments provided, as set out below.

- 5 of the respondents felt that the aggravating factors needed to be expanded and suggested:
- The addition of ‘(likely to exist in most DA offences except where offender and victim have been separated for a long period of time)’ to the ‘Abuse of trust and/or power’ aggravating factor (**a magistrate**)
- One respondent recommended the wording: “Steps taken to prevent, deter or dissuade the victim from reporting an incident” (**Magistrates Association**)
- **Paladin** commented that ‘steps taken to prevent reporting’ – should be not just physical but also emotional, psychological threats to self-harm or to commit suicide or for the perpetrator to claim victimhood (as many do), to try to deter the victim.
- Replace ‘victim is particularly vulnerable’ with ‘victim has additional vulnerabilities’ as the current term can help to reinforce stereotypes and misconceptions about victims. ‘Additional vulnerabilities’ should include examples-. disability, age, ethnic background. (**Women’s Aid; Suzy Lamplugh Trust**)
- **Paladin** commented that ‘vulnerability must be fully understood, domestic abuse victims are almost always vulnerable by nature of the type of abuse and dynamics.

*We must not allow this to focus on race, religion, job, class, economic status or “confidence”. Many appear confident when they are not with their partner. However more can be at risk’.*

- Expand ‘*using contact arrangements with a child to instigate an offence*’ to reflect when children are used as an agent of abuse when the offender and victim are living together. (**Women’s Aid**)

2 respondents highlighted that the abuse of trust and power is present in all domestic abuse offences, and should therefore be removed to avoid double counting.

Respondents also proposed the addition of the following factors:

- *Gratuitous humiliation and/or degradation of victim.* **A magistrate** commented that this is often seen in specialist DA courts, for example, pouring beer over the victim, offending behaviour causes victim to flee the mutual home at night in night clothes or state of undress, abusive and/or demeaning language in front of children or in public.
- *Steps taken to prevent, deter or dissuade the victim from assisting or supporting the prosecution.* (**a magistrate; a Judge**)
- *Deliberate false reporting of incidents of domestic violence as a means to control the victim* (e.g. through gaining the “upper hand” in family court, and thus threatening the victim using their child(ren)) (**a member of the public**)
- *‘Isolating the victim from their friends/colleagues/family’.* It is a specific factor that should be distinguished from ‘*steps taken to prevent the victim obtaining assistance*’. (**a magistrate and a member of the public**)
- *‘Third party harassment/encouraging or colluding others to abuse the victim’* (**Highbury Corner Consultation Committee; a Barrister; The Law Society; Suzy Lamplugh Trust**)
- *‘Impact of witnessing domestic abuse on other dependents in the household (distress and upset caused)’.* Not just effects on children (**Magistrates Association; a member of the Public**)
- *“Coercive or controlling behaviour by perpetrator - a pattern of intimidation, degradation, isolation and control with the use or threat of physical or sexual violence”* (**Women’s Aid; Suzy Lamplugh Trust**)
- *Visiting or loitering victim at work, home etc more than three times a week* (**Suzy Lamplugh Trust; a member of the public**)

### **Mitigating Factors**

A large number of respondents disagreed with the proposed mitigating factors.

Of those that disagreed:

- **10** stressed the need for greater guidance on what constitutes “provocation”. The guidelines should explicitly state that the provocation factors be ‘*stringent*’, i.e.

proof not from the offender, and the provocation must be “*exceptionally high*” to possibly mitigate any seriousness (**a member of the public; a magistrate; HM Council of Circuit Judges; Magistrates Association; a campaign group; Criminal Bar Association; Police Crime Commissioner; The Law Society; Men’s Rights Activist**). It was suggested that provocation should not include infidelity or tension over child contact. **One magistrate** also argued that the conditions for provocation need to be high, but they are not necessarily rare.

- 7 respondents took issue with the mitigating factor relating to provocation and felt that it should be removed entirely because DA is inexcusable, its perpetrators have a tendency to blame the victim for their behaviour, the courts are complicit in victim-blaming, and is too subjective and encourages victim blaming by the defence (**Women’s Aid; South-East London Magistrates Council; Suzy Lamplugh Trust; Refuge; Police; a magistrate; Leeds City Council**)
- 7 respondents felt that “good character” should be removed as a mitigating factor. It was stated that the outward behaviour of the perpetrator is of no relevance to the abuse they may be repeatedly perpetrating behind closed doors. Offenders tend to be highly effective at manipulating others, creating the impression that they are less of a risk, when in fact this makes them more dangerous (**Women’s Aid; Highbury Corner Consultation Committee; Suzy Lamplugh Trust; Refuge; Police; Leeds City Council**). **One magistrate** said that positive good character should be a statutory presumption for all perpetrators and that only a bad antecedent history should be used to take cognisance of character. Several respondents felt that ‘good character’ required greater clarification and one magistrate said it should be restricted to a first offence only.
- 7 respondents felt that great caution should be exercised when considering self-referral and that a measure of ‘*sincere intent*’ is needed to ensure the perpetrator isn’t just ‘*playing the system*’. The importance of the motivations in attending treatment or counselling in the context of a prosecution will differ greatly from a person who has been referred by their GP after seeking help for their behaviour (**Women’s Aid; Police; Magistrates Association; Suzy Lamplugh Trust**). The **police** suggest that only self-referrals taken before arrest should be considered. Thus, a rewording is recommended by the **Magistrates Association**; ‘*Where the court is satisfied that the offender genuinely intends to reform his or her behaviour and that there is a real prospect of rehabilitation being successful*’. This should be assessed through reports from support workers or treatment centres which evidences the individual’s engagement in treatment programmes, and their propensity to take responsibility and seek long-term change, this could involve reports from support workers or treatment centres (**Magistrates Association; Highbury Corner Consultation Committee; Women’s Aid; Suzy Lamplugh Trust; Leeds City Council**). 2 respondents wanted a pre-sentence risk-assessment to be required before this could be used as a mitigating factor (**Women’s Aid; Public**).
- 2 respondents also felt that self-referral should be removed as a mitigating factor. **A magistrate’s bench** and **Refuge** highlighted research which showed that attendance on a non-DA focussed anger management type course can make a perpetrator a more sophisticated offender rather than rehabilitating them.

Concerns were voiced about victim safety if self-referral were to mitigate the sentence, because there is ‘*no evidence of how dangerous the person is once out on the streets*’. The Magistrates Bench felt that self-referral would discourage courts from sentencing an offender to community orders with a DA rehabilitative element.

- **Paladin** commentated that with self-referral for help – it would be the appropriate course of action to adjourn the sentencing to see the outcome of the course.

**HM Circuit Judges** invited consideration of a separate category (not provocation) applicable where a victim has repeatedly asked an offender to return to him or her, often in the face of a protective order.

**The Law Society** suggested two further factors: “*evidence of good parenting*” and “*an isolated incident or abuse of short duration*”.

### **Other factors influencing sentence Section**

- 7 respondents (**Criminal Bar Association; Highbury Corner Consultation Committee; Victims Commissioner; Westminster Magistrates Bench; Police Crimes Commissioner; Magistrates Association; Refuge**) wanted the role and importance of victim personal statements to be explained which would also encourage impact statements to be made before sentencing (preferably at the initial police interview), to mitigate the impact of coercion/fear from the offender. The **Westminster Magistrates Bench** suggested the addition of the following:

‘A court should consider, where possible, a victim personal statement which will help it assess the immediate and possible long-term effects of the offence on the victim (and any children, where relevant) as well as the harm caused, whether physical or psychological. If no victim personal statement is available, comments made in a witness statement or in evidence at trial should be taken into account’

- 6 respondents felt that the guidelines needed to be more explicit about the victim’s influence on sentencing. They recommended replacing the current statement with ‘*no victim is responsible for the perpetrators sentence*’. (**3 Magistrates; a member of the public; Leeds City Council; Police Crimes Commissioner**). **Leeds City Council** suggested that in the sentencing remarks the court make clear to the offender that the wishes of the victim have been carefully considered and despite this the court deems the offences so serious as to override them.
- 4 respondents also wanted explicit reference to the wishes and views of children in sentencing. Children ‘*wanting their parent back*’ should not play any role in mitigation of a sentence. The court should consider the best interests of children – essentially, their safety and wellbeing – in relation to child contact with a perpetrator of DA. (**Women’s Aid; Magistrates Association; A campaign Group; Council of HM Circuit Judges**)
- 2 respondents felt that the victim’s wishes should only influence sentencing in certain conditions. **A solicitors firm** suggested that the victim/complainant’s

views should only have some influence if they assume some responsibility for the situation (i.e. saying that they provoked the defendant). **Women's Aid** posed that the victim's wishes should only be taken into account if they are in touch with and supported by a specialist domestic abuse service or independent domestic abuse advocate. This should help mitigate the effect of coercion and ensure the victim has an understanding of the power and control dynamics inherent in the abusive relationship.

Other suggestions included:

- The **Magistrates Association** wanted the guidelines to note that the inter-relationship between criminal and family proceedings are complex. It was suggested that guidance should be given about how decisions in other proceedings should be considered. In that context, greater communication between criminal and family jurisdictions was sought.
- **Women's Aid** also wanted to make clear that the perpetrators desire to maintain contact with their child/children is of no relevance to the court.
- **One Magistrate** suggested the inclusion of a section on the problems of disposals which are particular to DA offences
- **One Magistrate** recommended the relabelling of the section as "*Other factors which might be offered up to influence a sentence*" to emphasise the possible confusion in what should be concluded.

### **Factors to take into consideration**

Several respondents felt that the offender's failure to accept responsibility for their actions, or that they engaged in a pattern of abuse, should not negate the availability of DA programmes to them. Mandatory attendance of an accredited DA programme should be considered in all cases where not previously tried to promote rehabilitation and prevent the revolving door of DA with offenders going on to abuse their current partner or new partner once released, thus helping ensure safety for the victim. **Westminster Magistrates Bench** recommend amending the penultimate sentence of paragraph 15 to '*Such an option will normally only be appropriate where the court is satisfied that there is a realistic prospect of rehabilitation being successful*', and the addition at the end of the first sentence '*...or other DA-specific intervention*' to address the fact that current accredited DA programmes are only available to men who have offended against female partners

Some respondents were concerned that consideration of a suspended sentence or community order be given if the offence only just crosses the custody threshold. If the custody threshold is crossed, it was thought that an immediate custodial sentence should always be imposed. Whilst agreeing with attendance on DA programmes, in the interests of victim safety the mandatory attendance should not reduce a custodial sentence to a non-custodial sentence. (**Suzy Lamplugh Trust**)

Other respondents urged caution when determining the genuine nature of the offender's reform intentions. **Suzy Lamplugh Trust** stated that DA offenders often will try and manipulate the system in their favour, especially if it gets them a lighter/shorter sentence.

The **Suzy Lamplugh Trust** also recommended that a treatment programme (e.g. Healthy Relationship programme) for the fixated behaviour associated with any stalking sentence must be applied to all cases and a Restraining Order granted when the victim wants it. They emphasised that DA programmes are inappropriate for any stalking offences, and can in fact be dangerous for the victim.

## Level of Information in the Guideline

The consultation asked whether there was any other information that should be included within the proposed guideline, several respondents made suggestions, as set out below.

The **Suzy Lamplugh Trust** wanted greater emphasis on the emotional/psychological impact of abuse. They also recommend the inclusion of a paragraph referring to the cumulative nature of stalking and domestic abuse. They are not “incident” crimes but patterns of behaviour, often with repeated breaches of court orders and an escalation in risk to the victim. They would like the guidelines to act as a reminder to sentencers to ask the police and CPS to bring the offender’s history to the courts attention at the sentencing hearing.

The **Suzy Lamplugh Trust** stressed that guidelines should make clear that approximately 45% of stalking takes place in a domestic abuse setting and 55% in non- intimate relationships. Equal weight needs to be given to all stalking cases regardless of the relationship between stalker and victim because the offender’s perception of the relationship often influences the choice of victim.

**One campaign group** felt that the guidelines should state that where a restraining order is granted, DA should be considered an exceptional circumstance, with a presumption that the restraining order remains in effect until further order. They pointed out the difficulty in assessing a timeframe of risk, given the nature of the relationship between intimate partners or family members. They said that there was inconsistency about order length and suggested that either party could apply to the court to remove the order when no longer appropriate.

**Paladin** stated that the courts should have a positive duty to impose a robust restraining orders unless there is evidence that it would not be in the interest of justice to do so.

**One magistrate** had concerns about how sentencers use the guidelines and whether the prosecution is required to “prove” particular aspects or if sentencers can draw their own conclusions in order to determine offence seriousness and victim impact.

## Equality and Diversity Matters

The consultation asked whether there were any equality or diversity matters that the Council should consider for the guideline, some suggestions were made on these issues, as shown below.

5 respondents wanted a general diversity/equality definition whereby ‘Hate Crime’ can be an aggravating factor, to help avoid stereotypical assumptions about domestic abuse.

Some respondents also stated that the guidelines need to make clear that sentencing decisions are completely gender neutral and will not be swayed or affected by any religious/cultural context or interpretation (**3 Magistrates; Highbury Corner Consultation Committee; a campaign Group**).

2 respondents felt that given most DA victims are women, there is a crucial gendered dimension to this type of offending which needs to be recognised by the guidelines. (**a magistrate; a campaign Group**)

2 respondents were concerned about gender inequality. One member of the public expressed concerns about the ongoing 'sentencing gap' between men and women for the same crimes, and felt there should not be 'special consideration' given to female perpetrators. Another **member of the public** expressed concern over the lack of DVPP for females, as rehabilitation programmes are only available for men.

**One barrister** wanted greater consideration for victims in same-sex relationships and sought protection and promotion of the victim irrespective of gender.

### ***Additional matters raised by respondents***

**Women's Aid**, whilst noting that this is beyond the remit of the Sentencing Council, highlighted the need for relevant training for sentencers on all aspects of domestic abuse because '*research consistently concludes that poor judicial understanding of the dynamics of DA is highly prevalent.*'

Paladin also said '*We cannot underscore enough the important of specialist-led training for the Judiciary.*'

The **Highbury Corner Consultation Committee** were concerned about whether the guidelines would lead to consistency in sentencing. They felt that any sentencing body could put almost any interpretation on the guideline that it wished.

## Appendix 2: Summary of responses to the consultation on intimidatory offences guidelines from the Sentencing Council

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### Key Themes

#### Gender

##### *Male victimhood*

Some respondents asked for an explicit focus on male victimhood in domestic abuse and intimidatory offences. **Mankind** comments that strong stereotypes exist in which victimhood is considered synonymous with femininity and perpetrators with masculinity.

As such, respondents suggest the following:

- Explicitly note in the guidelines to cancel any presupposition the sentencer may have of gender stereotypes, emphasising that men may be victims also.

*“Please ensure magistrates and judges recognise that men are victims of these crimes as well as women” (Mankind Initiative)*

Other respondents who agreed that both genders need to be explicitly recognised as both perpetrators and victims of domestic abuse include: Immigration Marriage Fraud UK, **two** members of the public and **Michelle Sheppard** (Leeds City Council Health and Domestic Violence Coordinator).

##### *Female Victimhood*

**Several** other respondents such as **Women’s Aid** and the **Magistrates Association (MA)** argue that the guidelines should acknowledge the gendered nature of many intimidatory offences, especially those in a domestic context. **Women’s Aid** claims female survivors are more likely to:

- i) experience repeated incidents of domestic abuse,
- ii) fear for their lives, and
- iii) experience abuse as part of a coercive and controlling relationship.

Women’s Aid provides the following arguments:

Women are more likely to be killed by their partners or ex-partners than men. (77% of female domestic homicide victims were killed by a partner or ex-partner vs. 51% for male domestic homicide victims)

Quantitative and qualitative evidence shows women are more likely to be victims of repeat, more severe and intense violence from men, with greater levels of fear experienced in the context of power and control.

Where gender was recorded, 92.1% of the 100,930 defendants prosecuted for domestic abuse in 2015–16 were men and 83.3% of victims were female.

**The MA** concurs that there is a crucial gendered dimension to this kind of offending behaviour, given the fact that a large majority of victims of intimidatory offences are women.

## Middle categories in Harm and Culpability

*Several respondents suggest that intermediate categories in the ‘Harm’ and ‘Culpability’ levels were unclear.*

### Two Magistrates, and two members of the Public

#### Clarity

- At least **four** respondents found throughout the guidelines that the middle categories were insufficiently clear, and could lead to ambiguity. For example, in Section Three in the consultation, harassment/stalking, Step One: harm Category 2 is defined as “Harm that falls between categories 1 and 3”. Two respondents suggested providing examples of different intermediate levels of Harm and Culpability to aid clarity. **Leigh Webber Solicitors** alternatively suggested only two categories of Harm in harassment/stalking: “Greater” and “Lesser”.

**A member of the public commented** in Section Five: Disclosing private sexual images, Step Two ‘Sentence Levels’:

*“Again I feel it isn’t clear what sort of offences would fall into Category two - those where some distress or harm had been caused? I’m not sure I understand how that judgement would be reached?”*

In contrast, **Alex Chalk MP** sees value in the harm and culpability categories being left open to interpretation as it “*seems appropriate to allow sentencers a broad discretion to make that assessment.*”

## More than three culpability categories in Section 3: Harassment/Stalking s.4/4A

Some respondents saw the use of more than three categories as problematic, questioning whether an extra ‘Very High Culpability’ category is required, and finding the context of

“extreme” is not well-defined within this category. A member of the public commented that the categories are insufficiently substantive (i.e. A is by extension upwards and C falls between B and D).

### Harsher Punishments

While most respondents agreed with the proposed sentenced levels, a significant minority (30.8%) disagreed in the sentencing consultation in questions (Q13, Q19, Q25, Q30, and Q35) (Fig. 1)

Fig. 1

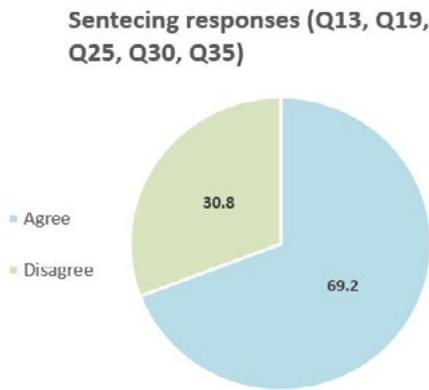
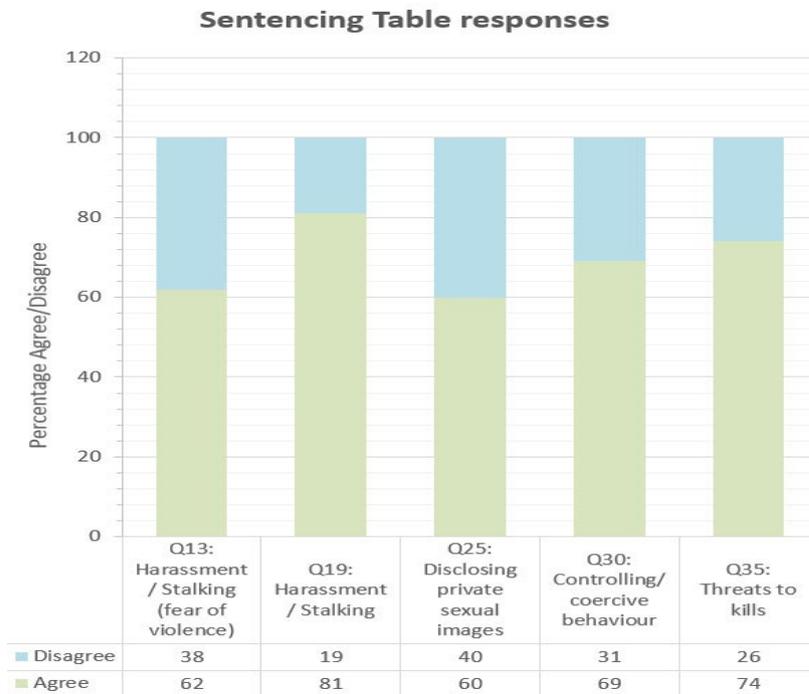


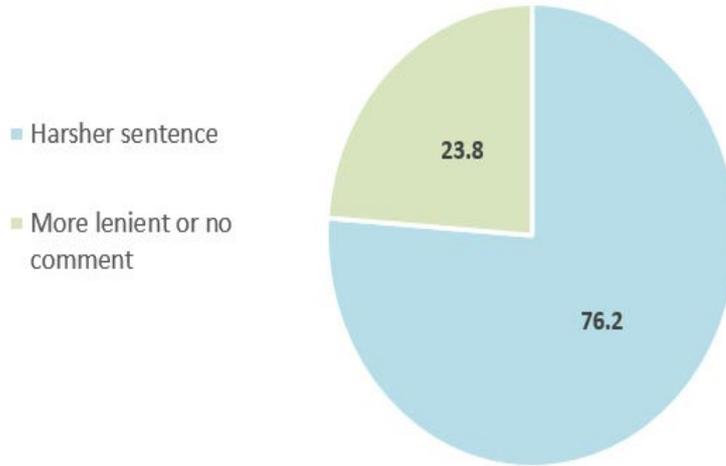
Fig. 2



Of respondents who disagreed, 76.2% (Fig 3.) called for harsher sentences (23% of all respondents). Such respondents included **Northumbria PCC, South Wales Police and PCC, and Highbury Corner Magistrates Consultation Committee, and Women’s Aid.**

Fig 3.

Of those who disagreed with sentence levels:



Amongst respondents, sentence increases were suggested *across the board*, especially for particularly low and high categories (e.g. 3C and 1A respectively). Suggestions include:

- Sentences for 1A should be increased to either in line with, or reflect, the statutory *maximum custodial sentence*. A range of respondents made this comment in Q13, Q25, Q30, and Q35, including:

**Women's Aid, HHJ Maureen Bacon QC, two magistrates, and SEL Magistrates Council, Council of HM Circuit Judges.**

Starting point sentence levels to be too low, especially compared with other guidelines (e.g. s2 harassment/stalking guideline):

- **A magistrate, Women's Aid, member of the public, The Queen Mary Legal Advice Centre, MA, ManKind**

**Three** respondents saw fines as *inappropriate* even for lower level offences, especially when in a domestic context (**Women's Aid, member of the public, The Queen Mary Legal Advice Centre**)

- Sentences should be increased generally to reflect the gravity of such offences. **Women's Aid** supports harsher sentencing to:
  - ensure justice is done
  - improve victims' confidence in the criminal justice system
  - send a clear message this form of crime will be taken seriously.

**NB:** Those who believe sentencing to be too harsh include **Leigh Webber Defence Solicitors** and a **member of the public**.

### Protected characteristics

*Respondents disputed the extent to which provisions for hostility towards protected characteristics are relevant for guidelines concerning crimes in the context of intimate relationships.*

In Section 3 (harassment/stalking S4/4A), **two** respondents had concerns over the assignment of culpability related to hostility towards a victim based on (presumed) characteristics (Category B – High Culpability) (**a member of the public, ManKind**). Questions are raised over the extent to which an offence can be motivated by hostility towards group characteristics when such crimes are targeted as individuals whom the perpetrator often knows intimately.

**Mankind** claims that intimidatory and domestic abuse offences are motivated by desired *power* over an individual, not hostility towards certain characteristics. They have concerns over concerns over the inclusion of “sex” in:

*“Offence motivated by, or demonstrating, hostility based on any of the following characteristics or presumed characteristics of the victim: age, sex, disability, sexual orientation or transgender identity”.*

**ManKind** claim perpetrators usually have hostility towards the victim as an individual, not motivated by victim’s gender. There is a danger seeing domestic abuse as an “ideological crime” in which gender is unnecessarily considered. One member of the public concurs, finding the guidelines inapplicable in the context of an intimate relationship. (*Note-this guideline will be used for offences where the offender/victim aren’t intimately known to one another*).

On the other hand, **Women’s Aid** would like more recognition of protected characteristics in the guidelines, particularly when they are combined in so-called ‘intersectionality’. **WA** state this should be added to the statement that domestic abuse impacts:

*“people of all ethnicities, sexualities, ages, disabilities, immigration status, religion or beliefs, and socio-economic backgrounds”.*

Indeed, **two** respondents asked for violation of protected characteristics to be included in aggravating factors (*note- this would give rise to double-counting as these factors are already considered at culpability in step 1*).

- **Northumbria PCC** suggests provisions should be made that take into account the enhanced abuse of *trust and power* where the victim is part of a group with “protected characteristics” under the Equality Act 2010 and the potentially greater impact on them.
- **A member of the Public** commented that protected characteristics are particularly important when measuring impact on the victim due to honour based abuse or isolation from their community for LGBTQ victims as a result of the offence

## Mitigating factors- Good character and remorse

Several respondents opposed the inclusion of

- “good character”,
- “no previous convictions”,
- “remorse”, and
- “determination and/or demonstration of steps having been taken to address offending behaviour”.

### Good character

Five respondents saw “Good character and/or exemplary conduct” as inappropriate as mitigating factors:

**Northumbria PCC, South Wales Police, a member of the public, Women’s Aid, The Suzy Lamplugh Trust**

- **Women’s Aid** comment that as perpetrators of domestic abuse are often considered to be of ‘good character’, as the abuse often takes place in private.
- Indeed, the **Suzy Lamplugh Trust** claim that “good character” is often used by the perpetrator as a tool to manipulate the court process.

### Previous convictions

**Three** respondents note that the absence of “previous convictions” also does not mean there has not been any previous criminal activity (**Women’s Aid, Warrington Anti-Stalking Clinic Initiative, Suzy Lamplugh Trust**). Victims often experience many incidents before reporting the abuse.

- Indeed, the **Suzy Lamplugh Trust** quotes research findings that on average a victim will experience over 100 stalking incidents before reporting to the police (Sheridan, 2005).
- Anecdotally, the **Trust** reports that victims must report multiple times before a crime is recorded. Thus, these bodies urge the Council to remove “no previous convictions” from the mitigating factors.

### Remorse and determination to address offending behaviour

Some respondents also have doubts over the inclusion “determination and/or demonstration of steps having been taken to address offending behaviour” and “remorse” (**Women’s Aid** amongst others).

- **The MA** would prefer to see these two factors qualified so sincere intent is required to prevent mitigation being awarded irrespective of intent.

*(note- the above are all standard factors used throughout sentencing guidelines- courts do not have to take them into account if there is no evidence for them to do so.)*

## Mandatory (consideration of) Restraining Order

*Throughout the consultation, respondents have encouraged the use of, or consideration of, a Restraining Order.*

**Suzy Lamplugh Trust, Metropolitan Police, The Law Society Queen Mary Legal Advice Centre, Revenge Porn Helpline**

**The Suzy Lamplugh Trust** advises that Restraining Orders to be issued as standard practice in stalking cases where the victim wants one and recommends a management programme as part of the sentence to address the offenders' behaviour. The **Met Police** concurs, and adds that reasons for *not* imposing a Restraining Order should be documented.

For other intimidatory offences the **Queen Mary Legal Advice Centre** comments that it is *particularly* important that the guidelines highlight that Restraining Order are an available remedy which should be considered in *every case*. Many victims are desperate for civil order (e.g. injunction/non-molestation order) but cannot afford the expense, either financially or emotionally.

Richard Graham MP additionally comments that offenders should always be subject to some kind of court order with conditions to desist their behaviour. He refers to Dr Monckton-Smith (Senior University of Gloucestershire Criminology Lecturer):

Court orders are just as important as a custodial sentence and it should include a period of time after release. The order should include zero tolerance for breaches, in order to identify offenders who are unwilling to stop and therefore pose the most threat to victims.

## “Victim is particularly vulnerable”

*Various respondents opposed the use of “victim is particularly vulnerable” in the Harm factors throughout the guidelines.*

**Two** respondents wished to either amend or remove *the phrase* (**Women's Aid, South Wales Police**).

- **Women's Aid** requests “*psychological harm*” be added as a harm assessment, and that the “victim is particularly vulnerable” is replaced with “*victim has additional vulnerabilities.*”
- **South Wales Police** asks for “*victim is particularly vulnerable*” to be omitted as *all* victims of these types of offences are vulnerable.

Two respondents had concerns that “*victim is particularly vulnerable*” may be *misinterpreted* as there are some significant connotations of “*vulnerability*”.

- **The Highbury Corner Magistrates Consultation Committee** questions if ‘vulnerable’ is limited to the definition commonly used (i.e. young/old/physically handicapped).
- A **member of the public** commented that often even those who do not *seem* stereotypically vulnerable (wealthy, university-educated) are rendered vulnerable when targeted by intimidatory offences and domestic violence

## Psychological Distress

*Multiple respondents stated the guidelines should emphasise and specify psychological distress as a Harm factor across all crimes.*

**A member of the public, Northumbria PCC, two magistrates, Highbury Corner Magistrates Consultation Committee, Suzy Lamplugh Trust, Women’s Aid**

Three respondents throughout the consultation urged for a ‘Victim Personal Statement’ to be taken and used to assess psychological distress (**Highbury Corner Consultation Committee, a member of the public, Women’s Aid**).

- Women’s Aid suggests they should be used to assess harm, and only evidence presented to the court should be used in the assessment of harm.

**Richard Graham MP** adds:

*“Mental harm should be considered alongside physical harm as victims of stalking face PTSD. This was the case with several victims we spoke to, as well as their families”.*

## Specific issues raised regarding the individual guidelines consulted on Section 3- Stalking/Harassment S4/4A

*The majority of respondents agreed that both harassment and stalking should be included within one guideline, including Alex Chalk MP. Of the respondents who disagreed:*

- Culpability may vary between stalking offences and harassment offences, and harm should take preference over culpability as a factor for stalking cases, as offenders may not realise the sinister or threatening nature of their actions and the effect on the victim (**a magistrate**).

The **Suzy Lamplugh Trust** wants separate guidelines for the two different offences to make a clearer distinction between the two crimes.

- Criminal justice professionals often do not understand the difference between stalking and harassment, and the 1997 Protection from Harassment Act (and the 2012 stalking law amendments) are further indication that they should be addressed separately (**Suzy Lamplugh Trust**).

**Richard Graham MP** notes that:

*“Stalking is distinct from harassment in the length of time often attributed to a stalking campaign. Victims often wait for 100 instances of stalking before reporting it.”*

### **Learning disability and mental illness (in reference to the proposed lesser culpability factor)**

**Three** respondents held that a mental disorder or learning disability is insufficient to reduce offender responsibility: **Anti-Stalking Clinic Initiative, Highbury Corner Consultation Committee, and Suzy Lamplugh Trust**.

#### *Additional comments:*

- **Warrington Anti-Stalking Clinic Initiative** asks for the words “*fixation*” and “*obsession*” to be included across all four categories of Culpability for stalking, to encourage professionals to see a distinction between stalking and harassment

### **Including text with the guidelines on psychiatric reports**

*The vast majority of respondents agreed with the inclusion of text within the guideline on psychiatric reports.*

Of those respondents who disagreed, three respondents approved of the inclusion of some text indicating consideration of psychiatric reports, but objected to the text in its current form. **Three** respondents had concerns over authors of the report, requesting that the guidelines prescribed the use of suitably qualified psychiatrists to give expert, reliable evidence in respect of stalking.

- **The Suzy Lamplugh Trust** urges for *stronger* wording: “*psychiatric reports should be considered in most cases*”, as 50% of stalkers are known to have mental disorders.

### **Proposed approach to sentencing racially/religiously aggravated stalking and harassment offences**

*90% of respondents agreed with the proposed approach to sentencing racially/ religiously aggravated stalking/ harassment offences, 10% of respondents disagreed.*

#### **Specific range**

**Two** respondents suggest including a specific range by which custodial sentences increase by level of racial or religious aggravation (a **magistrate, MA**).

## Language clarity

- **The Criminal Bar Association commented that:**
  - There is no guidance as to how many or in what combination the aggravating features should present before categorising the aggravation as low, medium or high.

## Additional comments

- The MA suggests:
  - using the phrase “*isolated, repeated or persistent*” rather than “*sustained*” for ‘High Culpability’, as this would be more familiar to sentencers.
  - introducing “*language, gestures and weapons*” as an aggravating factor.
- **The Law Society** suggests the following amendments:
  - “*The following is a non-exhaustive list which the court could consider to decide the level of aggravation...*”
  - “*... Once the court has considered these factors and any other such factors it considers relevant and has decided on the level of aggravation...*”
  - “*High level of racial or religious aggravation where the racial/religious hostility element of the offence can be said to have substantially motivated the offence or formed a substantial proportion of the offence or formed a substantial proportion of the offence as a whole*”
  - “*...[Medium level] where the racial/religious hostility element of the offence can be said to have motivated the offence or formed a proportion of the offence*”
  - “*...[Low level] where there was a racial/religious hostility element of the offence but where it could be considered to be minimal or incidental to the offence as a whole*”
  - “*... The sentencer should state in open court that at the time of committing the offence, or immediately before or after doing so, the offender had demonstrated towards the victim of the offence, hostility based on the victim’s membership (or presumed membership) of a racial or religious group; or that the offence was motivated (wholly or partly) by hostility towards members of a racial or religious group based on their membership of that group.*”

## Section 4- Harassment/Stalking S2/2A

### Inclusion of psychiatric reports

16 respondents, shown below supported including text regarding psychiatric reports for this guideline.

- **Women’s Aid, two members of the public, Immigration Fraud UK, a Lawyer, Highbury Corner Magistrates Consultation Committee, Criminal Bar Association, Northumbria PCC, The Law Society, five magistrates**
- **Alex Chalk MP** commented that sentencers should indeed be required *specifically* by the guideline to consider ordering psychiatric reports.

**Two** respondents quoted research to support the use of psychiatric reports:

- Within London during a 12-month period, *well over half* of the offenders had clear or *under-lying mental health conditions* (**Met Police**);
- 50% of stalkers have a mental disorder (**Suzy Lamplugh Trust**).
- **Richard Graham MP** quotes **Dr Jane Monckton-Smith** (Senior University of Gloucestershire Criminology Lecturer): many obsessive stalkers are often undeterred by court orders due to their fixation. Richard Graham claims “*The acknowledgement of this mental health aspect of stalking and appropriate treatments are arguably the best way to rehabilitate stalkers, who rarely see the threat of a custodial sentence as sufficient deterrent.*”

## Section 5- Disclosing private sexual images

### Images circulated widely/publically (‘A – High Culpability’)

**Two** respondents commented that focus should be placed on *whom* photos have been shared with, rather than *how* circulated widely/publically they are (**Women’s Aid, Queen Mary Legal Advice Centre**).

- Both respondents recommend categorising culpability based partially on the *individuals* to whom images were sent: victim’s family, friendship group, work colleagues, employer, amongst others.
- **Women’s Aid** recommends adding for Category A Culpability: “*sending images to a victim’s family, friendship group, colleagues, employer, pupils, students, or other contacts*”

Similarly, **South Wales Police** disagrees that for High Culpability a large number of images need be disclosed, as distress/longer-term impact upon victims may exist irrespective of the number of images shared.

**Two researchers (Prof. Clare McGlynn & Prof. Erika Rackley)** recommend the *individuals* to whom images were sent to be taken into account in recognising the factor “conduct intended to maximise distress”.

- The researchers suggest ‘High Culpability’ should also acknowledge where the offender has taken steps to ensure the *wide circulation* of the images (e.g. encouraging/telling a third party to do this and/or posting them on a forum where further distribution is very likely).

### Additional Comments

**Three** respondents had additional comments concerning the “*Images circulated widely/publically*” factor.

- Equally, the **Criminal Bar Association** believes “*attempts made to limit circulation*” should count towards ‘Lesser Culpability’. For example, where there has been disclosure but the offender then seeks to limit the circulation of it (i.e. but then deleting shortly after posting on social media).
- A **magistrate** questions whether “*Images circulated widely/publically*” is necessary, as it is not possible to disclose images privately.

### Additional ‘Culpability’ factor(s)

#### *Threats to disclose images*

**Three** respondents believed “*Threats to disclose images*” should be included in Culpability (**Suzy Lamplugh Trust, Queen Mary Legal Advice Centre, Standing Together Against Domestic Violence**).

- The **Queen Mary Legal Advice Centre** suggests a campaign of *threats, coercion, or blackmail* preceding material disclosure should raise Culpability where there has not been a separate charge to reflect this behaviour.

#### *Period of time*

**Two** respondents believed the period of time over which the images were (made) available be taken into account:

- A **magistrate** suggests two other factors be taken into account in ‘Culpability’:
  - period of time the images are kept available by the offender; and
  - efforts made by the offender to keep images available (e.g. “frustrating attempts to remove images and re-posting images after removal”)
- **The Law Society** suggests length of time during which the publication of the images took place is included as an indication of High Culpability.

#### *Type of images*

**Two** respondents comment on the potential for wide variation of private sexual images, and note that different type of material ought to carry different levels of Culpability.

- **Queen Mary Legal Advice Centre** suggests adding: “*The nature of the image contains highly explicit sexual content / activity.*” Private sexual images vary greatly from somewhat private, to a nude photograph, to explicit sexual acts.
- A **magistrate** claims a small number of particularly *explicit* material may be *worse* than a large number of less explicit material. Consideration should be given to *grading* the material as is child pornography.

(note- The Council considered differentiating between the types of images, i.e a nude still photo, compared to a video of sexual activity- but concluded that this was not an appropriate way to assess culpability, the effect of distribution of a photo compared to a video could be the same.)

### **Minimal distress or harm caused to the victim**

**Three** respondents objected to the factor “Minimal distress or harm caused to the victim” in its *current* form, believing “minimal distress or harm” rare or impossible in the case of disclosing private sexual images (**Revenge Porn Helpline, Criminal Bar Association, South Wales Police**).

- The **Criminal Bar Association** recommends “minimal” is replaced with “limited” as is rare such offences cause “minimal” distress or harm.

## **Section 6: Controlling or coercive control in an intimate relationship or family relationship**

**Four** respondents believed length of time to be an essential Culpability factor, especially in category ‘A - High Culpability’ (**Two magistrates, Women’s Aid, The Law Society**).

- **A magistrate** recommends A - High Culpability to read: “*persistent action over a prolonged and sustained period*”.

**NB:** This factor complements the factor in C - Lesser Culpability: “*offence was limited in scope and duration*”.

- **Women’s Aid** wishes to include provisions for the following in the Culpability factors:
  - whether the offence “*was or is likely to be continued, repeated or escalated*”, as frequency and escalation are key risk factors of coercive control.
  - “*Conduct involved entrapment or extreme isolation*”, as victims’ isolation/ confinement are essential features.
- The **Suzy Lamplugh Trust** recommends that the *link* between coercive control and *stalking* is highlighted in the Culpability factors.
  - Evidence suggests that some stalking actions are used in coercive control to maintain control and both behaviours share key characteristics (**Stark 2009; Monckton Smith 2016**).
- **Criminal Bar Association** suggest adding “*Conduct intended to significantly humiliate and degrade the victim*”. This would accord with the references in the other proposed indicators of High Culpability to “*maximum*” distress and “*significant*” violence and capture offending at the higher end of the scale.
- **The Law Society** suggests “*colluding with others to carry out the abuse*” should also be a factor taking an offence into the high culpability.

### **Harm factors:**

**Criminal Bar Association** recommends including “*Very serious physical harm caused to the victim*”.

- **Refuge** comments that one cannot be sure, without direct assessments of the impact of abuse upon the victim, the degree of “*Particularly serious physical or psychological harm caused to the victim*”.
- **Women’s Aid** suggests adding “*very serious distress caused to the victim*” to ensure the guideline is consistent with other intimidatory offences.

### **Additional Comments**

**Northumbria PCC** states that the guidelines should clearly indicate that community sentences should be made *punitive* and *rehabilitative*, including requirements available to address offending behaviour (i.e. supervision requirement, programme requirement, unpaid work requirement).

## **Section 7: Threats to Kill**

### **Proposed culpability factors**

#### **Isolated, brief incident**

**Three** respondents commented that “*Isolated, brief incident[s]*” are rare, and should be removed from Category C (**Mankind, Suzy Lamplugh Trust**).

- **The Suzy Lamplugh Trust** mentions that threats to kill are often part of the *wider* pattern of behaviour.

#### **History of offences**

**Two** respondents advised that a *history of threats or violence* (especially in a domestic context) should contribute towards a higher culpability (**Women’s Aid, Highbury Corner Magistrates Consultation Committee**).

#### **Domestic context**

- **Women’s Aid** suggest adding: “*A proven history of violence or threats by the offender in a domestic context*”

### **Additional comments**

- **Women’s Aid** recommends adding: “*Coercive or controlling behaviour by perpetrator - a pattern of intimidation, degradation, isolation and control with the use or threat of physical or sexual violence*”.

- **SEL Magistrates** advises that offenders will often say that the threat was ‘not meant’. Thus, more emphasis should be placed on Harm (to the victim) rather than Culpability, which is difficult to identify.
- **Criminal Bar Association** suggests that the “*the victim is particularly vulnerable*” to be moved to culpability. The harm *caused* to that vulnerable victim should then be reflected in the Harm factors and the vulnerability of *the victim* should add the perpetrator’s culpability.

## Proposed harm factors

### *Offence has a considerable impact on victim*

Two respondents seek further clarification of “*impact on victim*” (MA, The Law Society).

### *Additional comments*

- A **magistrate** requests “*and/or long-term*” be inserted before “*distress*” in the first harm factor.
- Given “*Minimal distress or harm caused to victim*” is so rare, a **magistrate** notes that perhaps an explanation is needed (e.g. “*where threat is not taken seriously or incapable of being carried out*”).

## Proposed aggravating and mitigating factors

### *Aggravating factors*

#### *History*

Two respondents saw a history of antagonism towards the victim as an aggravating factor (a **magistrate** , **Women’s Aid**)

- **Women’s Aid** suggests adding: “*A proven history of violence or threats by the offender in a domestic context*”

# Formal Minutes

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**Tuesday 17 October 2017**

Members present:

Robert Neill, in the Chair

Mrs Kemi Badenoch	Mr David Hanson
Ruth Cadbury	Gavin Newlands
Bambos Charalambous	Laura Pidcock
Alex Chalk	Ellie Reeves

Draft Report (*Draft Sentencing Council guidelines on intimidatory offences and domestic abuse*), proposed by the Chair, brought up and read.

*Ordered*, That the Draft Report be read a second time, paragraph by paragraph.

Paragraphs 1 to 53 read and agreed to.

Summary read and agreed to.

Two papers were appended to the Report as Appendix 1 and 2.

*Resolved*, That the Report be the Second Report of the Committee to the House.

*Ordered*, That the Chair 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.

[Adjourned till tomorrow at 9.30am

## List of Reports from the Committee during the current Parliament

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All publications from the Committee are available on the [publications page](#) of the Committee's website.

The reference number of the Government's response to each Report is printed in brackets after the HC printing number.

### Session 2017–19

First Report	Disclosure of youth criminal records	HC 416
First Special Report	The implications of Brexit for the Crown Dependencies: Government Response to the Committee's Tenth Report of Session 2016–17	HC 423
Second Special Report	Government Responses to the Committee's Reports of Session 2016–17 on: <ul style="list-style-type: none"> <li>• Prison reform: governor empowerment and prison performance</li> <li>• Prison reform: Part 1 of the Prisons and Courts Bill</li> </ul>	HC 491