

Research review of the Overarching principles: domestic abuse sentencing guideline

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1. Summary

1.1 Background

In 2006, the Sentencing Guidelines Council (SGC) published a definitive guideline *Overarching principles: domestic violence*. In 2018, the Council revised the guideline to reflect important changes in terminology, expert thinking and societal attitudes in this important area of sentencing. To reflect the fact that both physical violence and controlling behaviour can constitute domestic abuse, the title of the guideline was changed to [Overarching principles: domestic abuse](#). The guideline was updated in 2021 to reflect the enactment of the [Domestic Abuse Act 2021](#), including that Act's statutory definition of domestic abuse.

Towards the end of 2023, the Sentencing Council commissioned Nottingham Trent University (NTU) to conduct a review of the guideline. The review focused on how the guideline is used in sentencing as well as sentencers' understanding, interpretation, implementation, application, and thoughts about the current guideline. It also explored the impact of the presence of domestic abuse on the sentence.

1.2 Methodology

The review was conducted using a mixed method approach, which consisted of the following:

Primary data

- An online anonymous survey of 358 sentencers (53 judges and 305 magistrates) exploring sentencers' use and thoughts about the guideline. The questions included in the survey can be seen at Annex A.
- Forty semi-structured qualitative interviews with sentencers (20 from the Crown Court and 20 from magistrates' courts). Interviews were designed to allow for more in-depth discussion than the survey and to allow for interviewees' points to be elaborated upon and clarified in response to interviewer probing. Interviews included sentencers reviewing hypothetical scenarios which can be seen at Annex B.

Secondary data

- Analysis of 413 transcripts of Crown Court sentencing remarks covering 19 offences across the broad areas of assault, kidnap and false imprisonment, harassment and stalking. Each transcript was reviewed for the presence of potential domestic abuse or context by reference to the domestic abuse guideline's definition. Transcripts were coded thematically.
- A systematic review of all published sentencing appeal judgments using search terms related to the overarching guideline and domestic abuse. The search terms can be found under section 3.2.2 of this report. Searches returned 42 relevant appeal

judgments between the introduction of the domestic abuse guideline in 2018 and early 2024. Judgments were analysed thematically.

- Analysis of a relevant sample of past Sentencing Council data from court data collections. The offences analysed included assault, harassment, criminal damage, and breach of a protective order. Analysis focused on the answers to the questions about whether domestic context was relevant to the case and, if so, its impact on the sentence.

1.3 Limitations

Across the data sources outlined above, the following limitations should be borne in mind when considering how representative or conclusive the findings are:

- The data can only be said to be indicative of the views/practice of the sample of sentencers covered through the different data strands. Due to sample sizes, they cannot be said to be statistically representative of the sentencer population
- As the survey and interviews relied upon participants volunteering, there is a risk of self-selection bias. This can mean that while participants are readily engaged with this area of research, such respondents may be differently inclined in terms of sentencing practice, their use of the domestic abuse guideline and so on than the general cohort of sentencers
- Sentencing transcripts are only available from the Crown Court and Court of Appeal; evidence is therefore limited to what was said in those courts
- It is difficult to conclude that any differences in the application of the domestic abuse guideline (as identified using the data collected in past court data collections) were due to the overarching guideline itself. There are a large number of variables that could have influenced the changes
- Some cases may not be fully recorded (or recorded at all) in data collection exercises, due to human input errors or lack of time on the day.

1.4 Findings

1.4.1 When and how sentencers use the domestic abuse guideline

- Forty-four per cent of the survey respondents said they ‘always’ refer to the domestic abuse guideline when sentencing cases of domestic abuse, 40 per cent ‘sometimes’, 13 per cent ‘rarely’, and three per cent ‘never’. In interview, some of those who used it considered that it was a useful reminder of key principles and was a useful training aid for new sentencers. Others used it more extensively, for detailed application in the sentencing process. For example, for assessing ‘harm’ and ‘culpability’ under the relevant offence specific guideline, stating that the domestic abuse guideline applies and therefore there is an additional aggravating factor, or in considering in detail the guideline’s aggravating and mitigating factors. The most common way that sentencers used the domestic abuse guideline was to refer to its list of aggravating factors “of particular relevance to offences committed in a domestic context”.

- There was generally a high level of satisfaction with how usable the guideline is in practice. Ninety-five per cent of survey respondents were at least 'satisfied' with the guideline's layout, structure or ease of use.
- Within analysis of the aforementioned sentencing appeal judgments, the case of [R v Baldwin \[2021\] EWCA Crim 417](#), noted that greater engagement with the domestic abuse guideline rather than just treating the domestic context as an aggravating factor is required.
- While 87 per cent of survey respondents said they found the domestic abuse guideline helpful in sentencing, 13 per cent did not. For the most part, those with positive views thought that the guideline was a helpful document, with relevant and useful information, for example of things to take into consideration in sentencing cases involving domestic abuse, as a source of general guidance to assist identifying domestic abuse, and as a checklist.
- Reasons provided in the interviews and survey for not using the guideline included it just being "common sense", "obvious" or prioritising offence specific guidelines (among other documents) in busy courts. This echoed findings of the [User testing survey analysis - how do guideline users use and interact with the Sentencing Council's website?](#) published in November 2023 in which sentencers shared that, due to a sense of familiarity with the overarching guidelines and their principles, they did not feel the need to refer to the domestic abuse guideline in each case in which the guideline was relevant.
- The sentencing transcripts reviewed were noted to have included a number of instances in which the domestic abuse guideline was not specifically mentioned in the remarks, despite the guideline being particularly relevant to the cases. However, it is possible that the sentencers had referred to or applied the principles of the guideline but did not formally mention it in their remarks. They could also have applied factors or principles related to domestic abuse that appear in offence specific guidelines such as 'Offence committed in a domestic context'.

1.4.2 The impact of the domestic abuse guideline on sentences

- The Council's past data collection exercises provided a mixed picture in terms of the domestic abuse guideline's potential influence on final sentence outcomes where cases had been identified as having been committed in a domestic context. There were three offences for which the collections pre- and post- the offence specific guideline were also before and after the revision of the domestic abuse guideline: harassment, breach of protective order and criminal damage.
 - For harassment, there was an increase in the proportion of cases having their sentence increased in some way to reflect the domestic context following the introduction of the domestic abuse guideline. After the introduction of the guideline 70 per cent had their sentence increased, compared to 45 per cent prior to the guideline's introduction.
 - For breach of a protective order, a slight increase in the sentence was observed. The domestic context was reported to have increased the sentence in 50 per

cent of cases following the introduction of the domestic abuse guideline, compared to 43 per cent of cases before the guideline came into force.

- For criminal damage, little difference was recorded pre- and post- the introduction of the domestic abuse guideline. Following the introduction of the guideline, the domestic context was said to have increased the sentence in 35 per cent of cases compared to 39 per cent of cases prior to the guideline's introduction.
- Interviewees reported that the presence of domestic abuse played a part in deciding whether or not to suspend a custodial sentence. Often, this was used as something operating in favour of imposing immediate custody.

1.4.3 Sentencers' views on when the domestic abuse guideline applies and what constitutes 'the domestic context'

- In the survey and interviews, some sentencers reported relying on "common sense" to decide whether an offence was committed in a domestic context and referred to the type of relationship and/or the location of the offence as the reason for classifying a case as involving domestic abuse. Sentencers predominantly focussed on the relationship between the parties as a way to classify whether a case was in a domestic context. This was primarily observed in interviews during discussion of scenarios, which included heterosexual relationships. Despite this, sentencers also gave other examples of relationships including, same-sex co-habiting couples, extended family members, or adult children and parents (this aligns with paragraph two of the domestic abuse guideline). Across the sample of sentencers, judges were more likely than magistrates to turn to and use the domestic abuse guideline in order to decide whether the offence had been committed in a domestic context. In interview, some magistrates pointed out a lack of guidance on relationship length.
- In relation to location, sentencers' main focus in interview was on family or separated couples' homes (for example where contact between the two took place incidentally, due to contact arrangements around children). However, some also mentioned shared accommodation, such as houses of multiple occupancy (HMOs). Some felt that it was not just the location of the offence itself that put a case in a domestic context, but a degree of dependency and trust between the victim and offender was also required. Others felt that a more intimate or familial relationship is required to fulfil the classification.
- In accordance with case law, others in interview considered the offender's conduct when deciding whether an offence was in a domestic context, such as: violence, coercion, control, and attempts to undermine and humiliate the victim. Where sentencers analysed this aspect, they would often make use of the behavioural factors indicated in the domestic abuse guideline, as indicative of domestic abuse. A few sentencers commented on use of technology to control, noting that the domestic abuse guideline could provide further information as to the operation of this kind of abuse.
- Some 'grey areas' and inconsistencies as to what counts as 'domestic context' were identified, such as:

- houses in multiple occupation (HMOs)
- longstanding platonic relationships of trust/dependence
- stalkers (delusionally) believing they are in a romantic 'relationship' with the victim, providing a similar sense of entitlement/power to that of domestic abusers
- death occurring as a result of neglect
- mercy killings
- cases of modern slavery
- instances where there are multiple defendants, and one is abusing the other
- where a long-term victim of domestic abuse 'snaps' and attacks or kills their abusive partner
- where a victim of domestic abuse commits offences against others as a result of their abuse

It was implied that further guidance in these areas may be beneficial.

- In interview, a 'virtual/online space' was a location that appeared to be more problematic for sentencers in deciding whether the offence was committed in a domestic context. It was suggested that the applicability of the space could be clarified within the guideline. This could be particularly relevant in the context of the proliferation of social media and other technologies, which can allow enhanced monitoring, control and harassment of individuals.

1.4.4 Practical issues

- There was generally a very high level of satisfaction in the survey in terms of how the domestic abuse guideline works in practice. Ninety-five per cent of survey respondents were at least 'satisfied' with its 'layout, structure or ease of use'. Conversely, some sentencers raised concerns regarding utility in a busy court: where they are already looking at numerous other guidelines and documents, some found it difficult to locate the guideline when busy or under time constraints. Some suggestions were made to add a link to the guideline at the top of each offence specific guideline, as well as greater use of bullet points, tables, checklists and the highlighting of key words (e.g., provocation, children, and restraining order) to help find the guideline's information on these issues more quickly.
- It was suggested in the survey and interviews that there was insufficient interaction with and cross-referencing from offence specific and other overarching guidelines. Sentencers are directed to the domestic abuse guideline via a drop down under the aggravating factor 'Offence committed in a domestic context'; however, this link is somewhat buried. It is therefore suggested that this could be made more prominent within offence specific guidelines and a brief explanation added. However, some interviewees found the non-prescriptive nature of the guideline to be an advantage.
- Sentencers noted that they would like to see a formal uplift in the domestic abuse guideline, similar to guidance contained in offence specific guidelines on the uplifts in sentences for hate crimes and assaults on emergency workers. It was suggested that this could be referenced in the domestic abuse guideline as well as relevant offence specific guidelines.

1.4.5 Other specific issues

- Some comments in response to the survey noted that the guideline did not provide much assistance in terms of the imposition of restraining orders where child contact is raised as an issue. It was suggested that some guidance on the particular wording or provisions to consider in these cases might assist. Similar concerns were raised in relation to the length of these orders. Considerations in the drafting of these orders have been reflected in case law such as [R v Khellaf \[2016\] EWCA Crim 1297](#). It may be of assistance to sentencers to have this reflected in the guideline.
- The domestic abuse guideline encourages sentencers to consider potential rehabilitation programmes (paragraph 17). However, issues with a lack of availability of some of the relevant probation courses and the unsuitability of offenders with certain characteristics for some courses e.g., when they are only for males, may suggest a problem with the assumptions that the guideline is based on. Sentencers thought it was unclear what to do if the courses are unavailable or unsuitable.
- Many survey respondents and interviewees felt that the domestic abuse guideline needed to be updated, at the very least to take account of the new non-fatal strangulation offence and the consequent seriousness with which such conduct is now treated. Some suggested this should be added to the list of aggravating factors “of particular relevance to offences committed in a domestic context”, and/or in the ‘Scope’ and ‘Assessing seriousness’ sections of the domestic abuse guideline. A suggestion was also raised to include in the guideline things to look out for that could be indicative of future risk, such as strangulation, stalking, and threats to kill.
- It was mentioned by respondents and interviewees that sentencers are expected to order compensation in cases of domestic abuse. However, comments suggest that the approach in domestic abuse cases is to assume that it will do more harm than good unless and until the victim of the offence informs the court. If this is regarded as the correct approach by the Council, sentencers could benefit from this being outlined in the domestic abuse guideline.
- The application of the mitigating factor of provocation within the Council’s data collection exercises was explored, which found that the recording of this factor was rare. It was therefore suggested that the domestic abuse guideline could elaborate on the “rare circumstances” where provocation may be relevant, particularly cases where victims of abuse lash out at their abuser.
- Where there are multiple defendants and one is abusing the other, it was also suggested that the guideline might also cross-reference the ‘Difficult and deprived background or personal circumstances’ factor which was recently introduced by the Council. The factor also includes ‘Direct or indirect victim of domestic abuse’; however, this wording appears at the bottom of a list of 12 other sub-bullet points in the majority of offence specific guidelines. To incorporate this reference into the guideline may enhance its prominence.
- The relevance of a previous record or pattern of abusive behaviour without convictions lacks clarity. Some sentencers seemed prepared to consider things like previous non-molestation orders, harassment warnings and the like to be separate aggravating features for domestic abuse offenders (as demonstrating a pattern of behaviour or that

the offender ought to have known better, having already been given a chance or warning), but others did not.

- Sentencers noted that the mitigating factor 'Good character' may have little relevance and therefore exercised caution in relation to the factor in interview. They did note that the guideline's comments on this assisted them with avoiding taking good character at face value. It should be noted that the wording of this factor was changed to include positive good character, rather than solely good character in April 2024.

2. Introduction

2.1 The Sentencing Council and sentencing guidelines

The Sentencing Council for England and Wales was established in April 2010 (under [s118, of the Coroners and Justice Act 2009](#)) in order to promote greater transparency and consistency in sentencing, while maintaining the independence of the judiciary.

The Council is an independent, non-departmental public body which is part of the Ministry of Justice's family of arm's-length bodies. The Council has statutory duties to:

- develop and issue sentencing guidelines and monitor their use
- assess the impact of guidelines on sentencing practice
- promote awareness among the public regarding the realities of sentencing, and publish information about sentencing practice in magistrates' courts and the Crown Court

The majority of sentencing guidelines issued by the Sentencing Council are 'offence specific', providing a step-by-step framework for sentencing a particular offence or group of offences. For example, there is a guideline on [Theft from a shop or stall](#) and one on [Dangerous driving](#). Where there is no relevant offence specific guideline, the [General guideline: overarching principles](#) provides a step-by-step process and information to help guide the sentencer instead.

The Council also produces 'overarching' guidelines, which address specific issues that may arise across many different offences. These include guidelines on [Reduction in sentence for a guilty plea](#) and [Sentencing children and young people](#), which are expected to be used in conjunction with any relevant offence specific guidelines. The [Overarching principles: domestic abuse](#) guideline, hereafter referred to as the 'domestic abuse guideline', was issued by the Sentencing Council in 2018 and is another example of an overarching guideline. It applies to all sentencing courts in England and Wales.

In accordance with the Sentencing Council's statutory duties to assess the impact of guidelines in sentencing practice, and as part of its current strategic plan, Nottingham Trent University was commissioned to conduct a research review of the domestic abuse guideline. This explores the guideline's impact on sentencing, as well as sentencers' understanding, interpretation, implementation, and application of it.

2.1.1 Sentencing guidelines

Whether overarching or offence specific, all courts are legally obliged, by [s59\(1\) Sentencing Act 2020](#), to "follow any sentencing guidelines which are relevant...unless the court is satisfied that it would be contrary to the interests of justice to do so." Sentencing guidelines apply in magistrates' courts, where (at the time of the research) sentences of up to six months' imprisonment may be imposed for a single offence, and the Crown Court, where any sentence can be imposed up to the maximum legal sentence for the offence.

The Court of Appeal (Criminal Division) also applies sentencing guidelines where these are relevant to the appeal.

Offence specific guidelines provide a tailored step-by-step process for the sentencer to follow, along with any relevant overarching guidelines. In summary, the process is as follows:

- **Categorisation/provisional sentence**
The court arrives at a provisional sentence based upon an initial assessment of the seriousness of the offence. This is determined by the culpability of the offender and the harm caused, intended to be caused, or that might foreseeably have been caused, by the offence. The outcome of this initial assessment is to arrive at a pre-determined sentence starting point and an associated category range as set out in the relevant guideline. For example, a given category may have a starting point of a 'medium level community order' and a range of 'low level community order – 6 weeks custody'.
- **Aggravating and mitigating factors**
The court considers a non-exhaustive list of aggravating and mitigating factors in relation to the offence itself and the offender, including the offender's criminal record or lack thereof. These factors can move a sentence up or down within the initial category's range or, exceptionally, outside of the initial category.
- **Reduction in sentence for guilty pleas**
The court may reduce the sentence to reflect an offender's guilty plea. Generally, the earlier the plea, the greater the sentence reduction. The court will refer to [s73 Sentencing Act 2020](#) and the Reduction in sentence for a guilty plea overarching guideline to help decide precisely how much of a reduction to provide.
- **Where applicable, there are further additional issues courts may take into account. These include:**
 - the court may reduce the sentence to reflect any assistance the offender has provided to the prosecution or investigators. For example, providing evidence or information implicating others involved
 - an assessment of the 'dangerousness' of the offender to the public and whether special custodial sentences should be imposed
 - totality – applicable when sentencing more than one offence and determining whether to impose sentences consecutively (served one after the other) or concurrently (served at the same time), to reach an overall sentence that is "just and proportionate"
 - whether the offender should pay 'compensation' to the victim and any other 'ancillary' orders, such as a restraining order or disqualification from driving
- The court will then give reasons for, and explain the effect of, the final sentence.

With regards to the Council's overarching guidelines, these do not follow a standard format or process. They are generally narrative guidelines that contain guidance on a range of cross-cutting areas that can be applied across a range of offences. Each one has been

developed to meet the specific needs of sentencers in the area in question. The following section outlines the details of the domestic abuse guideline.

2.2 The domestic abuse guideline

In 2006, the Sentencing Guidelines Council (SGC), the predecessor body to the Sentencing Council, published the Overarching principles: domestic violence guideline. In 2018 the Council revised this guideline. The aim of this was to reflect important changes in terminology, expert thinking and societal attitudes. The Council intended for the revised guideline to ensure courts identify domestic abuse cases and factor it into sentencing decisions, and provide guidance on all the necessary information and factors to consider. The title of the guideline was changed to Overarching principles: domestic abuse, to reflect the fact that both physical violence and controlling behaviour can constitute domestic abuse. The guideline was further updated in 2021 to reflect the enactment of the [Domestic Abuse Act 2021](#), including that Act's statutory definition of domestic abuse (discussed in detail below).

Although many criminal offences can involve domestic abuse, it is not an offence in its own right: in practice, conduct involving domestic abuse is often charged under other offence types, such as harassment, criminal damage, assaults or homicide. Indeed, some of the relevant offence specific guidelines for these offences contain reference to 'domestic context', for example as an aggravating factor. The Council also expects the principles of the domestic abuse guideline to be applied, in conjunction with any relevant offence specific guidelines, wherever an offence is committed in a domestic context.

The closest to a specific domestic abuse offence is Controlling or coercive behaviour in an intimate or family relationship, under [s76 Serious Crime Act 2015](#). An [offence specific guideline for this offence](#) was published in 2018 and is being evaluated separately to the domestic abuse guideline. This offence is therefore beyond the scope of this report and its evaluation will be published in due course.

The [domestic abuse guideline](#) is available on the Sentencing Council's website, but a brief summary is provided below.

The guideline begins with a section on its scope, focusing on the definition of domestic abuse. This includes, but is not limited to, a summary of the detailed definition from the Domestic Abuse Act 2021 (linked above). According to the Act, domestic abuse is abusive behaviour of person A against person B, where both persons are over the age of 16 years old and both persons are personally connected. Abusive behaviour can include physical or sexual abuse; violent or threatening behaviour; controlling or coercive behaviour; economic abuse; psychological, emotional, or other abuse. Person A and B are considered 'personally connected' when they are married; in a civil partnership; they have agreed to marry each other; they have agreed to become civil partners; they are, or have been, in an intimate personal relationship with each other; they have, or have previously had, a parental relationship with respect to the same child; or they are relatives.

This part of the guideline also reminds sentencers to avoid stereotypical assumptions regarding domestic abuse, noting that it “occurs amongst people of all ethnicities, sexualities, ages, disabilities, religion or beliefs, immigration status or socio-economic backgrounds”.

It then proceeds to emphasise that, “[t]he domestic context of the offending behaviour makes the offending more serious” and explains why. For example, “because it represents a violation of the trust and security that normally exists between people in an intimate or family relationship” and the likelihood of increasing frequency and severity. At this point, the guideline also notes that victim withdrawal from prosecution does not indicate a lack of seriousness and to avoid drawing any inferences from lack of victim involvement.

The guideline continues by listing some aggravating and mitigating factors “of particular relevance to offences committed in a domestic context”, for example, ‘Abuse of trust and abuse of power’, or ‘Evidence of genuine recognition of the need for change, and evidence of obtaining help or treatment to effect that change’, respectively. Some of these factors are incorporated into certain offence specific guidelines too.

The guideline then lists several other factors influencing sentence. These include some very general considerations in relation to victim wishes, the general irrelevance of provocation, the interests of children and the appropriateness of custodial sentences. There is also more specific guidance, on the application of statutory ‘dangerousness’ provisions and ancillary orders. The guideline concludes with information on the use of restraining orders and the relevance of victim personal statements made to the court.

2.3 The research review

This research review aims to provide an accurate and up-to-date indication of ‘practice on the ground’ to enable the Sentencing Council to consider the extent to which the domestic abuse guideline is delivering its aims and objectives. Its findings will supplement the extensive [Overarching principles – Domestic abuse: Response to consultation](#) (Sentencing Council, 2018a) and [Overarching Principles – Domestic Abuse: Final resource assessment](#) (Sentencing Council, 2018b) that were conducted by the Sentencing Council when the domestic abuse guideline was being drafted.

Resource assessments contain estimates of the potential consequences that the introduction or revision of a guideline may have on prison, probation, and youth justice resources. The assessments involve detailed analysis of current sentencing practice, alongside a review of current guidance, transcripts of judges’ sentencing remarks and news articles.

Following the consultation and resource assessment, it was anticipated that some sentencers might impose more severe sentences following the introduction of the guideline. This was due to the introduction of a principle in the guideline that cases committed in a domestic context should be treated more seriously than cases not

committed in a domestic context. It was found that although some sentencers were already sentencing in line with this principle others were not, so it was estimated that there could be an increase in severity. However, it was not possible to predict the exact magnitude of any increase, or whether the guideline might lead to a change in the type of disposals sentencers handed down. Due to some emphasis in the new guideline on rehabilitation and the need to consider the most appropriate sentence to address the offending behaviour, it was also anticipated that some sentencers might give greater consideration to imposing a community order.

As noted above, the Council is required as part of its statutory duties to review the performance of its guidelines, and following public consultation in 2020, the Council identified five [Strategic objectives for 2021-2026](#). These included a commitment to “explore the impact and implementation of the domestic abuse overarching guideline by undertaking an evaluation”. The Council therefore commissioned Nottingham Trent University in October 2023 to conduct a research review of the guideline.

This review focuses on:

- sentencers’ understanding, interpretation, implementation, application, and views about the guideline
- how the domestic abuse guideline is used in sentencing
- the impact of the domestic abuse guideline on sentences

As such, the key areas of focus here are the domestic abuse guideline’s effect on:

1. The decision on whether or not to categorise or classify an offence as one involving ‘domestic abuse’ or ‘domestic context’

How, if at all, does the domestic abuse guideline assist or affect sentencers’ understanding of domestic abuse? The guideline contains a large initial section explaining when it applies, including, although explicitly **not** limited to, the statutory definition of domestic abuse. We are interested in how, if at all, this and any other relevant parts of the guideline are used by sentencers to decide this question.

2. The sentencing process/decision

How or where does the guideline fit into the sentencing process and what parts of that process does it affect? For example, does it result in a change in the sentence starting point (in terms of assessing culpability or harm initially), or in an additional aggravating factor/s, later in the sentencing process? Similarly, does the guideline affect, for example, the use of ancillary orders or requirements?

3. The final sentence

Does the guideline result in a harsher, more lenient or different type of sentence? This could be in terms of sentence **type**: financial penalty, community order, or custodial sentence, or in terms of sentence **severity**: length of custodial period, number of hours of

unpaid work, fine amount, and so on. It could be both. Relatedly, does the guideline result in the inclusion of a specific **element** to a sentence? For example, adding a particular rehabilitation programme to a suspended sentence order where one otherwise would not have been added, or favouring unpaid work over a curfew for a community order.

3. Methodology

In considering the questions outlined previously, the review draws upon both primary and secondary data, in particular:

- an anonymous online survey of sentencers with experience of sentencing cases involving domestic abuse
- one-to-one qualitative (semi-structured) interviews with sentencers which were anonymised post-interview
- a sample of transcribed Crown Court sentencing remarks (post-domestic abuse guideline implementation)
- reported and published Court of Appeal (Criminal Division) cases (post-domestic abuse guideline implementation), and
- data from previous Sentencing Council court data collection exercises (pre- and post- the domestic abuse guideline implementation)

Further details of each of these data are set out at 3.1 and 3.2 below.

Approval is required in order to conduct interviews or surveys with sentencers. This was obtained successfully following review of all research materials including interview and survey questions by both the Office of the Sentencing Council (OSC) and the Senior Presiding Judge (who acts as a point of liaison for judiciary and government). Nottingham Trent University's Business, Law and Social Sciences independent research ethics committee also reviewed and approved the proposed programme of research and materials.

3.1 Primary data

3.1.1 Anonymous online survey of sentencers

A link to an online survey was disseminated to all sentencers in magistrates' courts and all locations of the Crown Court via a link that was sent to their judicial email addresses. It was also posted on Magistrates' Matters (a newsletter for magistrates) and the judicial intranet. Potential participants were informed of the aims of the review, as well as the other sources of data that would be relied upon alongside their survey. The survey was open from November 2023 to March 2024, with 365 responses received in total. Of those, seven were filtered out as the respondents had no experience of sentencing domestic abuse cases.

The survey consisted of closed and open questions. A closed question is one where the participant must select from a number of pre-determined options, for example 'yes' and 'no' or a four-level Likert-style scale (e.g. 'very satisfied', 'satisfied', 'dissatisfied', 'very dissatisfied'). To encourage respondents to make a decision one way or the other, there were no 'neutral' responses ('undecided', 'don't know', etc.). An open question is where participants write their own response, for example in a free text box after being asked to

“please explain why”. The survey was designed to take around 10 minutes to complete, and it was made clear that “there are no mandatory questions, so you can skip any you do not want to answer”. A copy of the survey questions can be found at Annex A.

The breakdown of respondent roles is presented in Table 1, which shows that 85 per cent of respondents were magistrates, with those remaining being Crown Court judges (comprising circuit judges and recorders). The greater proportion of magistrate respondents is not surprising, given the national picture of sentencers. As of 1 April 2024, there were 14,576 magistrates (88 per cent), 127 district judges (magistrates’ courts) (< one per cent), 100 deputy district judges (magistrates’ courts) (<one per cent), 738 circuit judges (four per cent) and 988 recorders (six per cent) in post ([Ministry of Justice, 2024](#)).

Table 1: Survey respondent numbers broken down by judicial role

Judicial role	Number	%
Magistrate	305	85%
Circuit judge (full-time salaried Crown Court judge)	46	13%
Recorder (a part-time Crown Court judge)	7	2%
Total	358	100%

Given the different roles and experiences of magistrates compared with Crown Court judges, we have distinguished these roles when reporting findings below. We have not distinguished between part-time (recorders) and full-time (circuit) Crown Court judges.

Responses to closed questions were analysed in JISC Surveys and via Excel. Responses to open questions were analysed and coded thematically. In this report, some of the free text responses have been edited for typographical errors and to promote clarity, but not where this would have affected respondents’ meaning.

3.1.2 Qualitative interviews with sentencers

Semi-structured interviews were designed to allow for more in-depth discussion than the survey and to allow for interviewees’ points to be elaborated upon and clarified in response to interviewer probing. The opportunity to be involved in one-to-one interviews was advertised to all sentencers in magistrates’ courts and all locations of the Crown Court via their judicial email addresses, the judicial intranet, Magistrates’ Matters (a newsletter for magistrates) and at the end of the survey. Information included a summary of the review and invited those interested in being interviewed to contact the research team. Those who responded were provided with a more detailed information sheet about the review and what their participation in an interview would involve, as well as a consent form. An initial recruitment target of 40 interviewees, split between jurisdictions (20 from magistrates’ courts and 20 from the Crown Court) was met. Interviews were conducted via video conferencing facilities between January and February 2024.

The interviews consisted of open questions in relation to the areas of focus outlined in section 2.3, as well as consideration of two vignettes (hypothetical scenarios) to stimulate

discussions of how the domestic abuse guideline could apply within the interviewees' decision-making processes. The first vignette involved an either-way offence (assault occasioning actual bodily harm (ABH)), which was used for all interviewees, as this type of offence can be dealt with by either a magistrates' court or the Crown Court (hereafter 'the ABH vignette (1)'). The second vignette involved an indictable-only offence (causing grievous bodily harm (GBH) with intent), which was used for Crown Court interviewees, as these types of offences can only be dealt with by the Crown Court ('the GBH vignette (2)'). The third vignette involved a summary-only offence vignette (harassment), which was used for magistrates' courts interviewees, as these offences can only be dealt with by a magistrates' court (hereafter, 'the harassment vignette (3)').

A copy of the interview vignettes can be found at Annex B. The interviews were conducted by a member of the research team, recorded, professionally transcribed and anonymised. The anonymised transcripts were then analysed thematically by reading and noting key themes and sub-themes. Team members used NVIVO (software used to assist qualitative social science analysis) to record the relevant themes and sub-themes. In this report, some quotes have been edited slightly for clarity and to remove filler phrases (such as "you know" and "like").

3.2 Secondary data

3.2.1 Transcripts of Crown Court sentencing remarks

A sample of 446 sets of transcripts of sentencing remarks from Crown Court cases post-2018 (after the domestic abuse guideline's introduction) was obtained via the OSC, with the agreement of His Majesty's Courts and Tribunals Service (HMCTS). The terms of this agreement stipulate that the cases referred to in the findings are not named.

These transcripts were selected from a 'pool' of transcripts held by the OSC. The sample provided by the Office to the research team was purposefully weighted towards those cases which were most likely to be relevant in terms of the time period (in other words, after the domestic abuse guideline) and offence type, and for those offences which the Council has produced guidelines for.

Each case was reviewed for the presence of potential domestic abuse or context by reference to the domestic abuse guideline's definition (paragraphs one to seven). Only obviously irrelevant cases were removed, for example, where there was no connection between the offender and the victim, such as in the case of an assault on bar security staff. Fifty-five such cases were removed on this basis, leaving 413 for full analysis.

Table 2 outlines the types of offences contained in the sample of transcripts of sentencing remarks.

Table 2: Sentencing remarks sample numbers broken down by offence type

Offence	Number
Manslaughter	137
Child cruelty offences	40
Breach of a protective order	39
False imprisonment	25
Kidnap	22
Racially and/or religiously aggravated harassment and/or stalking	20
Threats to kill	18
Stalking	15
Modern slavery	15
Blackmail	14
Disclosing private sexual images	13
Harassment	13
Attempted murder	12
Threatening to disclose private sexual images	11
Bladed articles	7
Witness intimidation	6
Actual bodily harm	3
Grievous bodily harm (s20)	3
Total	413

Relevant transcripts were imported into NVIVO for coding. NVIVO is a software package used to assist qualitative social science analysis, by recording and collating the themes and sub-themes identified by the user. The research team read and coded each transcript and then analysed them thematically. Thematic analysis (see [Braun and Clarke, 2006](#)) involves identifying general themes (or codes) and sub-themes (sub-codes) in order to

draw conclusions from non-numerical data, such as documents and interview transcripts. Such codes may be derived from reading the data (for example, if a particular topic is mentioned in a set of sentencing remarks, this could then form a code) or may be agreed upon in advance as a factor to proactively consider. For example, if a factor is mentioned in the domestic abuse guideline, that might form a code. The team adopted a combination of the two approaches when analysing the sentencing transcripts.

3.2.2 Reported/published Court of Appeal (Criminal Division) cases

A systematic review was undertaken of all reported/published sentencing appeal judgments from the Court of Appeal (Criminal Division) following the introduction of the domestic abuse guideline (from May 2018 to February 2024). This utilised the following legal databases: Westlaw, The National Archives' 'Find Caselaw' service, BAILII (British and Irish Legal Information Institute) and Lexis+ UK. These results were narrowed down using the following search phrases:

- Overarching principles: Domestic Abuse
- Overarching principles AND Domestic Abuse
- Overarching principles AND Domestic Violence
- Principles AND Domestic Abuse
- Principles AND Domestic Violence

All judgments returned were then read and reviewed for relevance. This resulted in 42 relevant judgments, each of which were imported into NVIVO and analysed thematically, in the same manner as the sentencing remarks above.

3.2.3 Sentencing Council data collection exercises (pre- and post-domestic abuse guideline)

The Sentencing Council periodically conducts sentencing data collection exercises in both magistrates' courts and the Crown Court. These are generally run for five or six months for selected offences. During data collection periods, sentencers are asked to fill out a short online survey immediately after passing sentence, with details about the sentencing outcome and the factors that were taken into account in reaching that outcome, as well as some information on the offender.

We drew on 12 data collections for this work. The collections for breach of a protective order, criminal damage, and harassment, all spanned periods prior to and after the introduction of new offence specific guidelines for these offences, as well as pre- and post-the domestic abuse guideline (Table 3). The other collections were conducted later than the introduction of the domestic abuse guideline but were included as they also collected information on whether the offence was committed in the domestic context and, if so, its impact on sentence (Table 4).

Table 3: Data collection periods by offence type, pre- and post-domestic abuse guideline

Offence type	Data collection periods (pre-domestic abuse guideline)	Data collection periods (post-domestic abuse guideline)
Breach of a protective order	01/11/17 – 30/03/18	23/04/19 – 30/09/19
Criminal damage	01/11/17 – 30/03/18	04/01/21 – 07/05/21
Harassment	01/11/17 – 30/03/18	23/04/19 – 30/09/19

Table 4: Data collection periods by offence, post-domestic abuse guideline only

Offence type	Data collection periods (post-domestic abuse guideline only)
Actual bodily harm	04/01/21 – 07/05/21 and 09/01/23 – 30/06/23
Common assault	04/01/21 – 07/05/21 and 09/01/23 – 30/06/23
Grievous bodily harm (s20)	09/01/23 – 30/06/23
Grievous bodily harm with intent (s18)	09/01/23 – 30/06/23

3.3 Limitations

The following limitations apply to each source of data and should be borne in mind when considering how representative or conclusive the review's findings are.

3.3.1 Anonymous online survey of sentencers

While we secured our target number of participants, it should be underlined that the sample cannot be regarded as statistically representative. The [Ministry of Justice reports](#) that there are 14,576 magistrates in England and Wales and 1,953 sentencing judges (MoJ, 2024). In total, 305 magistrates and 53 Crown Court judges responded to the survey. Hence, this data is not representative of widespread sentencing practice or the views of the judiciary. It should also be noted that some sentencers did not complete every question in the survey, therefore data for some questions is incomplete.

We also depended upon participants volunteering, which carries a risk of self-selection bias. In other words, those inclined to volunteer their time for a research project on domestic abuse sentencing may be disproportionately more interested in or aware of this

area of sentencing and associated issues, compared with the general cohort of sentencers sitting in criminal courts as a whole. Of course, this does have positives: it meant participants readily engaged with the survey questions and we received many helpful and highly relevant comments. However, it is important to be aware that such respondents may be differently inclined in terms of sentencing practice, use of the domestic abuse guideline, and so on, than the general cohort of sentencers.

3.3.2 Qualitative interviews with sentencers

The above limitations in relation to small and unrepresentative sample sizes likewise apply to the interviews as it was only possible to interview 20 magistrates' court sentencers and 20 Crown Court sentencers. That said, this research did not aim to be representative of all sentencers. Rather, the interviews were designed to elicit a range of views on a topic through in-depth discussions, until data 'saturation' was reached (this is where fewer and fewer original findings and insights are found as more and more interviews (for example) are analysed, suggesting further ones are unnecessary).

Self-selection bias may also operate even more heavily here than in relation to the survey, given the extra time commitment required for an interview. Social desirability bias is also a risk with interviews. In other words, the natural tendency for people to tell researchers what they think they want or expect to hear. This is not necessarily deliberate and can operate subconsciously. It can lead to sanitised answers to questions, when compared with actual decision making in practice.

The use of vignettes also carries caveats. These were based upon the empirical research literature on the various ways that domestic abuse can take place and the team's own criminal legal practice experience. As intended, this helped to move from abstract to practical discussions about the domestic abuse guideline. However, a real case would have much more detail and evidence, for example, photographs, statements, witness testimony, advocacy from both sides' lawyer/s, and probation reports. The vignettes should not be considered (and were never intended to be) a 'simulation' of sentencing.

3.3.3 Transcripts of Crown Court sentencing remarks

As noted above (section 3.2.1), the transcripts included in this review were a sample from the 'pool' of transcripts held by the OSC. That pool is limited by the fact that it does not contain all the Crown Court sentencing transcripts for a particular offence, does not cover all types of criminal offences, and only covers those offences for which the Council has, or is, producing a guideline. It is possible therefore that there were offences potentially involving domestic abuse which we did not consider. Further, we analysed a total of 413 sets of remarks. Given that in recent years, [the Crown Court has processed at least 20,000 cases per quarter](#) (although not all of these will have involved domestic abuse) (MoJ, 2023), clearly this sample is not representative. In addition, it should be noted that these transcripts only cover the Crown Court as transcripts of sentencing remarks are not available for magistrates' courts.

There is also a limitation in terms of what the transcripts can and do show. They show what a judge said on a particular day, with a particular audience in mind: offender, lawyers, victim, and so on. The transcripts also varied in terms of the detail they set out about the case. In some cases, they seemed to assume some prior knowledge and were quite unclear, perhaps because the detail would have been obvious to those involved in the case or due to time constraints. In other cases, remarks provided a clear and accessible explanation of the reasons behind a sentence. We could also not ask for clarification, or explore **why** the judge said something, or **how** precisely they used the domestic abuse guideline. Relatedly, if a judge had read or used the domestic abuse guideline to help with their sentencing decision in some way but had said nothing about it in their sentencing remarks, this would also not be picked up from analysing the transcript.

3.3.4 Reported/published Court of Appeal (Criminal Division) cases (post-domestic abuse guideline)

We are confident that all reported/published appeals cases were picked up within the period of analysis (May 2018 to February 2024). However, this does not mean that all appeal cases decided during that period of analysis will have been covered. Firstly, any cases decided during that period whose publication was delayed until after that period may have been missed. Secondly, while most appeal cases are reported/published, it is possible that a relevant case during this period may not have been, perhaps due to reporting restrictions imposed by the Court of Appeal pending a re-trial in the same case.

The only significant limitation is that this source covers a very small proportion of total sentencing exercises: only 42 relevant appeal cases were identified in the course of the previous six years. This will of course provide useful insights in those particular cases, especially on how the Court of Appeal viewed the initial sentencing decision. However, it does not give any indication as to how the domestic abuse guideline has been used or the effect it has had in the vast majority of cases sentenced in the Crown Court or the magistrates' court which have neither been reported nor appealed.

3.3.5 Sentencing Council data collection exercises (pre- and post-domestic abuse guideline)

These surveys are completed in court, at the time of sentencing or immediately afterwards. In busy courts, it is possible that some sentencers might not complete the survey in full (or at all), therefore in some cases data for some questions (or sentences) may be missing.

In relation to domestic abuse in particular, while we were provided with data for the sentencing of seven different offences, these data were limited by the fact that only the collections for three of them, criminal damage, harassment and breach of a protective order, were available both prior to and after the implementation of the domestic abuse guideline. This makes it impossible to draw conclusions about the effect of the domestic abuse guideline in relation to the other four offences.

In relation to the three offences where this data was available, it is still difficult to show that any changes identified were caused by the domestic abuse guideline. For example, if domestic abuse was identified in more cases after the guideline compared to before, this could be because the guideline had improved sentencer awareness. However, it might equally have been because levels of domestic abuse may have risen during the same time period. There was also another key change to sentencing guidelines between these data collection exercises: new offence specific guidelines were introduced for all three of the offences. Hence, any observable differences might also be a result of those new guidelines rather than the new domestic abuse guideline. Lastly, the question format differed slightly between the pre- and post-domestic abuse guideline collections. The pre-domestic abuse guideline data collections asked sentencers “Broadly speaking, how did the domestic context affect your sentencing decision?” and utilised a dropdown list of responses, while the post-domestic abuse guideline data collections took one of two approaches. Those for criminal damage, actual bodily harm, common assault, grievous bodily harm and grievous bodily harm with intent asked that same question, but the list of dropdowns differed slightly, and for each option, a free text question was added, asking the sentencer to provide details as to why they had made that decision. Those for harassment and breach of a protective order asked an open question with a free text response: “In what way, if any, did the domestic context affect the final sentence and how?”. These differences in format and questioning may elicit different responses and reduce comparability.

3.3.6 Final comments on limitations

As mentioned above, all data sources have their inherent disadvantages. The fact that we have relied upon a variety of different sources of data and methods of data collection, mitigates some of these. For example, sentencing remarks demonstrate actual practice and so mitigate against the risk of social desirability bias presenting a sanitised account in interviews. Conversely, interviews allow sentencers to explain why they might do something and allows the researcher to ask clarifying questions, which is not possible when reviewing sentencing remarks. Surveys, due to their convenience, reach a larger group than interviews, providing a broader range of views. Sentencing Council data collections may provide less detail than some Crown Court sentencing remarks but cover a much greater number of cases and also include those from the magistrates’ courts (depending on the offence). Ultimately, the above caveats ought to be borne in mind when considering the findings. Nonetheless, despite these unavoidable limitations, these findings still provide helpful insight into the use of, and the perceived use of, the domestic abuse guideline across the criminal court system.

4. Findings

Across all sources of data, the following set of key themes was identified. This section is structured in accordance with these themes, rather than analysing each data source individually. All sources of data informed the findings and are discussed under each theme's sub-heading, where relevant. Details of the vignettes used in the interviews with sentencers can be found at Annex B.

4.1 Sentencer views on when the guideline applies and what constitutes 'the domestic context'

As noted in the introduction, one focus of this review was exploring sentencers' understanding, interpretation, implementation, application, and thoughts about the domestic abuse guideline. A crucial part of that is sentencers' understanding of whether the guideline applies at all. In other words, what is the 'domestic context' or 'domestic abuse'?

As outlined in 2.2 above, the domestic abuse guideline itself is potentially applicable across a wide variety of circumstances where there is a 'personal connection between the victim and offender. The Act also states that any child related to the abuser and/or victim, who "sees or hears, or experiences the effects of, the abuse" is also considered to be a victim of domestic abuse. However, the domestic abuse guideline is clear that it "applies **(but is not limited to)** cases which fall within the statutory definition" (emphasis added).

Across the data sources, there were many different ways in which the applicability of the domestic abuse guideline and the domestic context were interpreted. For some sentencers the domestic abuse guideline was welcome because it focused attention specifically on the domestic context as part of the overall crime, indicating that it needed to be taken more seriously than offences that had not been committed in a domestic context. Many sentencers stated that they did consider domestic abuse to be more serious than offences outside of the domestic setting and that the domestic abuse guideline had helped to solidify this view. It had also helped to challenge earlier stereotypical ideas about domestic abuse not being as serious as other types of offending, which otherwise might be prevalent. Such was the historic legacy of minimising the importance of domestic abuse that some interviewees and survey respondents, felt that even the word 'domestic' was inappropriate. For example:

Judge: It's just got such connotations of 1970s policing, you know: 'it's [only] a domestic'.

The various approaches identified by this review as to whether the guideline is applicable are set out below. We begin with sentencers' implicit or 'common sense' approach, before going on to consider approaches based upon the relationship, location and/or conduct.

4.1.1 The domestic context and applicability of the guideline is “just common sense”

Some sentencers appeared to use an instinctive common sense approach to whether a case fell within the definition of domestic context. In the case of magistrates, this appeared to be because many of them rarely used the domestic abuse guideline (see below, 4.2.1, and below, 4.2.4). Indeed, those magistrates who did turn to the domestic abuse guideline, often appeared (from interview and survey responses) to do so because they had some specialist interest in domestic abuse already - for example, from employment in social or healthcare professions or even personal experience. Of those surveyed, 32 per cent had sat in a specialist domestic abuse magistrates' court.

Reliance on an implicit or common sense definition was also seen among judges and even occurred in some cases, when participants were guided specifically to or were asked in interview about the eight paragraphs under the relevant 'Scope of the guideline' heading. For example:

Judge: I can't remember what the definition actually is [right now], but you know it when you see it.

Relatedly, as will be seen throughout the quotes from the interviews in this report, some sentencers appear to still be using the phrase 'domestic violence' rather than 'domestic abuse'. Use of this term does not necessarily suggest a problem with sentencer understanding, but it does show how old terminology can become ingrained. Its continued use is contrary to the domestic abuse guideline's aim to reflect important changes in terminology.

That said, generally judges stated in interview more often than magistrates that they used the guideline in order to decide whether the offence was in a domestic context. Some judges stated that they often began sentencing with the domestic abuse guideline, but the majority began with the offence specific guideline, before turning to the domestic abuse guideline for additional guidance and information.

It should also be noted that Crown Court interview participants tended to reference the guideline more frequently than was observed in the Crown Court transcripts. This could be a consequence of the fact that the guideline was the advertised subject matter of the interview, so it would be fresh in interviewees' minds. It could also relate to social desirability bias in interview responses (the natural tendency for people to tell researchers what they think interviewers want or expect to hear), and/or to self-selection bias (those inclined to volunteer their time for a study on domestic abuse sentencing may be more likely to have awareness and/or interest in that topic than most). Equally, as we discuss further below (4.1.6), some judges may not always mention that they have used the guideline in their sentencing remarks, even if they have read or used it in the course of making their decision. Regardless of the cause though, there is a risk that even the reference from some judges in interviews to their using the guideline to help determine

domestic context may present a slightly misleading picture of the frequency or level of the guideline's use for this purpose compared with actual sentencing practice.

4.1.2 The domestic context and applicability of the guideline is relationship-based

Outside of the instinctive “you know it when you see it” approach, another way sentencers classified domestic abuse cases was on the basis of the nature of the relationship between the parties. This aligns with the part of the domestic abuse guideline (paragraph two), which lists some relationships (drawing on the Domestic Abuse Act's definition). The most common example cited in this context from interview was a heterosexual relationship between (in accordance with the statutory definition) married or cohabiting couples with children, both in the abstract and in relation to the vignettes.

Magistrate: Well, it's a family, they're married.

Within this, some took a more detailed approach, examining the nature of that relationship, but still focused on that rather than the conduct.

Magistrate: It's a domestic context because of the relationship between the offender and the victim. They're married, they're parents, they've lived together. So yeah, this is pretty clearly in [a] domestic context.

Magistrate: Oh, it's not just the fact they've been married 15 years, it can also be partnerships for say six months, three months. You're looking at the relationship between the two people as to whether you would consider it to be in a domestic context. And that takes into consideration for example, who might pay the bills, are there children involved? There's a whole wide range of things that indicates a relationship, not just being married for 15 years.

Given that some of the vignettes involved a heterosexual married couple with children, picking up on this relationship was to be expected. The extent to which some focused exclusively on this aspect was notable though, given the many other things in the vignettes that might also have been relied upon (such as the conduct, see 4.1.5, below).

Beyond heterosexual couples with children, many magistrates and judges also gave other examples of relationships, including, for example, same-sex cohabiting couples, extended family members, or adult children and parents. The domestic abuse guideline was considered particularly useful by these sentencers for providing a wider range of relationships/examples that could fall under the domestic context.

Judge: Quite a lot of it is set out within the domestic abuse guideline, but basically, I look at it as any intimate relationship. Or that between partners. And, of course, whatever gender, sexuality is completely irrelevant and whether it's parent, child, whatever it is, a familial or intimate personal relationship.

In the following quote, one judge emphasised a wide range of relationships, pointing to a key issue, that it was a relationship involving “trust”:

Judge: I try and broaden it as much as I can. It's anybody who's had a relationship of trust. Or something more than acquaintance. It's a spectrum...I've done sentences recently where it's been a stepson and stepfather arguing over other family members. So that's probably a fairly tenuous link in that sense, but even step relationships can be close.... Offences that have happened between people who've been in a relationship that's passed some time ago. There's still that connection and a lot of the time the offence will be borne out of the circumstances or the breakdown of that relationship. So, it's not just between husband and wife, [or] boyfriend, girlfriend.

Similarly, a magistrate interviewee emphasised the need for some kind of "bond" or "tie" and a level of "permanence":

Magistrate: Now for me, to be in a domestic context, it's about the level of bond and tie that is there, so my understanding of it would be that there was some level of permanence to that relationship and not to say that they're still together or it has to be a really long time.... Intimate personal relationship means you're to some extent sharing lives in a way that going on a few dates, you're not.

This was particularly evident when it came to the harassment vignette (3, used in magistrates' court interviews only). In that vignette, the connection between the parties involved "a few dates after meeting on Tinder", before the victim said they did not want to pursue a long-term relationship. Many interviewees recognised that it was debateable whether this was a case of domestic abuse and used the domestic abuse guideline to help them decide one way or the other:

Magistrate: Well, I'm just trying to find exactly whether they've had an intimate or personal relationship. I suppose they'd been on a few dates. Would that be enough to argue that they had had an intimate, personal relationship? I think I would say, probably yes, but I can hear my colleagues, some of them would argue quite strongly against that. The fact that in the domestic abuse guideline, it doesn't actually say how short or long that intimate personal relationship has had to have lasted to have been an impact. But then I can imagine [my colleagues would] start saying, 'would one date mean that they'd had an intimate, personal relationship? ... What about two dates?' And you could get into that sort of difficult realm of, 'how many dates?' ...and how do we know how intimate and personal they'd been in those dates and so on? So, it's not straightforward.

Magistrate: Because the two people have been on a few dates, so that implies that a relationship is developing. We're not told if there's been any sort of sexual engagement, but that could be happening. A few dates, one of them already wants to pursue a long-term relationship. So, to me yes, I would say this would fall within the [domestic abuse] guideline.

Magistrate: No, I don't know that it would [come within the domestic abuse guideline].... It's a different type of [relationship], the relationship is a different situation. It's an early stage that [they] decided [they] didn't want to pursue it.

Ultimately, in relation to the harassment vignette (3), some magistrates decided that it did and some that it did not count as 'domestic', but that could be due to the brevity of the vignettes, compared with what would be available in court. The important point for the purposes of this review is the assistance the domestic abuse guideline provides in such cases. Some, such as the first magistrate in the above example, pointed out the lack of guidance on relationship length. However, others considered that this was adequate, given the need to keep the guideline to a manageable length (see further, 4.2.4, below).

4.1.3 The domestic context and applicability of the guideline is location-based

A further way in which the phrase 'domestic context' was thought to apply was based on the location of the offence. The domestic abuse guideline and Act do not mention location (although the guideline does refer to a "household" in the context of different kinds of relationship), so this approach is unlikely to be drawing from them. The main locations focused on in the interviews were homes, often a "family" home:

Judge: This is violence of intimate partners, spouses, in the family home, I think.

However, other locations might include the homes of separated persons, for example where contact between the two took place incidentally, due to contact arrangements around children. The key thing for some was that this was a place where the parties lived, which could include extended family members rather than only intimate partners:

Judge: A domestic setting between people who are in a relationship of one sort or another, not necessarily an intimate relationship. And/or allied to people who have a relationship, within a family for instance, or something less than what we might think of as a family, but some sort of connection of a domestic nature between them.

In terms of location, for some sentencers, domestic context could be considered to include people living in shared accommodation without an intimate relationship in the traditional sense. Here some people could be within a domestic context, due to the nature of their living arrangements, rather than exclusively the nature of the relationship itself. As the judge in the following quote acknowledges, in some cases it will be the relationship within the location that is important; in others, the location itself determines the domestic context:

Judge: Or sharing the same household so it could be a landlord and his tenant for example, or cohabiting tenants. So 'domestic' how I understand it is being in a relationship or in circumstances in which you are in close proximity, such as sharing a flat. However, while location was important, some sentencers were of the opinion that this would require some kind of "quasi-domestic" relationship and behaviour outside of simple multiple-occupancy shared accommodation. For example, a degree of dependency or trust, reflecting the domestic abuse guideline's reference to "expectation of mutual trust and security".

In addition, being in a position of power was also considered:

Judge: If I had somebody who was living here as a friend. ...let's just say that they were a slightly weaker individual than me and I'm just more of a bully. ...it's different to some bloke in a pub who's had too many beers and just smacks somebody. So, what is it? Instinct says 'well, it's quasi-domestic' and therefore if that's the case, although there's no familial or sexual or intimate relationship, there's still one person in a position of some degree of power over the other, and he's abusing it, or indeed she's abusing it. And if that's right, then perhaps the guideline needs to specifically reference that scenario.

Although being in a position of power is not mentioned in the domestic abuse guideline's definition of domestic abuse, 'Abuse of trust and abuse of power' is mentioned as one of the aggravating factors; paragraph four mentions 'expectation of mutual trust and security' and paragraph five mentions 'acts designed to make a person subordinate' in defining coercive behaviour. Text that focused on power and abuse of that power could therefore be worth considering for inclusion in the 'Scope of the guideline' section too.

That said, some sentencers indicated that they believed something more was needed than just living in a shared property with some position of power, trust, and/or dependency. Namely, a more intimate or familial type of relationship:

Judge: It wouldn't, for example, include two students living together in student accommodation. It requires a more intimate relationship between the two. Doesn't have to be formalised by marriage or something like that, and it would include stepchildren and fostered children and anything like that. But it requires that kind of relationship.

A location that appeared to be more problematic for sentencers was that of 'virtual' space. In particular, some magistrates struggled to decide whether the scenario in the aforementioned harassment vignette (3) should be regarded as domestic abuse. This involved a brief relationship between two parties and much of the harassing behaviour taking place online, albeit that the victim could well have been within their home when reading the online material. The brevity of the relationship, as noted previously, and the absence of cohabitation seemed to imply for some that this could not constitute a domestic context, whereas for others this was sufficient.

It may be that the domestic abuse guideline could clarify its applicability in virtual or online spaces (one way or the other) to encourage consistency of approach. Doing so would build on what is already considered by some to be a helpful role of the domestic abuse guideline. Many sentencers, particularly judges, felt that the sentencing guideline helped them to identify a range of domestic and familial relationships and to explain their decision about why it fell within the domestic context, and should therefore be taken more seriously by the court:

Judge: It can happen within the family. I've dealt with a case where a mother was being appallingly ill-treated by her son, and who in my judgement, fell very much within this overarching [domestic abuse] guideline. [The guideline] is a reminder and empowers the court to act in accordance with what I think is common sense. And justifies a robust and often severe approach to domination and control, and environments within that sort of context.

4.1.4 Problems with relying on relationship or location to determine 'domestic context'

The reliance of many interviewees and survey respondents on the nature of the relationship, and/or location of the offence as the reason for classifying a case as involving domestic abuse, is somewhat contrary to recent caselaw. One such instance is [R v Anthony Williams \[2021\] EWCA Crim 738](#), a case of voluntary manslaughter by reason of diminished responsibility. In such cases the offender fulfils all the legal requirements for murder, but the partial defence of diminished responsibility applies. This requires an abnormality of mental functioning caused by a recognised medical condition, with the abnormality substantially impairing the individual's ability to understand the nature of their conduct, form a rational judgement and/or exercise self-control. The abnormality of mental functioning must also have provided an explanation for the individual's conduct in relation to the killing. On appeal against the sentence – which was in part based upon the fact that the judge failed to consider the domestic abuse guideline – the Court of Appeal concluded explicitly that the domestic abuse guideline did not apply in this case where the killing was perpetrated by (1) a husband against his wife and (2) in their home, because the case could not be properly classified as domestic abuse in the absence of a history of controlling or coercive behaviour, violence, or abuse. There was a similar logic expressed in a 2019 case from the Crown Court sentencing remarks sample, where the judge determined that the victim (the offender's mother) being attacked in her home was not an aggravating feature, given that the case did not involve "persistent domestic violence but a one off push, which happens to have been in her home". Such cases arose, notwithstanding that the 2018 version of the guideline referred to "any incident or pattern". The updated version in 2022 has since clarified further that domestic abuse could arise through either "a single act or course of conduct".

Secondly, in [R v Dale Tarbox \[2021\] EWCA Crim 224](#), the Court of Appeal found that the guideline was not applicable on the following basis:

The circumstances of this case do not quite fit within the ambit of the domestic abuse guideline: although [victim] had stayed with Tarbox several times and for appreciable periods, and although there had been some sexual activity between them on at least two occasions, we do not think it can be said that they were or had been intimate partners or family members.

However, the Court went on to increase the sentence for a variety of other aggravating features, including a violation of the trust and security that the victim had placed in Tarbox, rather than the domestic context. As a result, the Sentencing Council later added text to

the guideline to widen its scope in relation to the kinds of relationships where mutual trust and security is expected. It is possible Tarbox could have fitted within the latest iteration.

Thirdly, in [R v Paul Beddoes \[2018\] EWCA Crim 2599](#) where the offender murdered his wife, the Court of Appeal declined to apply the domestic abuse guideline. This was on the basis that the “true” aggravating factors lay outside the domestic context and violation of trust. Instead, the court concluded that the aggravating factors in this instance were the use of knives, the brutality of the attack (evidencing an intention to kill), the fact that the victim was taken by surprise and the offender’s voluntary intoxication. On that basis, the court declined to apply the domestic abuse guideline and instead reassessed the sentence in light of the other aggravating factors.

Hence, in spite of the substantial reliance on the nature of the relationship and/or location to establish domestic context seen in the previous sections, the Court of Appeal’s recent decisions steer sentencers away from such an approach. The following statement in the R v Williams judgment demonstrates this steer aptly:

We do not consider that, on its proper construction, the Sentencing Council guideline on domestic abuse is authority for the proposition that in every case an act of violence, committed out of the blue, by an offender against his spouse or partner is to be sentenced more severely, simply because it is an offence of violence within the home.

4.1.5 The domestic context is conduct-based

The question then arises as to what sentencers should rely on instead of purely the relationship and/or location of the offence to determine applicability of the domestic abuse guideline. The final theme emerging from the primary data for assessing whether an offence was in the domestic context was the conduct of the offender. Where sentencers focused on this aspect, they would often make use of the factors indicated in the domestic abuse guideline, namely, violence, coercive and controlling behaviour, and attempts to undermine and humiliate the victim. Examples highlighted by sentencers in interview included tracking the movements of the victim, control of finances, or using contact arrangements with children to continue to exercise control over the victim. For example, the following quote places as much emphasis on the offender’s conduct as where it took place or the relationship:

Judge: It's a long-term relationship. There's a heavy element of dependence and trust.... It's a reasonably sort of serious aspect, because it involves violence as well as controlling behaviour.... It would be a question of multiple factors, you know, is it a close relationship? Or is it akin to a close personal intimate relationship? Does it happen behind closed doors? Is it obvious to everybody in public? Does it have those sort of elements of controlling, coercive behaviour?

This suggests an interplay of factors in some decision making. Various abusive behaviours are mentioned in this quote (violence, control and coercion). However, the location is

mentioned too (“behind closed doors”), as is the nature of the relationship itself (“akin to a close personal intimate relationship”).

Other responses from sentencers provided greater focus on conduct, for example in relation to the ABH vignette (1), which contained numerous forms of abusive behaviour:

Judge: It is what I quite often refer to as ‘the demolition of another human’. This constant manipulation, of various forms of control, leaves the victim in an abusive relationship, actually mentally they change.... In order to survive, they adapt to prevent flash points, and they submit more and more and more, until the situation, where they are, it’s not just the strike itself.... Plus, you’ve got good evidence that, as sadly is pretty much always the case, the children begin to show signs of confusion, signs of dysregulation, and this time it’s been spotted by the school. The impact of it is that the children will be confused about who they love, who they’re safe with, their behaviour will deteriorate, and then she’s left in the economically inferior position. This is a nasty piece of domestic violence. Particularly the attempts to continue to control her after the relationship has finished.

Some sentencers also mentioned the abuse of the family pet in the ABH vignette (1). This was on the basis that it could be calculated to send a message to the victim: ‘I can do it to the dog, and therefore I can do it to you’, or simply as a further means to control the victim by exploiting attachments to pets.

Further conduct considered by many sentencers as indicative of a domestic context was the exercising of power when a victim was vulnerable. For example, this was identified by some judges when considering the age difference between the couple in the GBH vignette (2). In that vignette the relationship commenced when the victim was 16 and the offender was 28. Vulnerability also arose out of particular social and cultural circumstances, which could give rise to different forms of abuse, such as honour-based violence, relationships with a significant age disparity and elder abuse particularly in homes of multiple occupancy where generations of the same family may live together.

In these circumstances sentencers found the information in the domestic abuse guideline particularly helpful, as illustrated by the following quote:

Judge: It can be nuanced. I did a sentence...it was a[n] [elderly man], and his son came round and smashed all the windows of the house with a baseball bat. On the face of it, it was a criminal damage matter, but I still applied this [domestic abuse] guideline because of the impact on the victim.... I was aware of the fact of the vulnerability of the father, in terms of his age and the breach of trust of an adult child, against a frail parent.... And it was the control, it was an argument over who runs the [business] and money.

While there is reference here to the relationship (father and son), the focus appears to be on the conduct.

A few judges also picked up on the use of social media to isolate, control, humiliate or further the abuse of the victim in the GBH vignette (2). This vignette concerned an offence of grievous bodily harm with intent, but against a backdrop of other abusive conduct. This was considered particularly degrading and demeaning, and as increasing the victim's vulnerability. For example:

Judge: ...ongoing persistent misconduct within the relationship, the controlling behaviour – we'll come back to the violence in a minute – but the isolation from her family and her friends. She was stopped from seeing any of them. Persistent violence, which she was required to cover up and hide, so she becomes complicit in it, and it becomes a feature of their relationship, and therefore reinforced. Taking images of her and sharing those, and demeaning commentary. The relationships and so forth with others, the taunting her about it means that it is directed towards her, and to diminish and belittle and undermine her confidence. Stopping her from doing what would normally be right for her and her child. Tracking devices on the phone, all of those things are very much within this overarching principles [domestic abuse guideline].

This also reflects comments in a few of the harassment cases covered in the sample of Crown Court sentencing remarks in relation to use of technology in order to abuse, where the judges viewed this very negatively. Overall, however, use of technology to control was not as well discussed across all interviewees as might be expected. In fact, some magistrates in interview regarded harassment via social media as inherently less serious than via a telephone call. Views in the survey were also mixed. One magistrate considered that "the use of modern technology, e.g., tracking devices and abuse via social media are not covered sufficiently", whereas another magistrate listed the domestic abuse guideline's current coverage of this as a reason why they found it helpful in sentencing. Potentially, the domestic abuse guideline could therefore provide further information as to the operation of this kind of abuse. This could be particularly relevant in the context of the proliferation of social media and other technologies which allow enhanced monitoring, control, and harassment of individuals.

4.1.6 Areas where the domestic abuse guideline's application is unclear

Lastly, it is also worth noting that the survey, interviews and review of both the appellate caselaw and Crown Court sentencing remarks raised some 'grey areas' in terms of the domestic abuse guideline's applicability and what counts as domestic context.

One area where the domestic abuse guideline may (taken literally) apply is in instances where victims of domestic abuse kill or fight back against their abuser within the family home (using an unreasonable level of force). In such instances, the conduct would by definition be physical abuse which comes within s1 of the Domestic Abuse Act 2021's definition of 'abusive'. The courts did not apply the domestic abuse guideline in any potentially relevant sentencing remarks in our sample. Presumably this is because the court either did not think it was a relevant guideline, did not consider it at all, or did not explicitly refer to it when sentencing. They may also have relied on mitigation within

offence specific guidelines in relation to a history of previous violence and abuse from the victim (for example, in the manslaughter guideline). Similarly, one magistrate who responded to the survey noted that the reference in paragraph 13 of the guideline to provocation being of no mitigation “except in rare circumstances” might cause difficulties for victims of domestic abuse:

Magistrate: We do see cases of assault where the victim finally snaps and assaults their abuser – we need to recognise that somewhere in the guidelines?

Part of the problem may be that the domestic abuse guideline does not elaborate on what those “rare circumstances” where provocation can be relevant might be. Some clarification, potentially including, if thought appropriate, cases where abuse victims lash out at their abuser, may assist in this regard.

In examination of the sentencing remarks transcripts, it could also be inferred that there was similar ambiguity about the applicability of the guideline in the context of so-called ‘mercy killings’ within romantic and familial relationships.

The guideline was also apparently not considered in the small sample (15) of sentencing for modern slavery cases, where the victims were forced to cohabit with their enslavers. This could be said to constitute (extreme) ‘economic abuse’ and therefore such a relationship might be considered to fall under paragraph four of the domestic abuse guideline, intended to include those who are co-habiting and have an expectation of “mutual trust and security”.

There is also a question about the applicability of the domestic abuse guideline to cases involving severe neglect resulting in death, within a potential domestic context. In two of the cases reviewed in the overall sample, a partner or parent died as a result of severe neglect by their partner or adult child. The domestic abuse guideline might apply in these circumstances given the neglect might be considered some kind of abuse, but there was no explicit mention of the domestic abuse guideline in either case.

Given the Court of Appeal’s decision in Williams and similar cases (see above, 4.1.4), a reluctance to bring the aforementioned cases within the scope of the guideline would not be surprising. However, it was not clear from any of the sentencing remarks outlined above whether this was a conscious decision that the domestic abuse guideline was not relevant, in accordance with caselaw, or the sentencer had not considered it.

Issues also arose where the offender considered that there was some kind of relationship with the victim, but the victim did not. This was most common in cases involving stalking, such as in two cases from the Crown Court sentencing remarks sample, where both offenders considered themselves in relationships with the victims of their stalking campaigns. The issue was also mentioned in interview in relation to the harassment vignette (3), as noted earlier. Perceived relationships, without a factual reality, were also apparent in relation to the relatively much more serious offence of attempted murder. In one case from the sample of transcripts, the offender carried out an extensively planned

attack at work on a colleague. He believed the victim to be in a relationship with him and even told other colleagues that she was his wife. In reality, the victim had no interest in him whatsoever, had told him repeatedly to leave her alone and had complained to their staff supervisor. The judge concluded that the motivation for the attempted murder was due to the offender being “overcome with jealousy”. It was also noted that he had a previous conviction for domestic homicide, again borne out of jealousy, and had only recently been released from the associated prison sentence. Nonetheless, and despite imposing a very severe (life) sentence, the judge did not discuss the domestic abuse guideline explicitly.

Paragraphs one to eight of the domestic abuse guideline (which address its scope/application) do not appear to assist or guide sentencers as to its applicability (or not) in the grey areas outlined above.

The final grey area involved cases where there was a clear background of domestic abuse, but by one offender against their co-accused rather than against the victim of the actual offence charged. Not only was the domestic abuse guideline not mentioned in several of the sentencing remarks, but some of those remarks appeared to adopt some of the very myths around the operation of domestic abuse that this guideline cautions against.

This issue arose in some of the 41 child cruelty cases within the sentencing remarks sample. In particular, in relation to the offence of causing or allowing a child or vulnerable adult to die or suffer serious physical harm ([s5, Domestic Violence, Crime and Victims Act 2004](#)). The fact that this particular offence raised these issues is unsurprising given its elements: it is possible to commit the offence just by ‘allowing’ another to cause death or serious physical harm to a child in the same household. In other words, failing to intervene or get help can be sufficient. The offender need not necessarily have inflicted any harm on the child themselves. That said, such issues can arise in many different offence contexts. For example, where a domestic abuse victim steals or handles stolen goods for their abuser.

In several of these cases, it was clear that one parent (or stepparent) had subjected their co-accused to domestic abuse, as stated by the sentencing judge in their remarks. Often, but not always, this domestic abuse was perpetrated by the father or stepfather against the mother. One particular example was where a co-accused knocked one of the other’s teeth out during the period within which the offending against the children took place. In another case, the injuries to the children, which formed the basis of the joint charges, were only uncovered as a result of the (co-accused) father’s arrest and conviction for assaulting the (co-accused) mother in their home.

Occasionally, as in the second example above, the domestic abuse was considered quite extensively as a “seriously aggravating feature” against the father and also some level of mitigation for the mother. However, this was the exception. In the other cases involving domestic abuse of one offender against their co-accused, it appeared to make, at best, no difference and, at worst, to be treated as an aggravating factor against the recipient of the domestic abuse or used to berate the recipient of the domestic abuse. For example, the

following remarks taken from several different cases make much of how the domestically abused co-offender must have known how violent their co-accused was, having been victimised by them previously:

Case A:

You were well aware, on my view of the evidence, of the risks the co-defendant's behaviour presented to you and your children and you simply decided to ignore these risks, not for the first time in your life placing your own selfish needs before those of your children.

Case B:

Although you were under his influence and control, you did have opportunities to seek help though I accept you were in an abusive relationship. Moreover, all this was in the context of both of you being told by Social Services that because of [co-offender's] history of domestic violence in relationships he was not to have contact with [child]. You resented this interference, [co-offender domestic abuser], and you, [co-offender], knew this yet remained with him.

Case C:

You were their mother. You had a duty to intervene and protect them from your partner even if you could not or had chosen not to protect yourself from his violence.

These sorts of remarks are troubling insofar as they tend to infer some element of 'victim-blaming'. In particular, the numerous references to the choices, decisions, and so on, made by these people to stay with their abusers adopt long-debunked myths around the operation of domestic abuse on its victims. In short, much of the above boils down to asking, 'why didn't you just leave him?'

No explicit reference was made to the domestic abuse guideline in any of these cases. In and of itself, this is unsurprising since that guideline does not say much about these sorts of situations (a co-accused domestically abusing another co-accused). However, the remarks in some of these cases seem to conflict with and undermine the very purpose of introducing the domestic abuse guideline by failing to recognise the true seriousness of the situation in which domestic abuse victims find themselves. On that basis, the domestic abuse guideline could be further developed to provide additional clarity on these issues, in order to achieve its stated goal of reflecting important changes in terminology, expert thinking and societal attitudes. For example, in the case of a child cruelty offender who has also been shown to have been domestically abusing their partner (and co-accused), the domestic abuse guideline might then be used to mitigate the sentence of the (domestically abused) co-accused and aggravate that of the domestic abuser. It might also cross-reference to the recently introduced (April 2024) mitigating factor in the general and offence specific guidelines of 'Difficult and/or deprived background or personal circumstances'. This new factor does include "direct or indirect victim of domestic abuse",

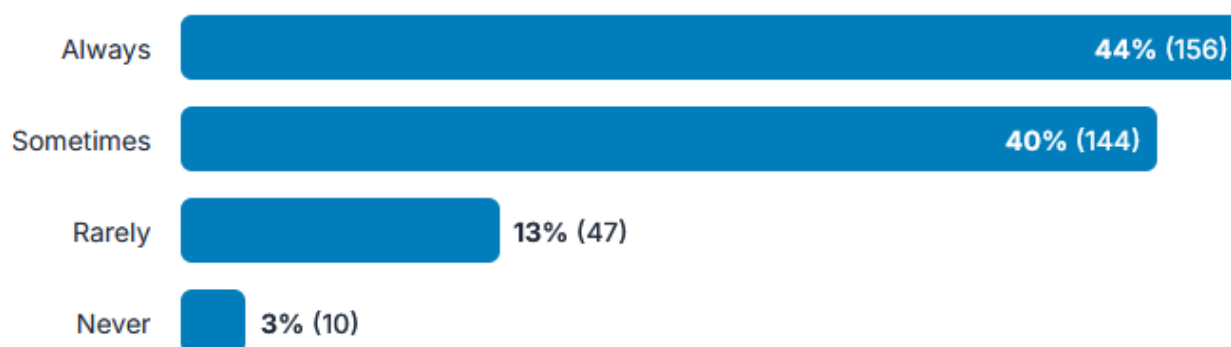
although only at the bottom of a list of 12 other sub-bullet points. Incorporating it within the domestic abuse guideline too might therefore serve to enhance its prominence.

4.2 When and how sentencers are using the domestic abuse guideline

A great variety of contexts and uses of the domestic abuse guideline were evidenced across the various data sources. Some sentencers used the guideline very rarely (or not at all). Some used it as a reminder or aide memoir. Others referred to it at various (or multiple) stages of the sentencing and decision-making process. In short, the domestic abuse guideline is well-used by some sentencers, some of the time, yet others appear not to refer to it at all, or only minimally, when sentencing cases involving domestic abuse.

The online survey conducted with sentencers asked sentencers how often they referred to the domestic abuse guideline when sentencing cases involving domestic abuse. Figure 1 shows the responses to this question. While 16 per cent of respondents 'rarely' or 'never' refer to the domestic abuse guideline when sentencing such cases, 84 per cent do so at least 'sometimes'. We discuss why the guideline is referred to, and in what ways, in the following sub-sections.

Figure 1: Q7 How often do you refer to the Overarching principles: domestic abuse guideline when sentencing cases involving domestic abuse?



Total responses: 357

This variation in level of usage reflects findings from [‘User testing survey analysis - how do guideline users use and interact with the Sentencing Council's website?’](#) published by the Sentencing Council. In that report (which drew on responses from 1,620 sentencers), 11 per cent of respondents to an online survey said they 'rarely' or 'never' accessed and applied the domestic abuse guideline for relevant cases, 35 per cent said they accessed it in every case and 54 per cent said they did this in 'most' or 'some' cases.

Table 5 shows the breakdown of the level of usage reported in the current survey for this review of the domestic abuse guideline by sentencer role, demonstrating a slight difference between magistrates and Crown Court judges. It shows that surveyed Crown Court judges reported using the domestic abuse guideline more frequently in sentencing than magistrates.

Table 5: Q7 How often do you refer to the Overarching principles: domestic abuse guideline when sentencing cases involving domestic abuse (by respondent role)?

	Always	Sometimes	Rarely	Never	Total
Magistrate	122 (40%)	130 (43%)	42 (14%)	10 (3%)	304 (100%)
Crown Court judge	34 (64%)	14 (26%)	5 (9%)	0	53 (99%)

Note: where percentages do not total 100 this is due to rounding.

Total responses: 357

We now consider the nuances behind how the domestic abuse guideline is used, as identified across all data sources. However, it is important to acknowledge that during the examination of sentencing remarks in particular, it was not always clear whether or not the domestic abuse guideline had been applied. Sometimes, this lack of clarity was because there was a reference by the judge to “sentencing guidelines”, without stating which guidelines in particular. For example, it was not always clear whether the judge meant the relevant offence specific guideline, or an overarching guideline and, if so, which ones. In other instances, while the domestic abuse guideline was mentioned explicitly by the sentencer, that mention was alongside other sentencing guidelines. In those cases, it was not always clear whether a particular mitigating or aggravating factor was being drawn from the domestic abuse guideline, or from another guideline, such as the applicable offence specific guideline. In such cases, we tend not to rely on that data source, or caveat the findings when they are discussed.

4.2.1 Sentencers who do not use the guideline routinely

Given that our survey was explicitly about sentencing domestic abuse, it was slightly surprising that 16 per cent of respondents reported that they ‘rarely’ or ‘never’ refer to the guideline in sentencing. However, this evidence is in accordance with the Crown Court sentencing remarks and the appellate caselaw. Indeed, the Court of Appeal ([R v Kingswell \(Liam\) \[2022\] EWCA Crim 814](#)) noted that the domestic abuse guideline “sadly is regularly ignored by sentencing judges” (paragraph 26). Sometimes the Court of Appeal itself has not referred to the guideline either. [R v Reid \(Gary Anthony\) \[2023\] EWCA Crim 396](#), for example, did not directly acknowledge the domestic abuse guideline, despite in the first paragraph concluding that the appeal “concerns an offence of domestic violence”, and then having made numerous references to aggravating factors that fall under it, even including domestic context. The appeal judges involved could have consulted the domestic abuse guideline and just not mentioned it explicitly, but it requires some inference and speculation to conclude that they did. Moreover, it would be unusual not to mention something which formed the basis of a decision. One of the most important aspects of an appeal judgment is to provide the reasons for the decision, as it is only these which form part of the law and set precedents in future.

In the previous Sentencing Council data collections, data for the sentencing of three offences were available both prior to and after the introduction of the domestic abuse guideline. One of the questions sentencers were asked was whether the offence was 'committed in a domestic context'. Identification of the domestic context as a factor decreased by around 10 percentage points for each of these offences post-domestic abuse guideline, in comparison to cases before its introduction. As can be seen in Table 6, identification was down by 11, 10 and eight percentage points for criminal damage, harassment and breach of a protective order respectively.

Table 6: Percentage of cases where domestic context was identified by sentencers prior to and after the introduction of the domestic abuse guideline.

Offence	Domestic context identified: pre-domestic abuse guideline	Domestic context identified: post-domestic abuse guideline
Criminal damage	45% (out of 675)	34% (out of 500)
Harassment	73% (out of 244)	63% (out of 332)
Breach of a protective order	86% (out of 482)	79% (out of 815)

Note: figures exclude cases where response to the question was not completed/unknown.

We do not suggest that the domestic abuse guideline has necessarily caused this decrease, as there are far too many uncontrolled other variables here. Firstly, the data collection for each of these offences took place prior to and after the introduction of each offence specific guideline, so there is the potential for those new guidelines to have influenced sentencing. Secondly, if (as per other data in this section) some sentencers do not refer to the domestic abuse guideline or use its principles, it may have no effect (in those cases). Thirdly, it is possible that the number of cases involving domestic abuse genuinely could have been lower/greater in the specific time periods that these data collections took place. Sentencing Council data collections are only a 'snapshot' of a particular period of time. Finally, the difference could reflect changing police and/or prosecution resourcing and practice.

Throughout the analysis of Crown Court sentencing remarks, it was apparent that the domestic abuse guideline was not always being acknowledged explicitly where it appeared highly relevant. This was true for all offences examined during analysis. While sentencing remarks vary in their length and level of detail (and in some cases relevant matters may have been discussed in court prior to the recorded remarks), it could sometimes be inferred that the sentencer probably had the principles of the domestic abuse guideline in mind, even if they were not mentioned explicitly in the remarks. This is because, on occasion, the language used or the comments in relation to particular aggravating features were very similar to that adopted in the domestic abuse guideline. In other cases, however, it was not mentioned, and sometimes against a factual background where it appeared to be quite relevant. We cannot speculate about sentencers' use of the guideline where not explicitly mentioned, but it is a legal requirement to give reasons for the

sentence (s52(2), Sentencing Act 2020). In relation to sentencing guidelines in particular, S52(6) states that this duty requires the court to:

Identify any sentencing guidelines relevant to the offender's case and —

- (a) explain how the court discharged any duty imposed on it by section 59 or 60 (duty to follow guidelines unless satisfied it would be contrary to the interests of justice to do so);
- (b) where the court was satisfied it would be contrary to the interests of justice to follow the guidelines, state why.

Hence, the absence of an explicit reference may indicate that the sentencer has not considered it. The following examples illustrate where domestic context is arguably relevant, but the domestic abuse guideline has not been explicitly referred to. As noted, these were not isolated instances, and the same themes arose across all offence types within the sample.

In one manslaughter case, the court acknowledged that there was a background of domestic abuse and that the killing took place within a domestic context, namely the couple's shared bungalow, but did not mention the domestic abuse guideline in its sentencing exercise. While the court did note that the history of domestic abuse and the vulnerability of the victim aggravated the offence, it appears that these aggravating factors were derived purely from the offence specific guideline (in contrast, that guideline was mentioned several times).

In one case of attempted murder, the offender almost killed his ex-partner when she was leaving his house as part of a pre-arranged agreement to collect her belongings. In accordance with that arrangement, the offender was not supposed to be present at this time. The relationship had ended due to domestic abuse and the offender even had a previous conviction for attempted murder against another former partner. While the judge stated that "in passing sentence upon you I must and do pay close attention to the guidelines of the Sentencing Council for crimes of this kind", it appears, due to reference to sentence starting points and categories, that they meant the offence specific guideline. There was no overt reference to the domestic abuse guideline, although it is always possible that they may have taken it into account in reaching sentence in some way and just not mentioned it in the remarks.

In one stalking case, the court noted that the offender had a history of violence in intimate relationships and a history of ignoring court orders. In another, the court noted the aggravating factors of the history of domestic abuse, and the vulnerability of the victim, but neither mentioned the domestic abuse guideline explicitly.

In some cases, it appears that application of the domestic abuse guideline may have fundamentally changed the sentencing exercise. For example, in one instance, the court simultaneously noted the offender's history/pattern of domestic abuse and his previous good character. Had the explanation of the mitigating factor 'Previous good character' from

the domestic abuse guideline been referred to, it may have reduced (or eliminated) the weight of that good character. That explanation states that: “In respect of offences committed within a domestic context, an offender’s good character in relation to conduct outside these offences should generally be of no relevance where there is a proven pattern of behaviour”. It also explains how public-facing good character can sometimes be used to mask domestic abuse for “lengthy periods”, as it provides the offender with the ability “to have a public and a private face”. Ultimately, there may have been good reasons in this case to take account of this good character, but this is not explained in the sentencing remarks and runs counter to the domestic abuse guideline. The domestic abuse guideline only says that it is **generally** of no relevance, not that it will never be relevant. This is a particularly clear example of a situation where the domestic abuse guideline appeared to be quite relevant, but it was not discussed explicitly one way or the other.

Perhaps the most notable omission of any reference to the domestic abuse guideline was in cases where there was a significant overlap between the offence charged and the domestic context. Namely, breach of a protective order (a non-molestation order or restraining order), where the protective order in question was put in place to protect the individual from a former sexual or romantic partner. While there is some mention of domestic abuse in the [Breach of a protective order guideline](#), this is fairly minimal: 1) a reminder under category 3 harm that sentencers “should take care not to underestimate the harm” where the breach occurs against a background of domestic abuse and 2) inclusion of some of the aggravating features from the domestic abuse guideline. The research team also found it difficult to locate the link within the offence specific guideline to the domestic abuse guideline. This is only visible if the ‘Breach results in victim or protected person being forced to leave their home’ aggravating factor is clicked. This issue reflects more general comments on difficulties with current cross-referencing to the domestic abuse guideline from offence specific guidelines (see below, 4.2.4). In the various cases involving breach of these orders examined in this sample, the domestic abuse guideline did not appear to be considered where the victim of the breach was an ex-partner of the offender. Similarly, in cases of disclosure of sexual images and threats to disclose private sexual images, the victim is very often going to be a former sexual partner of the perpetrator. There may of course be some unusual cases where the original image was obtained via filming by a non-participant, or through hacking, for example, but this did not occur in our sample. Nonetheless, application of the domestic abuse guideline was only mentioned explicitly in one case. In the others, it was not explicitly mentioned, although in some of these cases one could perhaps infer that the guideline may have been in the mind of the judge. For example, in one, the court noted the fact that the crime was “domestically related” as an aggravating feature, and, in another, the court did not reference the domestic abuse guideline explicitly but did state that it took a “very serious view of domestic violence”.

Across all the offences, this lack of mention of the domestic abuse guideline was in contrast to the treatment of other sentencing guidelines. Often, the judge would refer to the offence specific guideline explicitly, and some other overarching guidelines, but not the

domestic abuse guideline. Hence, for some sentencers at least, there appears to be something about the domestic abuse guideline in particular that means they are not inclined to reference it.

Why might the domestic abuse guideline not always be used?

Responses to open questions in the survey and discussions in interviews, suggest a number of reasons why sentencers may not always refer to the domestic abuse guideline. A frequent theme was that much (or sometimes all) of the domestic abuse guideline was regarded by some as “obvious” or “common sense”, and therefore did not need to be referred to specifically in every instance it was applicable. For example, in the survey:

Magistrate: The overarching guidelines are really based on common sense and once explained they don't have to be revisited or made reference to, they just make cases take longer with the decision process.

Magistrate: I've read them, they are self-evident and common sense.

Judge: Although we keep it in mind, it's not a guideline [I have] particular need to turn to, to have to work through every time I sentence a case because most of the time, domestic abuse as it were, is by definition, the overarching context of the case. But the specifics are more than amply covered by the specific offence guideline...

Very similar sentiments emerged in interview, across both jurisdictions, for example:

Judge: I've read it, and you get to the end and think, 'well what did that say? Nothing much.' I mean it just says all the obvious things that we all know anyway, so it hasn't really helped very much.

Magistrate: I think most of us feel that most of the time, they are common sense.

Others felt that, while the domestic abuse guideline was important to read at some point, this tended not to happen very often. Certainly, it did not need to be referred to in court or during sentencing exercises, unless they were particularly unsure of something. This also reflects findings from other Sentencing Council research on how its website and guidelines are used. Respondents to that research demonstrated “a feeling of familiarity with the [overarching] guidelines, which meant respondents did not deem it necessary to access the guidelines for every case for which the guideline may be relevant” (Miles, 2023, p.8).

Relatedly, some viewed the domestic abuse guideline as something that was more of a training aid, for new judges and magistrates, rather than something they would refer to now or in court. For example, in the survey:

Magistrate: We have had recent training so [there is] no need to keep referring to the guidelines.

Judge: I am an experienced circuit judge and was a criminal practitioner before then and am very well aware of the principles set out in the domestic abuse guideline, so do not need generally to refer to it when sentencing such cases.

Magistrate: [The domestic abuse guideline is useful] for magistrates who haven't completed any formal training in domestic abuse.

Likewise, in interview:

Judge: It might well be useful for people who aren't so experienced in crime at all, or in this sort of thing.

Across the responses, there appeared to be a strong focus on the offence specific guidelines in such cases over and above the overarching guidelines:

Magistrate: My experience in the magistrates' retiring room where domestic abuse is considered as part of sentencing it's a case of 'we need to aggravate it up to reflect domestic circumstances'. I do not, and I would suggest other magistrates do not, refer [very] often to the sentencing guideline on domestic abuse. The goal is to sentence in accordance with the offence guideline and then aggravate it up in sentence (survey).

Magistrate: [I] mainly look at the sentencing guidelines on the actual offence e.g. assault by beating (survey).

Judge: I'm just looking at the aggravating factors in the overarching principles on page three: most of those are actually covered in the [offence] specific guideline as well, and repeated as things for example, 'victim forced to leave home', 'impact on the child' and so on, they're all there as well (interview).

In some instances, it appeared that only the offence specific guidelines were regarded as 'sentencing guidelines', with the domestic abuse guideline almost relegated to not quite being a 'sentencing guideline' at all. The following quotes from the survey were all in response to questions asking why they did not always use the domestic abuse guideline or why they did not find it helpful. They could be interpreted as equating the phrase 'sentencing guidelines' with 'offence specific guidelines', with the overarching guidelines relegated to guidance, separate documents, or something else 'outside' the guidelines.

Magistrate: We just use the normal sentencing guidelines.

Magistrate: There are too many pieces of guidance. There's no time in court to read them. It's unclear whether extra guidance exists when looking at sentencing guidelines. Sentencing guidelines should be sufficient in themselves without extra, separate documents.

As one magistrate put it during the interview discussion of the ABH vignette (see Annex B, Vignette 1):

Magistrate: It would not be unusual for some of the magistrates to be very specific and say, 'these are the sentencing guidelines, this is what we have to stick with. We have two aggravating, two mitigating, therefore we have to take that into account, and we need to then stick within them' and sort of basically stick with the starting point [which comes from the offence specific guideline] of a high level community order...

...if it was just up to me, and we didn't have to apply those [aforementioned features from the offence specific guideline], I would then be saying that from what you've told me there, that this is actually very serious. Particularly as he is suggesting that the problem is that she has poor mental health, and he's isolated her, and it's all going on here, and he's not actually accepting any of his abusive behaviour. And he still seems to be trying to control her and the children, let alone the dog. I think I would be saying, given the aggravating factors, I would be looking towards a period of custody, if it was up to me.

This may suggest that, where there is a perceived conflict between the offence specific guideline (as quoted above, a perceived need to "stick with the starting point [from the offence specific guideline] of a high level community order") and the domestic abuse guideline, the offence specific guideline takes precedence. This is the case even where, as here, the sentencer quite clearly felt that the conduct required a more serious sentence (custody) than the offence specific guideline would suggest (a high level community order). The domestic abuse guideline might provide clear support for imposing such a sentence. Indeed, some other interviewees, both judges and magistrates, indicated that they would pass a lengthy custodial sentence in this vignette, by reference to the domestic abuse guideline. Others, however, felt it would be inappropriate in this scenario, as the domestic abuse guideline does not have the same force as the relevant offence specific guideline.

Against that, another theme across both surveys and interviews of magistrates was that they used the domestic abuse guideline when deliberating with colleagues when deciding on sentence, particularly, as one survey respondent explained, with those magistrates they perceived to be more "old school".

Lastly, others were quite positive about the contents of the domestic abuse guideline in the abstract, but did not feel able to use it very often in practice for practical reasons, especially the pressures of time and lengthy case lists. These are discussed in detail, alongside some suggested solutions from sentencers, in section 4.2.4 below.

4.2.2 Using the domestic abuse guideline as a general reminder or aide memoir

Survey respondents generally did not elaborate on why they **did** 'always' (40% of magistrates, 64% of judges) or at least 'sometimes' (43% of magistrates, 26% of judges) refer to the domestic abuse guideline. However, we can extrapolate some of the reasoning from responses to a later question, asking whether sentencers found the domestic abuse guideline helpful in sentencing. Eighty-seven per cent responded 'yes' and 13 per cent 'no' to that question. Respondents were then asked to explain their responses. For the most

part, those with positive views thought that the guideline was a helpful document, with relevant and useful information – for example, of things to take into consideration in sentencing these cases:

Magistrate: It provides a common reference starting point to aid consistency in sentencing outcomes.

Judge: [It] provides a very helpful document of factors to consider and [a] checklist for sentencing of matters to take into consideration or leave out of consideration.

The other main positive was as a source of general guidance to assist identifying domestic abuse in the first place:

Magistrate: [It] sets out clearly which relationships are included and gives clear guidance on behaviours to look out for.

Magistrate: Domestic violence (physical, mental, financial, controlling and coercive) is a lot more complex than violence to an unrelated victim, and [is] underpinned by the abuse of trust inflicted upon the victim. Often DV is more of a hidden and more complex crime, which the overarching guidelines and DV training help a magistrate navigate when looking at sentencing.

Likewise, in interviews, it was clear that the domestic abuse guideline was relied upon because it was very useful for sentencers as a general guide:

Judge: To be able to actually refer to it and say, the...first point of principle is that these cases are more serious, and of course take them more seriously. And so it was useful to be able to refer to that.

Judge: Occasionally it's quite a useful yardstick against which to measure conduct.

Magistrate: [It gives us] things to look for, we're not social workers obviously, but..., I think we have to be aware.

It was common to describe the domestic abuse guideline as a useful "reminder" or "checklist". For example:

Judge: It is a useful reminder and checklist of the principles to be applied when sentencing such offences (survey).

Similar sentiments emerged in interview, with the domestic abuse guideline being considered a useful reminder, although again, oftentimes subordinate to the offence specific guideline:

Judge: I think it's a helpful prompt if one forgets it for a moment.

Judge: My general feeling about the overarching principles [domestic abuse] guideline is that it makes a lot of very good general statements, it's a good general prompt. But when I'm actually dealing with a specific case, I will tend to look first at the actual offence guideline.

Judge: What I like about overarching guidelines in a sense is, they set out a series of reminders. I would hope that once you've been sentencing for as long as I have, none of this should be revelatory. It ought to be possible for you to reach these conclusions alone, but this is always wonderfully useful to check, 'oh my god, is that what I mean'. Just in a sense, in mind what you need to consider. And none of us have done this so long or so often, that it is not genuinely useful sometimes.

Magistrate: I found it helpful when the guideline first [came in] – because I remember it coming in – what does it actually mean by 'domestic abuse'? [and] what it wasn't..., because I think there was some discussion at the beginning of what domestic wasn't as well. So I think that's been helpful.

4.2.3 The domestic abuse guideline's use beyond the courts and judiciary

There were also some suggestions that the domestic abuse guideline may be used or have benefit beyond its use by the judiciary and courts for operational and training purposes. Some interviewees felt that there could be a positive educative effect on public attitudes from the guideline being a 'robust' published statement of principle that this behaviour was wrong and would not be tolerated by the criminal courts.

Further, beyond such impact on the public at large, one interviewee felt that the domestic abuse guideline could give victims more confidence to come forward, knowing that what had been done to them would both be taken seriously and dealt with severely:

Magistrate: So, it's just a very robust document, and if I was a victim, I think it would make me feel better about going ahead with any sort of action that I wanted to take against a domestic partner, or a child or a family member.

Interviewer: Okay, so perhaps, if the prosecutor says, 'look, this is what the magistrates are going to refer to', that would give you confidence?

Magistrate: Yes. It was interesting, during COVID, we saw a lot more [families] in the Domestic Abuse Court. So, father and daughter, or mother and daughter, or brother and sister. I think because people were forced to be living together more. So, I think if you are a daughter, and you don't feel comfortable about the way your father's treating you, and you think it falls into domestic abuse, then I think that probably is helpful to have [the guideline] there.

In this vein, the domestic abuse guideline, as an official document, also assists those victims who have been subjected to 'gas lighting': where a victim is manipulated and psychologically abused into questioning their own recollection of their lived experience and abuse. By framing some of these behaviours in definitive and denunciatory terms, the

guideline can affirm that their experience was indeed domestic abuse and that the state considered this to be criminal. For all these reasons, it could be worth considering promoting or raising awareness about the domestic abuse guideline to organisations/charities that support victims of abuse, such as refuges and/or the public more broadly.

4.2.4 Practical issues with using the domestic abuse guideline

This theme concerns more practical matters in relation to using the domestic abuse guideline, as opposed to its impact on sentencing decisions. For example, issues about its length, layout, structure, or its interaction with other sentencing guidelines. As a result, this section draws exclusively on the primary data (survey and interviews) from sentencers. Overall, it was found that most sentencers who participated in this review were satisfied with the domestic abuse guideline in these practical terms.

The following closed survey questions addressed these issues, with responses suggesting a high frequency of satisfaction overall. In total, 95 per cent of respondents were at least satisfied with the domestic abuse guideline's layout, structure, or ease of use, as can be seen in Figure 2.

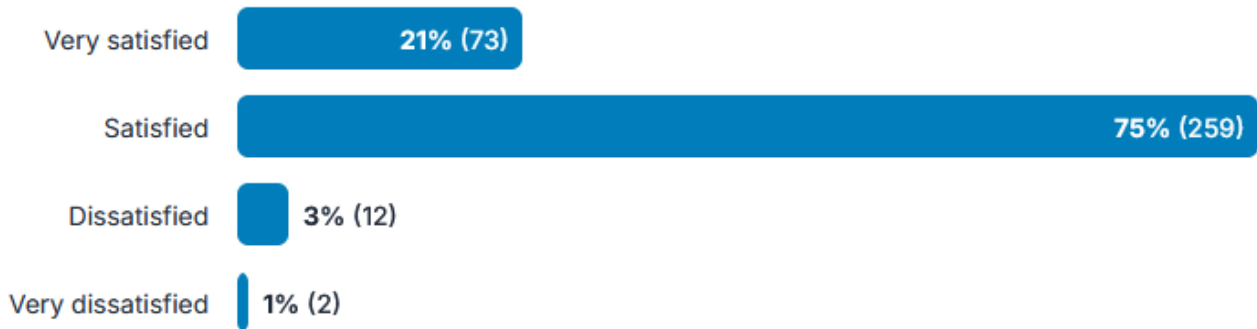
Figure 2: Q22 How satisfied are you with the layout, structure, or ease of use of the overarching guideline?



Total responses: 354

Similarly, 96 per cent of respondents were at least satisfied with how the domestic abuse guideline works in practice in terms of the level of information it provides, as can be seen in Figure 3.

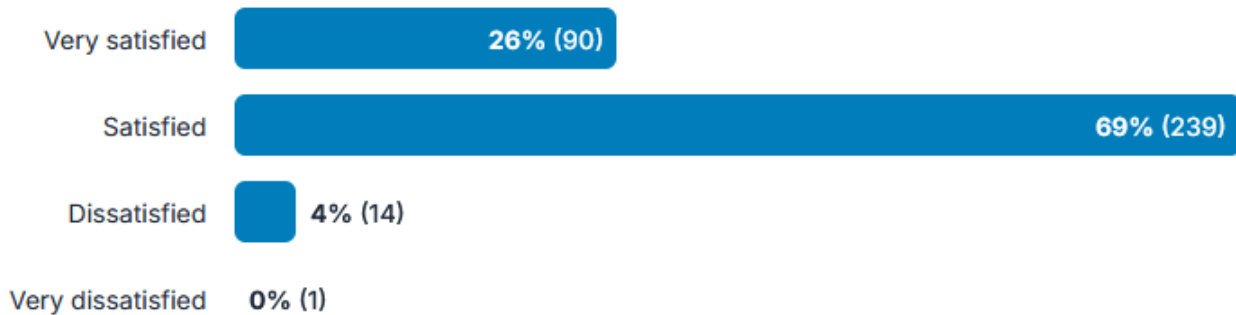
Figure 3: Q26 How satisfied are you with how the overarching guideline works in practice, in terms of the following: The level of information provided?



Total responses: 346

In total, 95 per cent of respondents were also at least satisfied that the domestic abuse guideline is easy to interpret, as can be seen in Figure 4.

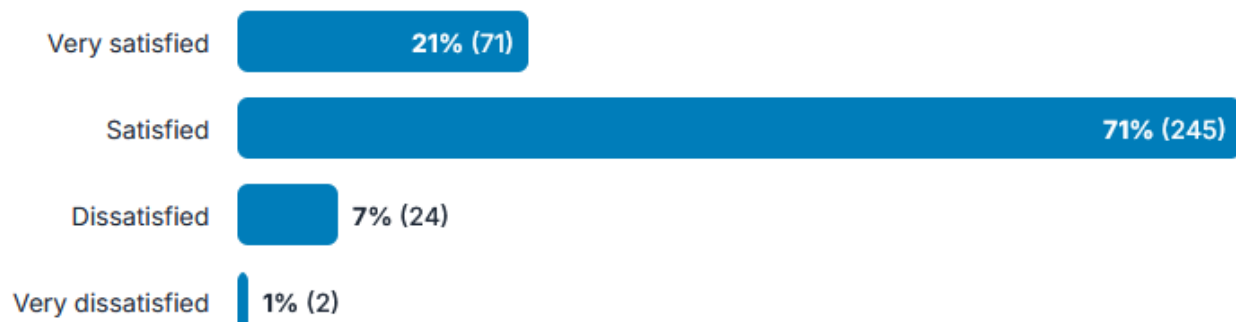
Figure 4: Q26 How satisfied are you with how the overarching guideline works in practice, in terms of the following: Ease of interpretation?



Note: where percentages do not total 100 this is due to rounding. Total responses: 344

In terms of interaction with offence specific guidelines, 92 per cent were at least satisfied with how the domestic abuse guideline works in practice, as can be seen in Figure 5.

Figure 5: Q26 How satisfied are you with how the overarching guideline works in practice, in terms of the following: How it works with other (offence specific) guidelines?



Total responses: 342

Hence, there was generally a very high frequency of satisfaction reported in the survey with how the domestic abuse guideline works in practice. Interviewees were similarly positive in this respect, for example:

Judge: It sets out nice and neatly the aggravating factors, and the mitigating factors, and I think very sensibly, other factors influencing sentence. So, [the] victim is not responsible for the sentence imposed, that is so important. No, I find it user-friendly, and I refer to it a lot.

When asked to explain the reasons behind these answers, positive survey responses tended to point to how clear the domestic abuse guideline was, its relatively short length and that it was easy to read and navigate. For example:

Judge: It's clearly structured and of an appropriate length, in my view.

Magistrate: Generally easy to read.

Some also felt that it took them logically through a process, 'checklist', or set of steps to consider, which was aided further by its use of headings and bullet points.

However, some sentencers surveyed also felt the domestic abuse guideline was too long. Hence, in practice, block text was noted to be at risk of being ignored or skimmed. To counteract this, some respondents suggested greater use of bullet points, tables, checklists, or flow charts, for example, and highlighting of key words (such as 'provocation', 'children', 'restraining order') to help find the guideline's information on these issues more quickly. Others suggested further headings for important issues, such as the parts addressing the avoidance of stereotypical assumptions and the withdrawal or non-cooperation of the victim.

The length of the guideline was a particular problem in a time-constrained and busy court, where sentencers have many other documents, guidelines, reports and so on to consider too. For example, in interview:

Judge: The problem with all the guidelines is that they tend to be somewhat verbose. And they tend to perhaps overcomplicate sometimes straightforward scenarios. As far as my interpretation of application of the [domestic abuse] guideline's concerned, I wouldn't go back on every occasion to read it thoroughly. I would know the basic principles, and I would apply the basic principles...if I had a list of, a dozen, [or] ten sentences in a day, and two or three of those were domestic violence, as they could easily be, I wouldn't be going back and forward to the [domestic abuse] guideline all the time, but I would rely, I hope, on my accurate recollection of the general principles.

Magistrate: Never look at them. We don't have time. When you're sitting in a busy court, the thing that you look at is the offence guideline.

Further discussion in interview highlighted a preference from some for more structure and/or more of a focus on decision making than is currently present in the domestic abuse guideline. The use of tables in the [Imposition of community and custodial sentences overarching guideline](#) was highlighted as a good example of this, particularly in relation to its guidance on deciding whether or not to suspend custodial sentences:

Magistrate: So, things like, for instance, there are tables within the suspended sentence guideline...that actually I will go and refer to, in terms of when could you activate and not activate, and what's the reasons?

Judge: [The domestic abuse guideline] only gives you a feeling as to what you should do in relation to this by way of an aggravating feature. And I think it needs to be a little bit more specific than that. Let me give you an example. A similar overarching guideline, the imposition [of community and custodial sentences] guideline has a specific table at the back of it... That sort of assistance, making the specific points about areas of the law that the judge should consider in sentencing, I find more helpful when applying a general guideline, such as the imposition guideline. I can go to it and quote from that table on page eight, where I am and justify it.

On the other hand, this was not the only view. Some interviewees (across both jurisdictions) noted how they found the fact that the domestic abuse guideline was “not prescriptive” to be an advantage. Hence, although some more structure might be welcome, care must be taken to avoid being too prescriptive.

Others would prefer something akin to the guidance contained in offence specific guidelines on the uplifts for hate crimes and assaults on emergency workers or the guidance in the overarching guideline on Reduction in sentence for a guilty plea:

Judge: If an offence is racially aggravated for example, the court has to explain how the sentence of the offence has been increased to reflect racial aggravation of it. Why not have something similar in relation to [saying] ‘this is an offence which falls within the domestic abuse guidelines, I increased the sentence as a consequence by this’? And the [domestic abuse] guideline [could] then [tell] us where, looking at the factors to be applied within the guideline, that increase comes from...and that method of increase/decrease, in terms of applicability of a guideline, is current, is applied within the credit for plea guidelines.... So, within guidelines as a whole, this methodology isn't unusual, but it's absent within the domestic abuse guideline.

Magistrate: Domestic violence, I think is the same as racial or religiously aggravated, where I would love to see an uplift for these types of offences.

The ‘Scope of the guideline’ section being at the beginning was also noted as an issue in terms of readability. In practice, sentencers are not going to open the domestic abuse guideline unless they think it may at least be potentially relevant. Hence, many suggested

having it at the end, for reference, rather than as something they continually had to scroll past every time they used it.

Others found it a problem to locate the domestic abuse guideline in the first place when busy or under time constraints. Some suggested having a link at the top of each offence specific guideline (or at least those where domestic abuse was often relevant), similar to the prominence and placement of links to the [Equal Treatment Bench Book](#), rather than being much later, under the domestic context aggravating factor bullet point.

The interaction with offence specific guidelines was a particularly frequent theme in interview and qualitative survey comments, reflecting the aforementioned slightly lower relative level of satisfaction on this in the survey (see above, Figure 5). As noted, at present, sentencers are directed to the domestic abuse guideline in some offence specific guidelines via a dropdown link under 'Offence committed in a domestic context' in the aggravating factors section. This is somewhat buried within the offence specific guideline: the bullet point needs to be clicked on before it is revealed and even then, only provides a hyperlink. There are no quotes, summaries, and so on. This is in contrast to the way offence specific guidelines treat the current Imposition of community and custodial sentences overarching guideline. Quotes and summaries from that imposition overarching guideline are revealed when clicking on relevant parts of offence specific guidelines. Sentencers in both the survey and interviews viewed this as being too siloed to be of much use, combined with their general tendency to focus primarily on the offence specific guideline. For this reason, some suggested incorporating or summarising relevant principles from the domestic abuse guideline into offence specific guidelines:

Magistrate: When you go through [the offence specific guideline], and you look at the aggravating and mitigating factors, and it says, 'abuse within a domestic context' and you click down and it says, 'go to the overarching guidelines', I think there ought to be a very well-constructed couple of sentences there. So that when people **don't** go to the overarching guidelines [and just stay within the offence specific guideline], it's something there for the other magistrates to click onto immediately that will help them discuss whatever it is they're looking at. It is not good enough saying, 'just go to the overarching guidelines', because I don't know if people always do.

Some went as far as to suggest assimilation into offence specific guidelines, in the same way that hate crime and emergency worker sentencing uplifts have been incorporated into [the Common assault guideline](#):

Magistrate: For example, we've got common assault, and then you go through and you've got an uplift, because it's an emergency worker. So, then what you do is, you would pull some things through and say, 'right it's an uplift, because it's a domestic', and it's all in one guideline I suppose.

Some further potential improvements were identified, but many of these were practical issues beyond the scope of the domestic abuse guideline, such as the lack of availability

of relevant probation courses and the unsuitability of offenders with certain characteristics for some courses (for example, the Building Better Relationships course is only suitable for heterosexual men). Ignorance and/or lack of training of some colleagues was also mentioned. That said, the issues with probation programmes may suggest a problem in terms of the assumptions the domestic abuse guideline is based upon. It encourages sentencers to consider potential rehabilitation programmes (paragraph 17), but it is less clear on what to do if those are unavailable in the sentencer's area or otherwise unsuitable for the offender's demographic. One survey respondent also felt the domestic abuse guideline could be improved by providing more information on rehabilitative options and their appropriateness generally.

4.3 The impact of the domestic abuse guideline on sentences

The Council's previous data collection exercises exploring sentencing in magistrates' courts, provided a mixed picture in terms of the domestic abuse guideline's potential impact on sentence after a sentencer had identified the domestic context. Tables 7, 8, 9 and 10 outline these.

It should be noted, however, that data discussed in this section are incomplete, as not all sentencers who identified an offence as committed in the domestic context went on to answer the question about what effect that context had on the sentence. For harassment, 111 sentencers recorded the effect on sentence after the domestic abuse guideline had been introduced (out of the 210 who identified the domestic context) and 170 recorded the effect on sentence pre-domestic abuse guideline (out of 178 who identified the domestic context). For breach of a protective order, 258 recorded the effect on sentence after the domestic abuse guideline had been introduced (out of 645 who identified the domestic context). The data was more complete for the pre-domestic abuse guideline collection on breach of protective order: 401 cases recorded the effect on sentence (out of 419 who identified the domestic context). These collections also exclude responses coded as 'Other', as it was unclear from such responses what the effect of the domestic context on the sentence had been. Hence, it is possible that any observed differences in severity pre- and post-domestic abuse guideline might be due to these differences in the numbers of sentencers reporting what the effect of the domestic context on sentence was.

Table 7 shows the effect the context of domestic abuse had on sentences. As can be seen, for the harassment cases for which we have data, there was an increase in the proportion of sentences where the domestic context increased the sentence in some way, from 45 per cent pre-domestic abuse guideline to 70 per cent post-domestic abuse guideline. The question asked of sentencers differed between data collections conducted pre- and post- the introduction of the domestic abuse guideline – pre-domestic abuse guideline responses were collected via a closed question format whereas the post collection used an open question with the option of a free text response. Hence, the post collection offers additional information that sentencers provided, in this instance referencing ancillary orders. The same difference is true for breach of a protective order (Table 8) but not criminal damage (Table 9), which collected only closed responses.

Looking at the collection for harassment prior to the introduction of the domestic abuse guideline, the sentence was increased in some way as a result of domestic context in 46 per cent of cases, versus 52 per cent of cases where domestic context was said to have made little or no difference to the sentence; in two per cent, it was said to have decreased the sentence. After the domestic abuse guideline's introduction, the domestic context was said to have made little or no difference in a lower proportion of cases (15 per cent). In a further 15 per cent of cases the effect was to add an ancillary order. It increased the sentence in some form in 69 per cent of cases. This includes imposing greater rehabilitation requirements (whether a formal programme or rehabilitation activity requirement (RAR) days), changing the sentence type to a more severe one (such as community order to custody), or handing down a more severe sentence of the same type (such as a longer custodial sentence). There were also five responses that simply said the domestic context affected the final sentence by way of an aggravating factor. Given the question asked, we have taken this to mean that the sentence must have been increased in some (even very small) way to account for this.

Table 7: Effect of domestic context on harassment sentences prior to and after the introduction of the domestic abuse guideline

Effect	Percentage of cases where the effect of domestic context on sentence was recorded pre-domestic abuse guideline	Percentage of cases where effect of domestic context on sentence was recorded post-domestic abuse guideline
Increased the sentence in some way	46%	69%
Made little or no difference to the sentence	52%	15%
No difference to sentence, but added an ancillary order	(not asked)	15%
Decreased the sentence	2%	0%

Note: percentages are expressed to the nearest whole number, so do not always add up to exactly 100.

Base size: Pre 170, Post 111.

For the breach of protective order cases for which we have data, as Table 8 shows, there was an increase in the proportion of sentences post-domestic abuse guideline that were increased in some way, where domestic context was identified by the sentencer – from 43 per cent prior to the guideline, to 51 per cent after the guideline's introduction.

Prior to the domestic abuse guideline, the sentence was increased in some way because of the domestic context in 43 per cent of cases versus 54 per cent of cases where the domestic context was said to have made little or no difference to the sentence, and three per cent where it decreased the sentence. After the domestic abuse guideline's introduction, the domestic context was said to have made little or no difference in 45 per cent of the cases with a further five per cent of cases adding on an ancillary order. It increased the sentence in some form in 51 per cent of cases. This includes imposing greater rehabilitation requirements (whether a formal programme or RAR days), changing the sentence type to a more severe one (such as a community order to custody) or imposing a more severe sentence of the same type (such as a longer custodial sentence).

Table 8: Effect of domestic context on breach of protective order sentences prior to and after the introduction of the domestic abuse guideline

Effect	Percentage of cases where the effect of domestic context on sentence was recorded pre -domestic abuse guideline	Percentage of cases where the effect of domestic context on sentence was recorded post-domestic abuse guideline
Increased the sentence in some way	43%	51%
Made little or no difference to the sentence	54%	45%
No difference to sentence, but added an ancillary order	(not asked)	5%
Decreased the sentence	3%	0%

Note: Percentages are expressed here to the nearest whole number, so do not always add up to exactly 100.

Base size: Pre 401, Post 259.

In respect of the data on criminal damage cases, there was a slight decrease in the proportion of cases where the sentence was increased in some way due to the domestic context, compared with sentences recorded prior to the introduction of the domestic abuse guideline (Table 9). The percentage of cases in the criminal damage data collections where the domestic context increased the sentence in some way went from 39 per cent pre-domestic abuse guideline to 35 per cent post-domestic abuse guideline. Note: the data here was more comprehensive than for the two data collections discussed above (161

returns recorded the effect on sentence post-domestic abuse guideline (out of 168 who identified the domestic context) and 294 recorded the effect on sentence pre-domestic abuse guideline (out of 302 who identified the domestic context)).

In the collection prior to the domestic abuse guideline, the sentence was increased in some way as a result of the domestic context in 39 per cent of cases, whereas the domestic context was said to have made little or no difference to the sentence in 60 per cent of cases and decreased the sentence in one per cent of cases. In the collection after the domestic abuse guideline's introduction, where the domestic context was identified, the sentence was increased in 35 per cent of cases, but made little or no difference in 63 per cent of cases and decreased the sentence in two per cent of cases.

Table 9: Effect of domestic context on criminal damage sentences prior to and after the introduction of the domestic abuse guideline

Effect	Percentage of cases where the effect of domestic context on sentence was recorded pre-domestic abuse guideline	Percentage of cases where the effect of domestic context on sentence was recorded post-domestic abuse guideline
Increased the sentence in some way	39%	35%
Made little or no difference to the sentence	60%	63%
Decreased the sentence	1%	2%

Note: figures exclude cases where response to the question was not completed/unknown.

Base size: Pre 294, Post 161.

As mentioned previously, it is important to bear in mind that offence specific guidelines were also introduced for each of these offences between the two data collections (which was the primary reason for carrying out these collections). Therefore, any differences may be due to the introduction of offence specific guidelines, or other potential variables, rather than the domestic abuse guideline. Generally, the fairly high percentages of cases where the domestic context made little or no difference to the sentence, within the post-guideline criminal damage (63 per cent) and breach of protective order (45 per cent) collections, are notable. These proportions are perhaps higher than might be expected for what sentencing guidelines suggest ought to constitute an aggravating factor. For these offences with post-domestic abuse guideline collections, we were able to look at the reasons sentencers gave as to why it had made little to no difference. Not all respondents provided sufficient detail to understand their reasoning, but those who did tended to

mention the presence of other mitigating factors, which may mean that the domestic context can be ‘balanced out’ by such things. For example, the criminal damage data collection responses mentioned it being a “low level offence”, “brief and already made reparation”, “fully admitted guilt and remorseful”, “did not cause significant distress” and “mental illness”. Similarly, responses for breach of protective order noted technical or minor breaches of the relevant order, genuine mistakes as to the duration of the order, or the offender’s learning disability and/or mental health hindering compliance. Other comments across all three of these offence collections (both pre- and post-domestic abuse guideline) noted that the relationship was now over, the parties had reconciled with no further incidents, or the victim had initiated contact perhaps suggesting a desire not to disturb a situation which had now calmed down.

In addition, we reviewed those offences for which data collections were only available after the introduction of the domestic abuse guideline: actual bodily harm, common assault and grievous bodily harm. The results of this analysis are presented in Table 10.

Table 10: Effect of domestic context on sentences by offence after the introduction of the domestic abuse guideline

Offence	Prior or after offence specific guideline	Domestic context increased the sentence in some way	Domestic context made little or no difference to the sentence	Domestic context decreased the sentence	Total cases where the effect of domestic context on sentence was recorded
Actual bodily Harm	Prior	55%	45%	0%	56
	After	77%	23%	0%	262
Common assault	Prior	66%	33%	2%	412
	After	62%	36%	2%	422
Grievous bodily harm (s20)	After	82%	16%	3%	38
Grievous bodily harm with intent (s18)	After	53%	41%	6%	17

Notes: Where percentages do not total 100 this is due to rounding. Excludes responses coded as ‘Other’. Data is only presented after the introduction of the offence specific guideline for the offences of grievous bodily harm (s20) and grievous bodily harm with intent (s18) as no data was collected prior. As with the previous table, these also exclude responses coded as ‘Other’, as it was unclear from such responses what the effect of the domestic context on the sentence had been.

Subject again to the caveats already set out regarding the data from the court data collections, this evidence demonstrates that, in many cases, the offence occurring in a domestic context increased the sentence. On the other hand, there are also some fairly high percentages of cases here where the domestic context was identified, but made 'little or no difference' to the sentence and even (for some offences) a small proportion of cases where it decreased the sentence. This is perhaps more than might be expected for what sentencing guidelines suggest is an aggravating factor. Very few sentencers provided any detail on why it made 'little or no difference' for these offences or led to a decrease, so it is difficult to say much on this. In relation to it decreasing the sentence, two of the common assault responses noted that the victim did not support the prosecution, and another that "absence [presumably in the sense of sending the offender to prison] not in the best interest of the family and some provocation."

Similarly, in relation to it making 'little or no difference', one sentencer alluded to the fact that there appeared to be fault on the sides of both the victim and offender and another that "both parties appeared to be culpable". In the absence of any further details about the cases, it is difficult to comment. Two others mentioned the location of the offence as the rationale for the domestic context making 'little to no difference' (a garden and sheltered accommodation respectively). It may be that, while the sentencer thought this was a domestic location, they did not think that it engaged the relevant aggravating factor and therefore ought to make no difference. This would be in accordance with the previously discussed caselaw on the domestic abuse guideline's applicability (above, 4.1.4).

Given the limitations outlined in relation to the data collections, in terms of determining whether the domestic abuse guideline is used directly in the sentencing process or decision, we now draw heavily on interview discussions, particularly in relation to the vignettes, in this review. Some of the Crown Court sentencing remarks also provide an indication of how the domestic abuse guideline had been used in the sentencing process. For example, there was an attempted murder case (and in breach of a restraining order), against a partner of three years, where the relationship was said to be characterised by violence, abuse, jealousy and possessiveness. Here, the sentencing judge went through the domestic abuse guideline and applied each part of it to the case in a very detailed (almost step-by-step) fashion, in order to set out all the relevant aggravating features. To avoid undue speculation, such factors are only discussed where the connection was very clear.

For those who used the domestic abuse guideline during the sentencing process or decision, there was, generally, some divergence between sentencers (across both jurisdictions) as to when they used it. The domestic abuse guideline was used by some in deciding the initial assessment of seriousness within the offence specific guideline, in relation to harm and culpability (or sometimes both). However, most commonly, the domestic abuse guideline was used after the initial categorisation, when the court was considering aggravating and mitigating factors.

4.3.1 Harm and culpability

For some participants, the domestic abuse guideline permitted them to consider the cumulative effect of previous incidents of domestic abuse when assessing the level of harm in a separate injury-based offence. As one survey respondent noted:

Judge: It needs to be recognised that judges are entitled to make appropriate findings based on the evidence before them as long as the criminal standard is achieved if this assists in contextualising the [domestic abuse].

For example, in interview discussions, which used vignettes (see Annex B) to stimulate discussions of how the domestic abuse guideline could apply in their decision-making process, many sentencers were quite keen to contextualise the harm and/or culpability by referencing the domestic abuse presented, when assessing both the ABH and GBH vignettes (1 and 2, respectively). This was particularly observed when sentencers assessed the ABH vignette: despite the fact that the vignette noted that the harm was deemed to be lesser harm (category 3), alongside the physical harm described, they noted additional harm from the domestic abuse throughout the relationship.

Judge: I then move to the overarching [domestic abuse] guideline, which I think allows me a degree of flexibility to consider the overall seriousness. So, the assault is a single incident of violence, but in the context of this, I recall from what I've read, in the context of a contact visit instigated procedure and all of the children [inaudible] with him on the basis of her deteriorating mental health. So yes, I think the pressure and everything else.... So, I would see that as a very significant aggravating feature. That would put me towards the top end of that range, and indeed I think in the circumstances, likely move me up in the harm category, category 2. And I would use the [domestic abuse] overarching principles to justify that movement.

Magistrate: I would have an issue with that being the lowest level of harm, because of the controlling, coercive aspects. Now obviously the charge, there wasn't enough evidence to actually go for coercive control, because it is very difficult to pursue that as a charge. But there is coercive control that had significant impact on the children. Not only witnessing [previous] incidents, but then having their own problems, mental health and other problems. The fact that there's physical abuse, there is financial abuse, there is emotional or psychological abuse. And I would probably have upped the harm category. So, I'd probably be looking at a harm [category] 2.

Similar issues arose in relation to using the domestic abuse guideline to assess culpability: despite the ABH vignette (1) noting that culpability was deemed to be medium (category B), some argued it could be higher:

Magistrate: You could potentially argue, and I would be here, that actually it's a higher culpability rather than medium culpability...depending how you see [it]...was it all pre-planned, what he does, is she a victim because of, or vulnerable because

of the settings? And from what I read, there could be that [it's] high culpability rather than medium culpability. So, in some ways, if you don't want to go outside of your main sentencing guidelines, I think there is scope in this particular case to say, actually it is harm 3 and higher culpability.

For many others, however, using the domestic abuse guideline to change the category like this was considered inappropriate, and they felt that their initial assessment of seriousness (particularly so in relation to assessing harm) had to start and end with the physical description of the injury. They then felt there was some scope to reflect the domestic context by moving to the upper end of the sentence range of the category that limited initial assessment put them in (but not beyond that category range). In some cases, this came with great reluctance and unease:

Magistrate: This is a really good example of why it's difficult to manage this, because...we're dealing with one isolated offence of assault [occasioning actual bodily harm], but actually what this describes is a 15-year period of psychological terrorism. So, I'm looking at this and my hands are tied already, because we're not really sentencing the offence that's been described, we're sentencing some tiny, tiny part of it. How would I apply the [domestic abuse] guidelines? I would use those to help justify going to the higher end of the sentencing category.

It may be that the domestic abuse guideline could take a clearer stance on this one way or the other. At present, there is a heading of 'Assessing seriousness', with some information as to the impact of domestic abuse and why it is particularly serious. However, it is not immediately clear whether the wording of this permits:

(i) a judge or magistrate to take this into account in the initial assessment of seriousness when assessing either harm or culpability, thus, for offences with an offence specific guideline, influencing the categorisation decision and associated starting point,

or

(ii) whether these factors can only be utilised as an aggravating feature later on in the sentencing process, after an initial categorisation decision and associated starting point and category range has already been reached.

4.3.2 Aggravating factors

The most common way, across the data samples, that sentencers used the domestic abuse guideline was to refer to its list of aggravating factors "of particular relevance to offences committed in a domestic context". At its most basic, this meant treating the domestic context as a single aggravating factor. For example, in relation to the ABH vignette (1):

Judge: I then apply as an aggravating feature, the following features of this case. Firstly, the harm to the children, more than one person harmed. Secondly, the domestic abuse guideline, because it's within the domestic setting (interview).

Although the domestic abuse guideline is mentioned, its use may be fairly minimal, as many offence specific guidelines also list 'Committed in a domestic context' as an aggravating factor, including all the offences covered in the vignettes. In such a situation, it is not immediately clear what, if anything, the domestic abuse guideline adds to offence specific guidelines. At worst, where 'Offence committed in a domestic context' is already listed as an aggravating factor in the offence specific guideline, some judges felt that the domestic abuse guideline appeared to add nothing new. On the other hand, as one judge noted in interview, having a dedicated guideline with such an explicit statement about seriousness could guard against attempts to trivialise domestic abuse:

Judge: Until the guideline was there and could be explicitly referred to by advocates or by sentencers, I think there was still a tendency for people to try and minimise on the basis, you know, 'it's a one off, there's never been violence before', even though we know, generally speaking, that isn't right.

Further, it may be that it assists in other relevant ways, for example in deciding whether this offence does or does not count as domestic context in the first place and therefore whether it engages that particular aggravating factor (see further, 4.2 above).

The Court of Appeal ([R v Baldwin \[2021\] EWCA Crim 417](#)) has noted that greater engagement with the domestic abuse guideline rather than just treating the domestic context as an aggravating factor is required:

The [Crown Court] judge said that he had reminded himself of the Sentencing Council overarching principles in relation to domestic violence. The Sentencing Council noted that domestic abuse offences were regarded as particularly serious within the criminal justice system. But the seriousness is not to be considered in a vacuum. Paragraph nine in the overarching principles [domestic abuse] sets out the aggravating factors of particular relevance to offences committed in a domestic context. It is by reference to those factors that a judge will assess the enhanced seriousness of the offence.

In Baldwin (2021), the Court of Appeal ultimately found this failure to consider the domestic abuse guideline adequately had led the sentencing judge to be too harsh. However, in interview, we saw from many sentencers how considering the guideline could result in a very significant uplift from the sentence starting point, or even going outside of the category range. For example, in the following interview discussion of the GBH vignette (2), the judge engages with the detailed aggravating features in the domestic abuse guideline very extensively:

Judge: So [Category 2B] a five year starting point, range of four to seven years. But this is a very clear example of all sorts of elements of controlling coercive

behaviour: isolation, restriction, all of those, the undermining behaviours that are exhibited within that. There is also the additional feature, which is [while] this [offence] is the worst example of violence – [it] has become a feature of their relationship...[it's] unpredictable in the sense of **when** it's going to happen: [but] entirely predictable in that it **will**: repeated use of violence...That substantially aggravates this offence [and] pushes it up into category 1B, [with] a starting point, of seven years. There are features here I would want to know more about. Post Traumatic Stress Disorder, the extent to which that's affecting her current behaviour. Suffering from headaches is unpleasant, but memory loss can be absolutely devastating if parts of her upbringing, background, her relationship with her children are difficult, or it becomes difficult to re-engage. All of that would be a feature that I'd want medical reports about. And in the right circumstances, I'd be pushing this up to...I would have thought seven and a half years, something like that...it's a severe punishment, but I think to ignore, and isolate that explosion of violence from a context in which it's committed, and why it's committed – which is that she's essentially moving away from him – would be to ignore what I think is the overarching principles [domestic abuse] here, which is still it's domestic, it's about controlling behaviour, it's about all of those features it's intended to address.

Hence, it appears that the domestic abuse guideline can be used to assign a great deal of extra weight to what, if one only looked at the offence specific guideline, is just the one aggravating factor: 'Offence committed in a domestic context'. Here, so much weight that it goes over the top of the initial category range by a further six months.

Relatedly, the reference to 'Offence committed in a domestic context', as an aggravating factor in the relevant offence specific guideline provides a drop down link to the domestic abuse guideline. This could sometimes operate as a gateway into the domestic abuse guideline and its list of additional aggravating factors (an approach the Court of Appeal in Baldwin appears to mandate). This can provide a much more detailed sense of the seriousness of domestic abuse and sometimes, as in this interview, a substantially heavier sentence:

Magistrate: There is the other aggravating factor, which is 'Offence committed in a domestic context', and then that would take you into the overarching principles [domestic abuse guideline] where there are additional aggravating factors. So, abuse of trust and power, victim vulnerable, those sorts of things would come into it.

This was also clear from some of the sentencing remarks reviewed. For example:

Case X:

That [domestic abuse] guideline makes it clear that domestic abuse is more, not less, serious than it would otherwise be.

And

Case Y:

From the domestic violence guideline [there] is the aggravating feature that steps were taken to prevent [the victim] from reporting the matters by saying to her that she should not go to the police.... Domestic abuse is serious because it represents a violation of the trust that should exist in any relationship. It causes lasting damage. It is plain to me that you have made [Victim's] life an absolute misery and there is no doubt the emotional harm in this case is severe requiring medical treatment...and perhaps what is most serious about this is the effect it has had on your children. That is a heavily aggravating feature, in my judgment. People are entitled to end their relationships and move on free from constantly having to look over their shoulder.

4.3.3 Whether the offender fulfils the 'dangerousness' sentencing criteria

It was clear from the interviews that the domestic abuse guideline is also sometimes used to assist decisions in a number of other important respects later on in the sentencing exercise, such as when considering if an offender is 'dangerous'. Specific sentences are available for offenders that are considered as such in the eyes of the law. In accordance with 'Chapter 6, Part 10, Sentencing Act 2020', offenders convicted of certain specified offences may be sentenced to an 'extended sentence' for public protection. Such a sentence entails spending more time in prison than would usually be the case (at least two thirds of the custodial term rather than half) and a considerably longer period of licence and supervision by the Probation Service upon release. In some other instances, offenders must be given a life sentence. In either case, one of the requirements is that the offender is regarded by the judge as a 'dangerous' offender, in accordance with the statutory guidance in s308, Sentencing Act 2020.

Such an assessment will depend very much on all the evidence, including the offender's evidence at trial (if there was one), as well as the offender's previous record and relevant reports from the Probation Service. A few Crown Court sentencers noted that the domestic abuse guideline also provided assistance with this decision:

Judge: I [think the] domestic abuse guideline might weigh into dangerousness, depending upon a subsequent risk assessment. Part of the risk assessment that the Probation Service would carry out, would be risk within a domestic context. That can be a group of individuals, in other words likely future partners, whom the court have to consider in terms of likelihood of further specific offences towards members of the public. It's not limited just to people who are members of the public generally, it's got to be all members of the public as a whole...within the dangerous assessment. So, I think the domestic abuse guideline is relevant there.

In particular, paragraph 16 of the domestic abuse guideline provides this guidance in relation to how one ought to interpret 'the public', for example including family members and future partners rather than just any member of the public at large. It is clear from the interviews that some judges have used this part of the guideline, although it was only

raised by a very small number of sentencers as part of this review. To an extent, this is to be expected, as magistrates and district judges, outside of youth court, would rarely if ever have cause to consider these provisions. However, even within the Crown Court interviewee cohort where sentencers may encounter more instances of dangerousness, the numbers were low.

4.3.4 Particular rehabilitative requirements to impose under a community or suspended sentence order

Numerous survey respondents and interviewees noted that they would consider rehabilitation options when dealing with cases involving domestic abuse. In addition to 'unpaid work', the Probation Service provides a number of specialist and structured programmes which offenders can be required to complete as part of a community order. These programmes are targeted at specific issues for offenders, for example, anger management or domestic abuse. Courts can also impose less structured intervention with a probation officer in the form of a number of 'rehabilitation activity requirement' days. Of those surveyed, 94 per cent answered 'yes' to the question: "Where domestic abuse is a factor in a case, and you have decided to impose a community order, would you impose any particular requirements due to the domestic context?". When asked to state what requirements in particular, almost all of these respondents referred to some sort of rehabilitation requirement, subject to probation reports. The option most frequently mentioned was the 'Building Better Relationships' programme. However, it was unclear whether this impetus came from the domestic abuse guideline. While the guideline mentions that sentencers should consider accredited domestic abuse programmes (paragraph 17), generally, interviewees appeared to be aware of these from experience, such as probation reports mentioning or recommending them, rather than being prompted by the guideline.

4.3.5 Whether or not to suspend a custodial sentence

For adult offenders in England and Wales, a custodial sentence does not necessarily mean spending time inside a prison. Any custodial sentence that is between 14 days and 2 years can be 'suspended' or 'immediate'. If suspended, the offender is not imprisoned, provided they do not commit any further offences during the period of suspension and comply with any other requirements imposed by the court (such as rehabilitation activities). If they do breach these terms, then a court can 'activate' the custodial sentence and send them to prison.

Interviewees reported that the presence of domestic abuse often played a part in deciding whether or not to suspend a custodial sentence. Often this was used as something operating in favour of immediate custody. One basis for this was that the seriousness of domestic abuse meant that, in accordance with the current overarching guideline on the Imposition of community and custodial sentences (which is currently in the process of being revised), "appropriate punishment can only be achieved by immediate custody". The other basis, again under the Imposition guideline, was that the "offender presents a risk/danger to the public". In domestic abuse cases, some sentencers considered that 'the

public' included the victim and/or other family members, as per paragraph 16 of the domestic abuse guideline.

Again, it is unclear whether this came from underlying experience or training in relation to domestic abuse generally rather than the domestic abuse guideline specifically. The domestic abuse guideline says nothing about suspended sentences in this context. It mentions some considerations in relation to crossing the threshold from community order to custody, such as being on the cusp of that threshold, but not what to do once it has, definitively, been crossed. However, some elements of the domestic abuse guideline do support the approach reported in interview of moving towards an immediate custodial sentence in cases of domestic abuse. Paragraphs nine and 10, highlight the severe nature of domestic abuse, with paragraph 10 noting the particular risks of escalation where abuse is domestic. Further, as noted above, paragraph 16, although it is written with statutory dangerousness assessments in mind, notes that "the public includes family members". It may be that the domestic abuse guideline could clarify the link between such stipulations within the domestic abuse guideline and the factors affecting a decision to suspend a custodial sentence within the imposition guideline.

4.3.6 The relevance of victims' views, including via Victim Personal Statements

The domestic abuse guideline's comments (paragraph 25) on the relevance of Victim Personal Statements (and, in particular, that one should not assume any less harm in the absence of one), appeared to be one of the more generally well known elements of the guideline. In interview, many sentencers explained how, while they found Victim Personal Statements particularly useful in assessing the level of harm, they never assumed the absence of one suggested that harm was lower. In effect, while a Victim Personal Statement may adjust the harm level higher than it otherwise would have been, the absence of one would never move it down. Equally, the absence of one would not mean the harm could never be moved up if there was equivalent alternative evidence of harm. Similarly, interviewees were also consistently very clear that mercy, forgiveness or a willingness to continue the relationship on the part of the victim would not result in them passing any less severe a sentence, reflecting the domestic abuse guideline's approach to this issue at paragraph 12. That said, as noted above, it was often unclear whether this view came from the domestic abuse guideline or elsewhere: for example, from training on domestic abuse, or sentencers' practical experiences of dealing with these cases.

Some interviewees noted that they found the domestic abuse guideline particularly helpful in explaining to victims why the fact that they might have felt forgiving or asked for a lesser sentence could not be given credence. For example:

Judge: I could speak to the victim directly, because she read a Victim Personal Statement from the witness box and say 'I hear everything you say. But I don't reflect just your wishes. I am impartial. I reflect society's view about this sort of abuse, so at the end of the day I'm dealing with a powerful younger man, seriously assaulting his mother,...and I have to reflect in my sentence what society says about this and I'm afraid having regard to how serious this is, and having regard to

the fact that it is domestic abuse and it can't be tolerated, it has to be immediate custody'. And being able to say 'I apply all relevant guidance including this specific guidance, which is based on years of experience and research' it's changed the way I can approach sentencing these cases. Not because I never understood how serious it was, but because it gives me something that I can objectively refer to and you can explain the decision.

Similar comments were made in relation to how sentencing remarks which referenced the domestic abuse guideline could help victims not to blame themselves for the sentence. Likewise, this approach to sentencing remarks could also be used to educate offenders, who are sometimes in denial as to how serious domestic abuse is, or who might otherwise blame the victim for their severe sentence.

4.3.7 Articulation and demeanour of victims and offenders

Some sentencers noted concerns as to how some social groups may present themselves in court, for example, in terms of their level of articulateness and/or command of English, which might limit their ability to express themselves clearly and effectively. In turn, this could have a potentially detrimental effect on their ability to express themselves meaningfully and in a way that could potentially influence decision making in cases of domestic abuse. This applied to offenders, for example, who might be less able to articulate persuasively how, thanks to the 'wake up call' of this conviction, they had gained a new awareness of how to treat others in their future relationships. It also applied to victims in their Victim Personal Statements:

Magistrate: I also think something that isn't included in the overarching principles, which desperately needs to be included, is something about how the injured party may appear in court. And I've had that happen where we've come out [into the retiring room], and somebody said: 'she doesn't appear very upset does she?' So, and I know there's been a lot of research as to how people can be impacted and how they then may appear, and I know this has been done with [young] people as well. But something needs to be in here to say: 'you cannot draw inferences about how bad or not....' That needs to be included, and it's not there.

The domestic abuse guideline might therefore benefit from a prompt to look out for these issues in domestic abuse cases.

4.3.8 Social characteristics, vulnerabilities, and equalities

There were two important ways in which the issue of social characteristics, vulnerabilities and equalities was discussed with sentencers in interview. The first was whether or not the domestic abuse guideline had equal application to different social groups, or whether it might affect the sentencing of offenders from particular social groups differently in some way. The second was, similarly, whether it might impact victims from particular social groups differently.

In interview, sentencers considered that there was nothing in the domestic abuse guideline itself that would cause its application to benefit certain social groups at the expense of others. Indeed, a number of magistrates felt that the domestic abuse guideline helped to avoid bias. The guideline was said to focus the sentencer's attention on the fact that it was intended to be applied equally to all under the law. If there was any bias, this was considered more likely to arise from sentencers' own inbuilt or unconscious biases, affecting their interpretation of the domestic abuse guideline, rather than the wording of the guideline itself. Sentencers' inbuilt or unconscious biases are beyond the remit of this review, but it can be noted that they appeared to reflect upon their potential biases quite frequently, in order to try and avoid them.

Some sentencers expressed frustration that both prosecution and defence lawyers appeared to lack knowledge and understanding of how the domestic abuse guideline should apply and required further training. Indeed, some judges felt that one benefit of the domestic abuse guideline was the educative effect that they, as sentencers could have, by referring counsel to it:

Judge: [The domestic abuse guideline has] been useful...to explain to an advocate who has perhaps not taken on board the nuances of domestic violence at the time.

That said, other sentencers felt that the domestic abuse guideline did appear to have had some effect in modifying some of the more contentious aspects of practice. For example, defence lawyers were less prone to using provocation as mitigation:

Judge: Advocates, less so now, but in the early days, things that they might have put forward as mitigation, they won't now do, partly because they're better informed and also partly because the [domestic abuse] sentencing guideline says, 'well, actually this is an aggravating feature, not a mitigating feature'.... I never hear anybody say something like, 'she provokes me into it'...nobody ever says such a thing nowadays.

However, the Sentencing Council's previous data collections in magistrates' courts showed that **pre-** the domestic abuse guideline, use of provocation as a mitigating factor was already used only rarely in the cases where it was recorded that it had been committed in a domestic context. For breach of a protective order, provocation was recorded as mitigation by the sentencer in six out of the 419 cases. Likewise, provocation was listed as mitigation in 19 of the 302 domestic abuse cases for criminal damage, and in 10 of the 178 domestic abuse cases for harassment.

That said, a number of magistrates and judges felt that far too much time was given to the offender's mitigation in domestic abuse cases, with lawyers often seeking to present such offenders in a positive light, or as victims themselves. This is understandably contentious in an adversarial system where defence counsel has duties both to the court and to the client. Equally though, it is the prosecutor's duty in such a system to provide the public interest perspective. While Victim Personal Statements were sometimes available to assist with this, some sentencers felt that this focus on the offender (particularly in magistrates'

courts) could sway other magistrates unduly, particularly those that (as noted previously, 4.2.1) did not use the domestic abuse guideline. On the other hand, when sentencers did use the domestic abuse guideline, it encouraged them to focus on the victim, which was viewed positively. For example, one survey respondent noted that the domestic abuse guideline was:

Magistrate: The only guideline that truly enables the sentencer to focus on the victim/s. Other guidelines are so focused on the defendant that it would be easy to omit the importance of the victim in the whole process.

The overall response in relation to the domestic abuse guideline's treatment of social characteristics was a positive one. Some of the most positive feedback on the domestic abuse guideline overall related to how useful it was in providing contextual information on different ethnic and social groups (such as in paragraphs two and seven), which helped sentencers think about these issues with a more open mind. Examples from the domestic abuse guideline included same-sex relationships (particularly between couples that were cohabiting) and the different nature of living arrangements among different social, cultural and ethnic groups, which extended beyond intimate partner relationships. For some, this also included houses of multiple occupation, such as multi-generational and extended family living and sometimes students. In those contexts, it was felt that the consideration in the domestic abuse guideline of abuse towards elderly parents by adult children, abuse of a spouse by other family members, honour-based violence, relationships with a considerable age disparity and arranged marriages was particularly valuable:

Judge: I mean, there's honour-based stuff. Which reminds you there's FGM [female genital mutilation]. There's forced marriage so that it reminds you, that different relationships have different issues. So FGM might be, it's going to be parent and child issues, and then the wider issues, so-called honour-based abuse as a wider flag.

In such instances the social, cultural, and/or ethnic background was considered by some sentencers to fall within the definition of 'vulnerability' within the domestic abuse guideline. However, some sentencers felt that while the domestic abuse guideline helped them to better understand the notion of the domestic context within different social, cultural and ethnic groups, this was sometimes relied upon by defence counsel to excuse or mitigate domestic abuse due to cultural or social factors:

Judge: [For example, defence counsel may say something like] 'He has been rather controlling and a bit heavy-handed on occasions, but he's from this particular country and culturally or even religiously, this is very normal and he's had some difficulty adjusting to matters over here....' Whilst I think we have to consider each case on its merits, because all people are different and there may be some explanation of their behaviour, that's based partly, at least in culture or ethnicity, age, many other factors. Ultimately, we're sentencing for behaviour that's contrary to our law. So, I think it may have much more to do with the rehabilitative aspect of sentencing, rather than the business of deciding where it falls on the guidelines.

It was recognised that this was not attributable to the wording of the domestic abuse guideline itself, or its interpretation. However, it was felt that the domestic abuse guideline could provide greater information or assistance with things to look out for in relation to how domestic abuse may operate within particular social groups. The following areas were raised in relation to this.

Religion, ethnicity and culture

Responses in relation to religious, ethnic and cultural issues mentioned the capacity for them to obscure or hide domestic abuse. For example:

Magistrate: What I notice when I read the [domestic abuse] guideline is that [there] isn't really specifically captured in there [anything] about how there might be some kind of cultural or religious aspect that might be obscuring what is actually going on (interview).

A judge also felt that the guideline could build on its current discussion of honour-based abuse in particular:

Judge: [The domestic abuse guideline] includes honour-based abuse...where I sit has a significant Asian and in particular Bangladeshi and Indian community.... I did have a young woman who had been badly abused by her father and her brothers because she's got a white boyfriend, and I think actually because it's such a distinct problem...it would help enormously actually to have a little bit more, if only some links to some useful resources...[rather than] just saying 'this applies to honour-based abuse'. Everybody's abuse is appalling to them, but it's just potentially so much more difficult for the person, given it's based on their own religious beliefs or cultural beliefs, for the culture and local community and so that they feel that they have put their religion or their culture into it.... I have an understanding of what a coercive controlling behaviour looks like in a traditional relationship between a man and a woman...you know the tracking, the monitoring of the phone, the preventing of the using of the bank accounts and all of those things. But I think it means something different in honour-based abuse.... I can remember looking it up [in the domestic abuse guideline] and thinking, 'oh, that doesn't really help me very much'. (interview).

Relatedly, it was felt that the domestic abuse guideline did not assist with understanding the unique barriers faced by victims from ethnic minority groups in particular. For example, in response to the question about whether the domestic abuse guideline would impact victims from any social groups in particular, one interviewee stated:

Magistrate: I do think there's a difference, I think in terms of ethnic minority victims. Because I think that in certain communities where women are not regarded as being equal to men, there is [a] higher level of tolerance of domestic abuse. And the barriers in some ethnic minority communities to reporting that abuse, and going through the criminal justice procedure, are greater.... There may be, in certain

ethnic communities, more mistrust of the police. Any domestic abuse victim is probably worried that they won't be believed, or they may not be treated very well if they go and report it because of all the information they see in the press, and everything we've heard...that some elements of the police force are institutionally misogynistic and racist. So, if you've got abuse in a domestic [context], in an ethnic minority community, you've got a double whammy there, which might make people reluctant to come forward.

While this was in response to a question about whether the domestic abuse guideline impacts upon victims from particular social groups differently, the guideline may not be the best place to address this. Training, for example, may be more effective. However, the domestic abuse guideline could explain why a victim from an ethnic minority community with issues in relation to trusting the criminal justice system may be particularly reluctant to engage, provide a Victim Personal Statement or provide a statement to assist with a prosecution. Doing so would be to build on general statements in the domestic abuse guideline around not making assumptions around victims' lack of engagement.

The potential impact that ethnic and/or religious factors may have on the vulnerability of a particular victim was also apparent from the analysis of the sentencing remarks in the context of blackmail against former partners. In two of these cases, the blackmail was more impactful and harmful due to the religious beliefs and related ethnic background of the victim or their family. In these two cases, the offenders sought to blackmail their former partners for money, using intimate sexual images obtained during their relationship. In both, the former partners appeared to be particularly vulnerable to that blackmail because of their religious and ethnic background. In one of these cases, the victim and perpetrator came from different ethnic and religious backgrounds. This was apparent in her victim statement to the court:

[In my] culture, a family's reputation means a lot. If any of these messages were to have been distributed to anyone who either knows my family, or my family, the impact would have been devastating to me as well as my family. I would never want to make my parents feel embarrassed or ashamed about my actions and would rather die than deal with the shame of things such as this.

Similar vulnerability was apparent in the other case, where the court acknowledged the victim's "family and cultural background" explicitly when discussing the impact that the threats of blackmail had on the victim.

However, while vulnerability was acknowledged in these cases, the court did not explicitly refer to the domestic abuse guideline, nor state the vulnerability of the victim as an aggravating factor during sentencing.

Socio-economic status

Similarly, sentencers felt that the domestic abuse guideline did not provide much context for socio-economic differences, in terms of what the issues might be in working-class and middle-class relationships. In other words, although the domestic abuse guideline notes

the relevance of socio-economic characteristics, it does not extrapolate as to how the context and nature of domestic abuse may vary across different social demographic groups:

Judge: I think in relation to socio-economic groups, what I see regularly is that the [domestic abuse] guideline would be most applicable to people who are struggling financially, who are not educated to a level above GCSEs and are working in low paid manual or retail jobs or not working at all and on benefits. I think that that is not because domestic violence is restricted to people in those socio-economic groups, but I actually genuinely think that there is a stigma to reporting in more middle-class domestic arrangements (particularly if you are bright or intelligent, you earn your own money) that you are abused in any way.

Magistrate: I think that's one of the biggest cruxes of problems domestic violence has. It is such a massive change to admit it's happening, because patently everybody then gets involved, or 'we knew there was something going on' you know, the whole thing comes together. And you can understand in many respects why it's even worse for middle class people than it is for working class, because we all live in our little boxes don't we? And nothing else goes on there.

Sexual orientation

Although the domestic abuse guideline clearly states that it applies to same-sex couples, it was felt that more guidance on such cases would be helpful. For example, while some sentencers felt that coercive control tactics within heterosexual and homosexual relationships were often similar, other sentencers felt that more context on homosexual relationships was warranted within the domestic abuse guideline:

Judge: I've dealt with sentences dealing with same-sex couples as well. Which is something that I don't think that that the overarching guideline [domestic abuse] necessarily spells out.

Women domestically abusing men

A further example that some sentencers wanted more context on, within the domestic abuse guideline, was in relation to women domestically abusing men:

Judge: I think men find it harder to come forward than women do. [The domestic abuse guideline] says all genders, so it doesn't suggest it's just female. I think the way that a woman abuses a man is different to the way that a man abuses a woman. Men tend to be more physical and violent. Women tend to be more controlling and manipulative, I think when I've seen [those cases], so [the domestic abuse guideline] perhaps doesn't emphasise that difference.

Magistrate: The assumption generally is, it's men harassing women. And I think it's important to recognise that women can certainly harass and cause a lot of distress to men, doing this behaviour [in relation to the harassment vignette (3), where the genders were not specified].

The Court of Appeal actively considered the role of gender within the context of vulnerability when applying the domestic abuse guideline in Baldwin (discussed above at 4.3.2). The appeal in this case concerned a female offender and a male victim in the context of domestic abuse, and the court considered whether the sentence would have been the same if the victim was female and the offender male. This was a matter that the sentencing judge in the Crown Court appeared to have been at pains to ensure parity about. The Court of Appeal, however, noted that, while a female and male offender should not be treated any differently because of their gender, when considering the domestic abuse guideline:

Factors such as abuse of power and particular vulnerability of the victim are more likely to arise when the offender is a man committing the offence against a woman.

Ultimately, the court later seemed to conclude that the offender here **could** be sentenced differently because of the (male) gender of the victim. That conclusion appears at odds with how male victims of domestic abuse may also be particularly vulnerable because of the social and cultural stigma attached to male victims of domestic abuse (or indeed, male victims of crime generally), and the assumptions often made about the gender of victims of domestic abuse.

4.3.9 Relevance of positive (previously ‘good’) character and previous record

‘Relevant previous convictions’ is listed as an aggravating factor in s65 Sentencing Act 2020 and therefore appears in many offence specific guidelines. However, there appeared to be some uncertainty over the relevance of ‘No previous convictions’ and evidence of ‘Positive good character’, which also appear (as mitigation) in many offence specific guidelines. In both jurisdictions, some sentencers appeared to conflate a lack of previous convictions with positive good character, a finding that aligns with the same finding from previous Sentencing Council research on: [Aggravating and mitigating factors in sentencing guidelines and their expanded explanations](#). That research led to a renaming of the factor in sentencing guidelines from ‘Good character’ to ‘Positive character and/or exemplary conduct (regardless of previous convictions)’. Some sentencers also relied purely on the offence specific guidelines for their treatment of positive character, rather than the domestic abuse guideline’s additional information. For example, in ABH vignette (1), the offender “volunteered at the local rugby club; was a member of the parish council; and has no previous convictions”, at the same time as carrying out a catalogue of domestic abuse in private. Some magistrates indicated that they would have taken account of the previous positive behaviour in the community (in spite of the extremely bad character at home over the same period). On the other hand, some judges, and those magistrates who referred to the domestic abuse guideline, recognised that evidence of previous positive character may have little relevance within the domestic context and that caution was needed. For example:

Judge: He may be a man of good character. That is, of course, a factor that one has to bear in mind, but in a case such as this, where it’s been repeated and gone on

for a long time, the domestic behaviour, would, to some extent, impact upon the relevance of that.

Magistrate: With anything which is domestic violence related, where of course, this could have been going on for some time, where the victim is in court, it is not fair to say that person's 'previously of good character'.

Where this awareness was present, in discussing the vignette scenarios, some likened domestic abusers to 'Jekyll and Hyde' characters, presenting a public façade of being a model citizen and community member, while being controlling and abusive within the domestic environment.

Judge: I know if I hit the drop-down box, it's going to tell me to avoid it [the good character]... I feel uncomfortable allowing much over good character in intimate violence cases. On the face of it, a hard-working provider for the family, the father, the good provider [we could] say that he is of good character, but it's that [which] enables some men, like in this particular scenario. I would be concerned to find out whether I was right in thinking that his front facing life would enable him to continue to abuse the family in the way that he was...there will probably be four references from other people saying 'I can't believe it of such a family man', which always increases my blood pressure slightly when I'm trying to deal with someone for domestic violence, and all the references say 'he loves his family, I'm sure this is out of character', when in fact you know perfectly well it's not, because he has one face to the public and a different face in the family home.

Indeed, a few sentencers recognised that evidence of supposed positive character in some circumstances served to compartmentalise demeanour and behaviour to an extent that it highlighted controlling tendencies and enabled domestic offending to continue undetected. They felt that the domestic abuse guideline's comments on this assisted with avoiding taking such positive character at face value.

Judge: When I go back to the overarching [domestic abuse] guideline, that [good character]'s really of very little worth because controlling and abusive partners, we know, they present the public face and there is the very different private face. That's a feature that the overarching [domestic abuse] guideline advises me of.

It was less clear what weight, if any, to attach to a previous police and/or civil court record which did not include convictions. The harassment vignette (3), where the offender had a harassment warning and non-molestation order in relation to a previous relationship, in particular generated some varied discussion. Some took the view that, since they were not convictions, they had to be ignored, whereas others considered them an aggravating feature, for example, on the basis that this demonstrated a potentially escalating 'pattern' of behaviour or that the offender had already been given a chance or warning and chosen to ignore it. On the other hand, such things were sometimes almost interpreted to the offender's benefit. Assuming, in the harassment vignette (3) for example, that there had been no breaches of the non-molestation order, this could suggest that compliance with

community or other court orders was more likely. The fact that the lists of aggravating and mitigating features in the domestic abuse guideline and others are not exhaustive may therefore need emphasising. Alternatively, the addition of a specific aggravating feature of ‘Relevant previous orders or out of court disposals suggestive of a pattern of abusive behaviour against current or previous partners’ could focus minds; however careful consideration of what evidence met the criminal standard of proof would be needed.

4.4 Other specific issues

A number of other discrete issues became apparent during the course of this review, which are outlined below.

4.4.1 Restraining order guidance

The domestic abuse guideline covers issuing restraining orders at paragraphs 19 to 24. A restraining order is a court order that states a particular person is prohibited from doing anything described in the order. Where imposed as part of a sentence, s360, Sentencing Act 2020 states that this must be done “for the purpose of protecting the victim or victims of the offence, or any other person mentioned in the order, from conduct which (a) amounts to harassment, or (b) will cause a fear of violence”. For example, a restraining order may state that the offender cannot contact the victim. Breach of a restraining order is a criminal offence.

The availability of this disposal upon conviction was generally well known and greatly appreciated. For example, one judge in interview noted it was “really, really useful”. Indeed, one (magistrate) survey respondent commented that, in domestic abuse cases they would always consider making a restraining order, unless there was a “very good reason not to”. That said, it is unclear whether this is due to sentencers consulting paragraphs 19 to 24 of the domestic abuse guideline frequently (and therefore being reminded of these options) or more a result of training and experience. A few survey respondents noted specifically that the information on restraining orders in the domestic abuse guideline was helpful.

In terms of improvements, some comments in the survey noted that the domestic abuse guideline did not provide much help on what to do in terms of orders where child contact is raised as an issue. Some guidance on the particular wording or provisions to consider in these difficult cases might assist.

Similar concerns were raised in relation to the length of orders. While paragraph 23 states that the court may specify a determinate period or “until further order”, there is no guidance on what “best practice” (as one survey respondent put it) might suggest the duration ought to be. There is caselaw on considerations in drafting such orders generally (such as [R v Khellaf \[2016\] EWCA Crim 1297](#)), so some codification of this into the domestic abuse guideline might be helpful.

One judge in interview also noted that it was unclear whether the reference to 'European Protection Orders' in paragraph 18 was still relevant post-Brexit. Clarification that this still applies (or, if not, deletion) would be appropriate.

Views from a few interviewees were less positive about restraining orders where the relationship was clearly going to resume. Although the domestic abuse guideline suggests (paragraph 22) that such orders might still be made, with a prohibition on 'molestation' rather than contact between them, a couple of judges simply did not consider this to be a practical measure.

Judge: A restraining order, where the parties are going to resume their relationship is on the whole not a good idea, because it doesn't work. And if they're back in a relationship, they're back in a relationship. But it just brings court orders into disrepute. But...what they're suggesting in the guideline is that you can still make one and say, 'well don't, even if you're back in a relationship with her, don't molest her'. But what does it mean, 'molest'?... Does it mean annoy her? Does it mean, pester her to come to bed, pester her to get up in the morning? Does it mean say, 'five times a week would you do the dinner for me'?... When it's used in ordinary discourse...it normally has a sense of sexual molestation, and I don't think it would be that. So I'm saying that even non-molestation orders in the family court, or they used to, don't very often say, 'don't molest her'. Nowadays they tend to say, 'don't hit her', [or] 'don't go within 100 metres of her home'.... They don't say 'don't molest her', because...it's not clear what it means. And you're attaching five years imprisonment to it.

Judge: Paragraph 20, restraining orders...I am very reluctant to impose restraining orders in relation to ongoing relationships. I understand why it's there, and I should imagine there may be circumstances where you might, but I don't feel I occupy a position where I should be continuing that. I also have trouble with imposing a prohibition which is [already] an offence. They're all potentially offences. But the point about a restraining order is it's a bespoke, designed, order to restrict movements, behaviours, opportunities. It's not intended to say, 'you must not assault the victim'.

These debates on the merits of a broad term like 'molestation' or specific prohibitions such as 'do not contact', and the issue of whether to, effectively, re-categorise forms of behaviour which may already be categorised as a crime of assault or similar go back some time. For example, [Law Commission Paper 207, \(1992, paragraph 3.1\)](#), recommended a broad approach that there should be no statutory definition of molestation and that the courts should continue to interpret the phrase to include many different sorts of conduct. There is also extensive caselaw (particularly in relation to non-molestation orders, under the Family Law Act 1996 and precursors) on the various meanings of molestation. Some of that has set the bar very low, such as [Vaughan v Vaughan \[1973\] 1 WLR 1159](#), which suggested that being a "perfect nuisance" was sufficient. We do not suggest what position, if any, the domestic abuse guideline ought to take on this, but it is not without controversy and some judges do not like it as currently drafted. As it stands, paragraph 22 states that

courts 'may' consider adding a prohibition not to molest the victim if the parties are to resume the relationship.

Restraining orders was also an area where victim forgiveness had more relevance for sentencers in this research. Some suggested that, in exceptional circumstances, some level of paternalism might be required here. This was in accordance with paragraph 20 of the domestic abuse guideline, which reminds sentencers that, while victim views should be sought, their consent is not required. However, the more common view was that it would be inappropriate to impose a restraining order without the support of the victim, or at least not where the victim clearly did not want one:

Judge: I wouldn't normally think of imposing a restraining order unless there was some cooperation from the victim if they wanted one. Because otherwise there'll just be a breach and the thing will be a waste of time, and a waste of police time.

Judge: It's not mitigation, but when you have a complainant in that case, saying 'I desperately do not want to support this prosecution, I do not want to, because it can only make things worse, it cannot make things better' then you can't not listen to that.

This reflects the position from caselaw. In [R v Herrington \[2017\] EWCA Crim 889](#) the Court of Appeal stated that:

[7] This is not a jurisdiction which can be used to prevent an adult from deciding who she wants to live with. Although any person considering this case would consider that [Victim] is at serious risk of violence from the appellant, she has the right to live with him if she chooses. It is to be hoped that she is genuinely aware of the risk she is running in doing that, but ultimately, she is an adult and free to take those decisions for herself. The law does not presently permit the criminal court to act to protect victims of domestic violence against the consequences of decisions of this kind which they freely make.

One judge in the survey noted that defence counsel "regularly" relied upon R v Herrington. However, in their view:

It is sometimes said in relation to particular sexual offences concerning children, that they require protection and protection against themselves. The same may be said in relation to adults (usually women) who are mired in toxic relationships and who are trapped by psychological, emotional and/or financial connections. I would certainly welcome additional guidance in this guideline in relation to the imposition of restraining orders.

Having been decided in 2017, R v Herrington just predates the domestic abuse guideline (2018), yet paragraph 20 of the guideline suggests consent of the victim is not required. It appears that such regular reliance on Herrington reported in the survey is not warranted,

as, in [R v Bassaragh \[2024\] EWCA Crim 20](#), reference to case law pre-dating an offence specific sentencing guideline was criticised as being “misplaced”.

Some magistrates were, however, willing to make a restraining order where the victim’s views were unknown either way, such as in the harassment vignette (3). This would not be contrary to caselaw such as R v Herrington, nor the domestic abuse guideline. Some of them felt that the option of doing so could be stated more clearly in the domestic abuse guideline:

Magistrate: When we talk about restraining orders on conviction, I think courts tend to believe that if a restraining order isn’t asked for, we can’t give one. We can, it’s within our gift to give a restraining order if we feel it’s proportionate and correct to do so. Whether one’s been asked for or not...and that needs to be reinforced.

Some magistrates also felt that there was little awareness of the option to make a restraining order upon acquittal (in accordance with the criteria in [s5A, Protection from Harassment Act 1997](#)) and that the mention of this in the domestic abuse guideline (at paragraph 24) was insufficiently prominent. However, consideration is needed as to whether the domestic abuse guideline is the best place for such a reminder. Referring to a sentencing guideline may be counterintuitive when someone has just been found not guilty and therefore by definition the judge or magistrate is not expecting to ‘sentence’ them.

4.6.2 Strangulation and other ‘red flags’

Many respondents noted that they found domestic abuse offences were frequently undercharged. This often focused around the coercive and controlling behaviour offence being undercharged as a property or injury-based offence instead, which led many to point out that the charge in the ABH vignette (1) was all too accurate. However, some interviewees also noted that, prior to the strangulation offence introduced by the Government in 2022, incidents of strangulation were often charged as ABH, and that the ABH guideline harm assessment did not provide for the harm in those offences to be fully reflected in the sentence, particularly when committed in a domestic context. Many felt that the domestic abuse guideline needed to be updated, at the very least to take account of the new strangulation and suffocation offence and the consequent seriousness with which such conduct is now treated. Some suggested this should be added to the list of aggravating factors “of particular relevance to offences committed in a domestic context”, and/or in the ‘Scope’ and ‘Assessing seriousness’ sections of the domestic abuse guideline. This was to reflect the (in their professional experience) frequent use of strangulation by domestic abusers. Such experience mirrors the Home Office’s statistics for domestic homicides from year ending March 2020 - 2022: out of the 11 methods of killing recorded, ‘strangulation, asphyxiation’ was the second most common for female victims and third most common for male victims (ONS, 2023, [Domestic abuse prevalence and victim characteristics](#)). At the time of the review, the Council was in the process of developing a new sentencing guideline for offences of strangulation and suffocation. At the time of writing, the guideline has recently been finalised and is due to be published in December 2024.

However, if issues related to non-fatal strangulation were to be included, the phrasing would need to be considered carefully. As one interviewee noted:

Magistrate: I think there's a problem, with terminology here, because when you look at police interviews, [you sometimes see] 'choking'. The definition of choking is 'something gets stuck in your throat'[whereas] 'strangulation' is, 'your airways are physically restricted externally by someone else pressing on your neck'. But...I think people use the word 'choking' when they're actually referring to 'strangulation'. So, when you're reading interviews from the police where it says, 'he had his hands round my neck and I couldn't breathe, and I almost fainted' etc....they say, 'he choked me', not 'strangled', I think something is getting missed here. Because it's not in the aggravating features...you don't have 'choking' anywhere, and yet this is how people describe the violence that is committed towards them.... But it is a serious risk factor for future death, because it's one of the most common ways in which femicide occurs [as] women are, tend to be, strangled rather than another form of violence.

Linked to this, there was also a suggestion to include greater coverage in the domestic abuse guideline of 'red flags' or things to look out for in the domestic context, indicative of future risk. Strangulation was one such suggested red flag, but stalking and threats to kill, were also noted as worth highlighting (perhaps in paragraphs nine and 10). The fact that the relationship had ended, or was in the process of ending, was also raised as a 'red flag' to highlight. Given that 35 women were killed by their ex-spouse, common-law spouse, cohabiting partner, boyfriend or girlfriend in year ending March 2020 - 2022, this could also be worth exploring (ONS, 2023, Domestic abuse prevalence and victim characteristics).

4.6.3 Compensation availability

Generally, sentencers are expected to order compensation, subject to the victim's views, "wherever possible" (paragraph four, [Sentencing Council explanatory materials, Fines and Financial Orders, Compensation](#)). However, survey and interview comments suggest that the approach in domestic abuse cases is to assume that it will do more harm than good unless and until the victim of the offence informs the court otherwise. For example, in the survey, participants commented:

Magistrate: Unlikely to award compensation as it is 'robbing Peter to pay Paul' in on-going relationships and where the couple have already split it can prevent them from both 'moving on'.

Similar sentiments were expressed in interview, particularly in relation to the harassment vignette (3) (which stated that the victim had withdrawn from the court process, therefore their preferences regarding compensation could not be known either way). If this is regarded as the correct approach in domestic abuse cases, the domestic abuse guideline might benefit from mentioning it, if nothing else in order to reflect what appears to be treated by some as a rule already in practice. Conversely, if this is considered an

inappropriate approach, it might be appropriate to include a reminder of sentencers' discretion in the domestic abuse guideline.

5. Conclusions

It is clear that the domestic abuse guideline is very helpful to some sentencers, some of the time. It is evident that, for some, it provides very helpful assistance at numerous stages of the sentencing process, such as: identification of 'domestic abuse' and the 'domestic context', assessing seriousness, noting particular aggravating and mitigating factors, considerations about ancillary orders and so on. Further benefits outside the immediate sentencing decision/process have also been noted throughout this review, such as in relation to its potential assistance in drafting sentencing remarks, justifying decisions, use as a reminder of key principles, or for broader educative and training purposes. The only problem is in relation to consistency of approach in these various contexts. Some clearly use the guideline at various different stages of the sentencing process. Others limited their use of the domestic abuse guideline to one particular part. For example, some purely used it for a general statement of the seriousness of domestic abuse and others, alternatively, focused almost exclusively on the domestic abuse guideline's list of aggravating and mitigating factors. Similarly, there was inconsistency in some contexts as to what did and did not count as 'domestic'.

Equally, the forgoing discussion also shows scope and ideas for amendments to the domestic abuse guideline's content in all of these areas. We are grateful to survey and interview participants for the many thoughtful and relevant suggestions made.

It is clear that, when used, the domestic abuse guideline can have an impact on sentencing decisions. However, a fundamental problem remains in that some sentencers refer to it rarely or not at all. This was particularly noticeable in responses to the direct questions in the survey and numerous cases across the sample of Crown Court sentencing remarks. Hence, our findings here, to some extent, support the anecdotal experience of the Court of Appeal (as stated in *R v Kingswell* [2022] EWCA Crim 814,) that the guideline is "regularly ignored by sentencing judges". An alternative interpretation in some cases is that sentencers may have the domestic abuse guideline or its key principles in their minds during sentencing, but just do not explicitly reference it in their remarks (or refer back to it every time). If so, then the relevant aggravating and mitigating factors are still being factored into the sentencing decision-making process (implicitly). This is although s52(6) of the Sentencing Act 2020 requires that any sentencing guidelines that are used are mentioned. More instrumentally, as we stated first, one of the purposes of setting up the Sentencing Council was to promote greater transparency in sentencing. If sentencers do not explicitly acknowledge and explain the role of the domestic abuse guideline, or the ways in which its mitigating and aggravating factors are applied in the sentencing exercise (or, conversely, why it does not apply on these particular facts), then such transparency is not being achieved. This is arguably of particular importance in the context of domestic abuse, where a forthright and public approach about the role of the

guideline in the sentencing process can communicate a clear message that domestic abuse is both serious and treated as such by the criminal courts.

As discussed in 4.2.4, practical issues may go some way to explaining lack of use. Even among those who viewed the domestic abuse guideline's content very positively, its day-to-day practicability was often more limited. Hence, it may be that format/access changes (bullet points, diagrams, tables, and so on) or greater integration within (or summaries within) offence specific guidelines may encourage greater use. Based upon both the primary and secondary data, the following offence specific guidelines appear particularly ripe for greater cross-referencing to, and/or summarisation of, the domestic abuse guideline:

- breach of a protective order
- disclosing or threatening to disclose private sexual images
- assault (common, battery, ABH, GBH and GBH with intent)
- criminal damage
- harassment
- stalking
- attempted murder
- manslaughter (all forms apart from corporate manslaughter)
- child cruelty and causing or allowing child death or serious harm offences
- threats to kill

Such an approach, together with more specific, structured and targeted points in relation to frequent issues arising in domestic abuse cases might also encourage greater use by those who currently regard the domestic abuse guideline as little more than a statement of the obvious (or common sense). For example, the suggestion to provide a more structured approach to an 'uplift' to reflect domestic abuse, similar to that found in offence specific guidelines in relation to hate crimes and assaults on emergency workers. More specific guidance could be provided in relation to the approach to compensation (where the victim's views on it are unknown), restraining orders (length, wording, codifying approach from relevant caselaw, application where future child contact is an issue, relevance of the victim's views), and identifying strangulation and other key risk indicators (perhaps building upon the discussion in relation to dangerousness and expanding this to cover risk in other decisions, such as in decisions to suspend custodial sentences). A clear stance on the relevance of a previous record not amounting to convictions and in what circumstances previous positive character can ever (if at all) be relevant in this context might also be appreciated.

Other suggested additions included specific assistance with understanding how domestic abuse operates in particular demographic contexts (such as honour-based abuse), awareness of novel uses of technology to enhance perpetrator control, avoiding assumptions about victim demeanour in court and detailing when (if ever) provocation is relevant in this context, such as where a victim of domestic abuse themselves 'snaps' and attacks their abuser and potentially some cross-referencing to the mitigating factor from

other guidelines of 'Difficult and/or deprived background or personal circumstances...direct or indirect victim of domestic abuse'. More targeted consideration of what can come within the scope of 'domestic abuse' would similarly be helpful, particularly in relation to some of the grey areas considered (stalkers, HMOs, close platonic relationships, virtual spaces, and so on) and the length (if any) of relationship required.

However, any such changes must always be balanced against the dangers of making the domestic abuse guideline overly complex and long-winded. Indeed, part of the problem may be that the guideline is currently already perceived by some to be a bit too verbose, or perhaps just trying to do too much or too many different things. In the longer-term, a 'Domestic Abuse Bench Book' might be better suited to assisting with improving awareness and understanding about many of the broader issues raised. One survey respondent pointed to such a bench book used by the Australian criminal courts as an example. Doing so might then permit the domestic abuse guideline to become much less wordy, more structured and more focused on the sentencing process. On the other hand, the fact that such information would then be outside the sentencing guidelines entirely might mean it is even less likely to be read.

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Annex A Survey

Thank you for your interest. Please read the following information carefully and then answer the three questions below to indicate your agreement to participate in this survey.

Research Subject Matter

The Sentencing Council has commissioned Nottingham Law School, at Nottingham Trent University, to complete a review of the [Overarching principles: domestic abuse guideline](#).

The project will examine how the guideline is used in sentencing. It will explore sentencers' understanding, interpretation, implementation, application and views of the guideline and the impact of the presence of domestic abuse on sentences. Findings from the project will be relied upon by the Sentencing Council in reviewing the guideline and inform discussions around any future development.

The review will analyse a variety of data sources, including transcripts of Crown Court sentencing remarks, previous court data collection exercises and a review of recent appeal cases. However, we are also keen to ensure that the perspectives of sentencers themselves form a key part of this research. We are therefore really interested in your views and experiences in sentencing domestic abuse cases, how you might use the Overarching principles: domestic abuse guideline and any ways it could be improved.

Your Involvement

The survey will usually take around 10 mins to complete. You can provide as much or as little detail in your answers as your time allows and there are no mandatory questions, so you can skip any you do not want to answer.

How to Withdraw from the Study

You are free to change your mind at any time during the survey by closing the survey window. The results are not saved/stored until you have formally submitted your survey at the very end. Once you formally submit your answers, your responses will be anonymised automatically. This does mean, however, that it will not be possible to remove your responses from the dataset (as it will not be possible to identify which ones are yours).

Benefits of taking part

By taking part you will be helping to improve the Sentencing Council's understanding of how this sentencing guideline is used in practice. Participation will also enable you to ensure your practical experiences are taken into account in any future development of the guideline. Some participants also find participating in research provides a useful opportunity to reflect on their work and experiences.

Confidentiality

Your responses are completely anonymous by design. We do not keep a record of your IP address and do not ask for your name. We will just receive the answers you provide to the

survey questions, without any further information. The research team will use these to inform their findings and draw conclusions.

If quotations from your survey answers are included in any published work, they will only be identified by general information about your role.

E.g. “Crown Court Judge”, “Magistrate”, “District Judge”, etc.

Any quotations used will be kept sufficiently short and/or generic to ensure that they cannot be traced back to you. Given the anonymisation, we are not collecting ‘personal data’ (i.e. it is outside the scope of GDPR etc.) The following internal policies will apply to safeguard data protection:

Nottingham Trent University’s [Research Ethics Policy](#) and [Code of Practice for Research Nottingham Trent University’s Research Privacy Notice](#)
[The Government Social Research standards](#)

In addition, as professional legal academics conducting social science research, the [Ethics Statement](#) of the independent Socio-Legal Studies Association applies.

[Qs1 – 3 covered agreement to participate etc.]

- 4) Do you have any experience of sentencing cases that involve domestic abuse?
- Yes
 - No

- 5) Which of the following best describes your current judicial position?
- Circuit Judge (or other full-time salaried Crown Court judge)
 - Deputy District Judge (Magistrates’ Courts)
 - District Judge (Magistrates’ Courts)
 - Magistrate
 - Recorder

- 6) Do you have experience of sitting in a specialist domestic abuse criminal court? (SDAC)?
- Yes
 - No

7) How often do you refer to the Overarching principles: domestic abuse guideline when sentencing cases involving domestic abuse?

- Always
- Sometimes
- Rarely
- Never

8) Please explain why.

9) What particular elements of a case do you look for when determining whether an offence was 'committed in a domestic context'?

10) Had you been a sentencer before the introduction of the Sentencing Council's Overarching principles: domestic abuse guideline in 2018?

- Yes
- No

11) [if applicable] Do you think the introduction of the Overarching Guideline has changed your sentencing practice?

- Yes
- No

12) [if applicable] Please explain in what way/s it changed your sentencing decisions?

13) Do you find the Overarching Guideline helpful in sentencing?

- Yes
- No

14) Please explain why

15) Do you think the Guideline adequately reflects the variety of relationships where domestic abuse can occur? For example, different sexes of perpetrators and victims, same-sex vs heterosexual relationships, abuse between family members, etc.

- Yes
- No

16) [if applicable] Please explain why not.

17) Do you think the Guideline adequately reflects the different kinds of abuse which can occur in a domestic context? For example, physical abuse, emotional abuse, mental abuse, financial abuse, controlling behaviour, etc.

- Yes
- No

18) [if applicable] Please explain why not

19) Where domestic abuse is a consideration in a case, what difference (if any) does it tend to make to your sentencing decision?

For example, changes to the type of sentence or other order (financial, community, custodial, ancillary orders, etc.) imposed, changes to the severity of a particular type of sentence (the length of custodial term and/or whether to suspend it, frequency or intensity of community order requirements, quantum of financial penalty, etc.)

20) Where domestic abuse is a factor in a case, and you have decided to impose a community order, would you impose any particular requirements due to the domestic context?

- Yes
- No

21) [if applicable] Please state what sort of community order requirements you would impose due to the domestic context.

22) How satisfied are you with the layout, structure, or ease of use of the overarching guideline?

- Very satisfied
- Satisfied
- Dissatisfied
- Very dissatisfied

23) Please explain why.

24) Is there anything that is not currently in the Overarching Guideline which you feel it would be of benefit to include?

- Yes
- No

25) [if applicable] Please explain what else you think should be included in the Guideline.

26) How satisfied are you with how the Overarching Guideline works in practice, in terms of the following:

26.1) The level of information provided

26.2) Ease of interpretation

26.3) How it works with other (offence-specific) guidelines

26.4) Any other practical issue (please specify below)

[answers to each one of]

- Very satisfied
- Satisfied
- Dissatisfied
- Very dissatisfied

27) [If applicable] please specify your 'other practical issue' in relation to the previous question.

28) If you are not satisfied with the level of information, ease of interpretation, how the Guideline works with other (offence-specific) guidelines and/or any other practical issue, please explain how this could be improved.

29) If you have any other comments on the Overarching Guideline not captured in the above questions, please include them here.

Annex B Interview vignettes

Vignette 1: Assault occasioning actual bodily harm – all sentencers

David and Vivica had been married for 15 years and had three children aged under 12. David volunteered at the local rugby club; was a member of the parish council; and has no previous convictions. Vivica had not worked since having the children. David was highly controlling, placing strict limits on Vivica and the children's movements; monitoring who they could see; and controlling the family finances. He was also violent and cruel to the family dog. David's demands had a detrimental effect upon Vivica and the children. The youngest had started to be disruptive in class and the eldest had started to cut herself.

Eventually, following a positive intervention from the school, Vivica was supported by Women's Aid to leave the home with the children. David continued to be controlling, stopping Vivica's maintenance or taking her car without warning because 'it was his'. Often, he would not bring the children back on time from his arranged contact. He has also instigated proceedings for an order that the children are to live only with him, on the basis of Vivica's deteriorating mental health. Once, after he failed to return them overnight, Vivica arranged to meet David. During the meeting David assaulted Vivica causing extensive bruising. She contacted the police and David was charged with and convicted of an offence contrary to s47 Offences Against the Person Act 1861 (assault occasioning actual bodily harm).

David denied being controlling in the relationship, attributing the relationship 'difficulties' to Vivica's struggling with having three young children. He denied the charge but was convicted after trial, whereupon it was agreed that the case was one of Medium Culpability but category 3 harm per the relevant Sentencing Guidelines for s47.

In her victim impact statement, Vivica detailed the continued impact of David's abuse, describing her mental health as 'very poor' and her isolation from the community. Both Vivica and the children were also very upset that her one source of support, the dog, could so easily be hurt. She needed to work but was having to take low-paid jobs with working hours that fitted around the children. She also documented the impact on her children. Child contact was a continued source of conflict, with her children not wanting to visit their father but him insisting on them doing so and Vivica herself intimidated into conceding to his wishes but fearing for her and her children's safety and living in constant worry that she would lose custody of them.

Vignette 2: Causing grievous bodily harm with intent – Crown Court sentencers only

Ravi and Harpreet had been in a relationship since Harpreet was 16 and Ravi was 28. Ravi had a reputation for being hot-headed and had previous convictions for two public order offences and one assault (none in a domestic context). He had completed the sentences for these offences by the time of these events.

Ravi had been violent to Harpreet from the beginning of their relationship. He made it difficult for her to see her family and, after his jealousy of her friendships led to arguments and violence, Harpreet stopped seeing all her friends. Violence could happen without warning and she became used to having to cover extensive and significant bruising on her body.

After their first child was born, Ravi would take pictures of Harpreet sleeping or in the shower, then post these pictures online, often with demeaning commentary about her appearance and/or her mothering. He also conducted relationships with other young women and would taunt Harpreet about the sex he was having with them, sometimes sending her videos of it. Ravi would prevent Harpreet being involved in the local playgroup or meeting other new mums.

One day, using a tracking device on Harpreet's phone, Ravi monitored her going into town and was waiting for her when she returned home. He grabbed a spanner and attacked her in front of their child. She suffered significant head injuries, resulting in a skull fracture, prolonged loss of consciousness and significant blood loss. He believed she had died and fled the scene. However, the neighbours had already called an ambulance and Harpreet was hospitalised. She recovered but suffers from headaches, memory loss and has been diagnosed with PTSD.

Ravi pleaded not guilty to an offence contrary to s18 Offences Against the Person Act 1861, claiming that he did not intend to cause serious injury, but was convicted at trial.

The probation report states that Ravi was remorseful about his behaviour during the relationship, as well as the offence itself, but does not suggest a non-custodial sentence.

Vignette 3: Harassment (without violence etc.) – magistrates' courts sentencers only

Bailey and Rowan had been on a few dates after meeting on Tinder. At an early stage, Rowan had realised that they did not want to pursue a long-term relationship and had communicated this to Bailey. Bailey did not accept this announcement and continued to regularly text, email and post messages on Rowan's social media accounts. These behaviours caused Rowan to become increasingly distressed and withdrawn and led to them being signed off work, due to their deteriorating mental health.

Bailey had a previous harassment warning and a non-molestation order relating to a former partner. Bailey pleaded guilty to an offence under s2 Harassment Act 1997 on the basis of the text messages and social media activity that had been provided. Rowan initially supported the prosecution but, as proceedings lengthened, withdrew their support. They indicated that they had no desire to be told about any sentence given or to offer victim impact statements.