

TRAVAW CONFERENCE

Inn of Court
19th January 2018

‘Analysis of case law on violence against women before the national courts’ – a prosecutor’s perspective



What is the national framework?

- EU, UK and NI Legislation
- Caselaw (limited)
- Code for Prosecutors
- NI Attorney General's Human Rights Guidance
- DoJ 'Stopping Domestic and Sexual Violence and Abuse in NI – A seven year strategy'
- DV, Rape and Human Trafficking Policies
- DV and Abuse – PPS Guidance for Prosecutors
- Service Level Agreements between PPS and PSNI
- Specialist prosecutors for all offence types
- Mandatory and ongoing training
- Stakeholder engagement and training
- Advisory role to policy and law makers
- Civil law; Health and Social Care provisions



What is violence against women?

Typically includes:

- Domestic abuse – physical, emotional
- Rape and sexual offences
- Child sexual exploitation including indecent images
- Extreme pornography
- Prostitution
- Human trafficking
- Forced marriage
- Honour based violence
- Female genital mutilation
- Harassment / 'stalking'
- Telecommunications offences / via social media



What is Domestic Violence and Abuse?

DOJ – Stopping Domestic and Sexual Abuse in Northern Ireland - A Seven Year Strategy (March 2016) defined domestic abuse and violence as:

“threatening, controlling, coercive behaviour, violence or abuse (psychological, virtual, physical, verbal, sexual, financial or emotional) inflicted on anyone (irrespective of age, ethnicity, religion, gender, gender identity, sexual orientation or any form of disability) by a current or former intimate partner or family member”

Definition used by PSNI and PPS when considering the DV motivation flag on NICHE and CMS.



The Prosecutor's Role

In every case, the Prosecutor should identify the most appropriate charge or charges to suit the circumstances of the case and must prosecute the case at its height and in the correct court jurisdiction.

Non exhaustive list of offences in a DV&A context. PPS public DV Policy – Annex A sets out examples of types of behaviour that can occur in cases of DV&A and which may amount to an offence.

Not our role to seek a conviction at all costs, present complete, balanced and fair evidence, complying with common law and CPIA duties of disclosure.

Not representative of the IP, though represent their interests.

Must also safeguard the rights of the accused, ensure a fair trial.



Test for Prosecution

Set out in the Code for Prosecutors:

- Evidential Test
 - Prosecutor must be satisfied that there is a reasonable prospect of conviction

AND

- Public Interest
 - That it is in the public interest to prosecute



Public Interest

Rare in DV&A cases for the public interest not to be met;

- Nature of offending
- Serious consequences it may have

Where complainant does not wish to proceed careful consideration should be given to public interest factors.

- interests and safety of the complainant, other family members including children/dependants

Prosecutors should always be made aware of any children living in the household;

- Impact on children in the household must always be considered;
 - May impact on the seriousness of the offence
 - May form part of the rationale to proceed with prosecution
- Prosecutors should ask police, where possible, to provide information on care/family proceedings to help inform prosecution decision



Public Interest Factors

- The seriousness of the offence
- Whether the offence is likely to be repeated
- Pre-meditation
- Threats made before or after the attack
- Any previous convictions or out of court disposals
- Whether the offending was or is likely to be continued, repeated or escalated
- The defendant's age or level of maturity
- Whether the defendant was suffering from any mental or physical ill health before, or at the time of the offence taking place
- Complainant's injuries - whether physical or psychological
- Weapon used
- Whether the offence was motivated by any form of discrimination
- If there were any children or other vulnerable dependants living in the household
- Whether the offence took place in the presence of, or near a child
- Whether the complainant is/was pregnant at the time of the offence
- Any continuing threat to the health and safety of the complainant
- The history of the relationship, whether the suspect was under the age of 18 at the time of the offence
- Whether a witness summons is suitable in all the circumstances of the case



Diversionary Disposals

- **Restorative Justice**

- Police cannot use in case of intimate relationships – current or previous partners
- In other DV&A cases the focus must be on complainant's safety
- Properly trained facilitator should oversee arrangements and ensure that there is no coercion of complainant

- **Cautions**

- Should be used rarely in DV&A cases
- 'Minor' offences only
- Where non-compliance of IP in making a complain this should not automatically benefit the Defendant where admissions are made



PSNI - Case Building

- Visible injuries
- Disposition of the victim/ alleged offender
- Physical conditions at the scene
- Identity of anyone present
- History of the relationship
- Ability/willingness of the IP to give evidence
- Composition of the family
- Effect of proceedings on any children
- Whereabouts of children during the incident;
- Current domestic arrangements
- Officer's view on the future relationship
- Likelihood of recurrence
- Views on safety of victim and any children;
- Information from other statutory or voluntary agencies
- Civil orders
- Vulnerable witness forms
- Details of any Risk Assessment
- Does the offender admit the offence or admit one offence and deny others
- Has the victim previously withdrawn a complaint and, if so why



PPS - Case Analysis

- Consider the evidence and information submitted
- Take decisions in accordance with the Code for Prosecutors and the PPS Policy for Prosecuting Cases of Domestic Violence and Victims and Witness Policy
- Prevent avoidable delay
- Provide pre-charge and/or prosecutorial advice when required.
- Consider bad character applications where appropriate
- Consider Special Measures/Registered Intermediaries
- Consider what other evidence may be available either to support the victim's evidence or as an alternative to the victim's evidence.
- Flag the case as DV&A on CMS
- Ensure that the safety of the IP/children/ any other person involved is a prime consideration
- Monitor all domestic violence cases in accordance with the PPS Policy on Prosecuting Cases of Domestic Violence.
- Ensure that Domestic Abuse Specialist Prosecutors are consulted when required.
- Identify appropriate counsel for the prosecution of domestic violence/abuse cases in the Crown Court as required.
- PPS Policy on the Giving of Reasons in Cases of No Prosecution



Counter Allegations

Police officers should record the following information

- Nature of the relationship
- Whether either party, or both, are involved in other proceedings, such as civil proceedings/orders, or family proceedings
- Comparative severity of any injuries inflicted by the parties
- Whether either party has made threats of future harm to others
- Any prior history of violence by either party
- Any previous counter allegations by either party and the outcome of same
- Whether either party acted defensively to protect themselves or others from injury
- The behaviour of the parties or note any other information which may be of value at the scene
- May be wearing body-worn cameras which might capture vital evidence



Counter Allegations

- Prosecutors may often be presented with conflicting accounts of the incident
- The complainant in the reported incident may have acted in retaliation
- Seek any additional information that may help clarify the position
- Some counter allegations may be made to further exploit the abuse perpetrated on the 'primary' complainant.
- Seek information as to history of the relationship to ensure that the full context of the incident is understood.



DV History

DASH Form completed by police and a risk assessment should be provided to prosecutors

Domestic

Abuse

Stalking

Harassment

DASH FORM

- Should also address any risks around children.
- Where prosecutors receive information direct from the defence or in consultation with IP must notify police and request an up to date risk assessment
- Good practice to ask the police whether any further relevant information has been shared with third party organisations – keep in mind on-going disclosure obligations
- Prosecutors should gauge from Police and VWCU communication and support systems needed to help the complainant with their safety
- Prosecutors should have appropriate information to inform applications for bail conditions or Restraining Orders
- Police may on occasion need to relay information discussed at the MARAC (Multi-Agency Risk Assessment Conferences)



Serial Perpetrators

- Where a suspect has committed an act of domestic abuse against two or more different victims they should be considered a “serial perpetrator”
- Enquires into the suspect’s previous criminal behaviour and the DV&A history should be obtained for the suspect and outlined by PSNI
- Prosecutors will always check CMS for details of Defendant’s previous offending:
 - This can be used to support bad character application
 - Where necessary, in order to support bad character applications, prosecutors should request a statement from IO regarding Defendant’s relevant convictions
 - Prosecutors should remember where bad character opposed and incident relates to a separate IP – they may have to be called to give evidence in relation to same
- Prosecutors may wish to request information such as:
 - Police callouts, including those where no further action was taken
 - Previous allegations and how they were concluded
 - Breaches of civil orders or previous bail conditions



Serial Perpetrators cont'd

- Information about previous relevant behaviour should be sought in order to :
 - Inform the risk to the safety of the most recent complainant and any children
 - Identify 'similar fact' evidence
 - Form separate charges relating to previous victims
 - Support an application to adduce the defendant's 'bad character' or 'reprehensible behaviour'
- Where 'repeat victims' or 'serial perpetrators' are involved there may be circumstances where cases which previously failed to meet the evidential test may now merit review
 - May lead to the conclusion that evidential stage is now met (on basis of new evidence) and that the earlier case can be joined with the more recent case(s) depending on nature and date of offending
 - Could mutually strengthen each case to the point where there is sufficient evidence to afford a reasonable prospect of conviction
 - A bad character application will be required for the purposes of cross-admissibility



Bad Character Evidence

Evidence of previous relevant behaviour may be adduced as bad character evidence under [The Criminal Justice \(Evidence\) \(Northern Ireland\) Order 2004](#)

Article 3:

“...evidence of a person's “bad character” are to evidence of, or of a disposition towards, misconduct on his part, other than evidence which (a) has to do with the alleged facts of the offence with which the defendant is charged, or (b) is evidence of misconduct in connection with the investigation or prosecution of that offence.”

- Important explanatory evidence without which the jury could not properly understand the other evidence in the case.
- It shows a propensity to eg violent, controlling and jealous behaviour.
- It goes to motive and assists in identifying the accused as the perpetrator.
- Shows that the accused was more likely to have committed the offence.
- Corrects any false impression given by the accused in interview.
- It displays the true nature of the relationship between the parties.



Bad Character Evidence cont'd

R v MMcC (NICA) 8/4/2016

- Defendant convicted 1 count rape & 8 indecent assault
- Complainant his daughter (aged 6 – 13 years)
- Sentenced to 16 years' imprisonment
- Bad character: incident aged 1 – 4 years of tickling IP in intimate area while she was naked
- Admitted by agreement of prosecution and defence
- No error in treating it as propensity
- NICA accepted the evidence was admissible as: *“relevant to the issue of whether the applicant had a propensity to commit the offences of the kind with which he was charged”*.



Bad Character Evidence cont'd

However

- Post R v Hanson & ors [2005] NICA held the Jury should have been 'clearly warned' not to place undue reliance on bad character evidence
- No warning given
- No requisition made
- Not mentioned by prosecution (or defence)
- Since 2004 Order courts recognise the 'danger' of jury placing undue weight on bad character evidence
- Important protection where only real issue is credibility of both parties
- Appeal allowed (also on a second ground)

“Important in any case that the trial judge is assisted by counsel in directing the jury properly but that is particularly important in historic sex cases where there is no independent evidence....”



Bad Character Evidence cont'd

R v D (NICA) Unreported – delivered 7/12/2016

- Defendant convicted 13 counts indecent assault & gross indecency
- Two complainants X & Y (occurred while aged 5 – 13 years)
- Sentenced to 8 years' imprisonment
- Evidence of D's violent, abusive behaviour on Z given by X, Y and Z
- Admitted by Trial Judge and jury appropriately warned:

“the jury will need to know and understand ... the alleged factual background to it so as to enable them to properly understand and assess the explanations put forward for any delay ... Y expressly makes the case that delay on her part in making allegations against the defendant was referable to fear on her part of what the defendant might do to her....”



Bad Character Evidence cont'd

R v D cont'd

“Invocation of Gateway 6(1)(c) requires cautious handling. It requires to be used sparingly. We are not satisfied that there was a sufficient foundation of fact to justify the introduction of the evidence of domestic violence against Z ...”

“Even if that had been the case, it would have been important to lay down firm limits as to the extent of the evidence that was to be admitted rather than, as happened, there commenced a free-ranging tour d’horizon of the whole domestic abuse narrative by Crown counsel....”



Bad Character Evidence cont'd

R v D cont'd

“Merely to tell [the jury] that it is explanatory or background evidence is not enough. The real danger is that this background of domestic violence took on a disproportionate role in the case and created a real risk that the jury would pay more prejudicial attention to it than should have been the case.”

“real risk that the jury has been unfairly prejudiced by the extent of the evidence of domestic abuse....”

- Time served
- No re-trial ordered, left to ‘PPS discretion’
- Victims did not wish re-trial
- Judgement not released



Bail

- Primary concern – IP and any dependants/children
- Locations of refuges and safe houses **should never** be revealed
- Liaise with police regarding IP's views/concerns regarding bail
- Changes to the bail conditions/custody status of a perpetrator must be communicated ASAP to complainants by the Victim Witness Care Unit
- Variation Applications – ensure Defence have given sufficient notice and details regarding the application
- Prosecution have a right to appeal bail – strict timelines for same



Bail Application - the IO should advise the Prosecutor of

- Fears the complainant may have regarding the perpetrator's behaviour
- Perpetrator's contact with the complainant's family members and repercussions this may have
- Information regarding children or any other dependants
- Areas / locations the complainant frequently visits or attends
- The impact on the complainant if the complainant and perpetrator are at school/college/university or work in the same organisation etc.
- Methods of contact between the complainant and perpetrator
- Whether any civil orders are in force and details of those orders
- Whether any civil or family proceedings are on-going
- The proximity of any of the perpetrator's relatives to the complainant and the likelihood the perpetrator may want to visit them
- Whether the perpetrator may already be on bail for another offence
- Defendant's history of complying with bail in the current proceedings and in other proceedings
- Breach of bail may contain new offences – prosecution should consider how these will proceed
- Cases where the complainant has purposefully contacted the defendant – Prosecutors will have to carefully consider the circumstances and how best to deal with the breach



Withdrawal Statements

- A withdrawal statement does not automatically end the prosecution
- Statement should be provided to explain the reasons that a retraction of the allegation/withdrawal of support has been made
- Prosecutors should consider particularly :
 - The nature of the original allegation (if not fully covered in a previous statement)
 - The complainant's reasons for withdrawing support or retracting the allegation
 - Details of those with whom the complainant has discussed the case – particularly anyone who has advised them and obtained their details
 - Whether any civil or family proceedings have been made, or are likely to be, commenced which may have impacted on the complainant's decision
- If there is any evidence of intimidation or harassment the Prosecutor should consider whether this may require a separate prosecution



Reasons IP may not wish to proceed

- Fear of further offending or harm
- Fear of coming face to face with the perpetrator in court
- Pressure from the perpetrator or their family/associates
- A wish to be reconciled with the perpetrator or family unit
- The complainant is no longer in a relationship with the perpetrator or does not want to re-live the incident
- A fear that children will be removed and placed in care
- A fear of the impact on dependants or finances
- Concerns that the CJS criminal justice agencies are not aware of the issues they face
- Perpetrator may agree to drop proceedings
- Feelings of isolation or vulnerability
- Fear of immigration status being made known
- Fear of sensitive personal information being revealed – such as fear of being ‘outed’
- Fears that any previous contact with the police will result in their complaint not being taken seriously
- Fear of not knowing what will happen if they do support a prosecution – lack of communication from CJS agencies
- Embarrassment and/or fear they may not be believed



Assessing Withdrawal Statements

- Where a complainant's account in their withdrawal statement is inconsistent with their original statement, police should be asked to investigate the changes and whether a further investigation into the circumstances is required
- Some complainant's may be advised to say that they 'lied' in their original statement; more likely to be the case where the complainant and perpetrator are in a continuing relationship or where there has been a reconciliation
- Always consider whether the complainant is vulnerable
- Be wary of 'criminalising' the complainant in such circumstances
- Carefully assess why IP may have made the decision to say they had lied or made a false allegation



DV Protocol

Upon receipt of a withdrawal statement prosecutors should follow the DV protocol and ensure the following points are addressed before making a decision on whether to proceed

- The officer's views on the case, including the veracity of the statement, any suspicions of witness intimidation or pressure and a general assessment of the reasons given by the complainant
- The officer's views on how the case should be dealt with, including proceeding against the complainant's wishes
- How the complainant might react to being compelled to give evidence
- Details of any identified risks to the safety of the complainant, or any other person
- Details of the support available to the complainant prior to the allegation being retracted or support withdrawn and whether this was a reason for the change in position or whether the possibility of a Special Measures application was explained
- Whether any support organisation assisting the complainant has expressed a view
- The likely impact on the complainant and any children/dependents of proceeding or not proceeding



Proceeding without the IP

- Always consider whether there is any risk to the safety of the IP if the case proceeds without their support. Consider the following :
 - Using evidence other than that of the complainant e.g.
 - Admissions
 - CCTV / Body worn footage
 - 999 recordings
 - Res gestae – statements made by the complainant or a witness to a third party or around the time that the offence was allegedly committed
 - Making an application under Article 18 of the Criminal Justice (Evidence) Northern Ireland Order 2004 to admit a complainant's statement as hearsay
 - Where the evidential test is met in the absence of IP, consider public interest in all the circumstances



Gerard McGuinness-v-The Public Prosecution Service for Northern Ireland [2017] NICA 30

“ On 9th November 2014 I reported to the police that I was grabbed by the throat, slapped on the face and smashed a glass on the head by my boyfriend Gerard McGuinness. I do not wish the police to pursue my complaint for the reason - I have resolved my issues.....he has apologised and assured me it will not happen again.....I now consider my complaint withdrawn”



The Facts

- Police had attended at 5.04am on 9/11/14
- IP verbal allegations recorded on body worn camera – served as evidence in case
- IP withdrew her evidence
- Witness summons issued for IP – failed to attend, decision not to compel
- BWF admitted as res gestae
- Defendant convicted by Magistrates Court on 8/4/16
- Appeal against conviction dismissed on 12/5/16 – footage again admitted as res gestae
- Important precedent



The Law – what is considered to be Res Gestae evidence?

- Issue for Court of Appeal set out in Paragraph 11
 - *“Whether the recording was a statement made by a person ‘so emotionally overpowered by an event that the possibility of concoction or distortion can be disregarded’”*
 - Apply the test set out in R-v-Andrews [1987] 1 AC 281
1. The event was so unusual or startling or dramatic as to dominate the thoughts of the victim so that there was no real opportunity for fabrication
 2. The statement may be made in circumstances of approximate if not exact contemporaneity
 3. The mind of the statement maker must be still dominated by the event for it to be sufficiently spontaneous
 4. Must consider any special features which may relate to the possibility of concoction or distortion
 5. The possibility of error goes to the weight to be attached to the evidence and not to the admissibility of the evidence



Court of Appeal Conclusions

- Satisfied no delay in IP making her complaint
- IP's complaint was spontaneous and instinctive
- Her intoxication did not prevent her outlining her complaint
- There was no other explanation provided for the injury seen by police
- Interests of justice met

“ was not an instance of [PPS] seeking to avoid inconsistent evidence or anticipating an untruthful account or providing protection from reprisal. Rather, this is an instance of providing support to the complainant in the changed circumstances brought about by the reconciliation of the parties while at the same time seeking to deal with the alleged previous conduct of the appellant. This is a balance which the prosecution has to make in deciding whether and in what manner to prosecute the appellant and does not involve any improper motive or device or unfair tactics.”



R v XL [2016]

- Both parties Chinese nationals resident in NI
- History of DV in China but not recognised as an offence
- 27/11/2015 - IP in a distressed state, significant facial injuries, alleged assault by husband, wished no police involvement
- Police and ambulance called, assault allegation repeated
- At hospital claimed raped after being falsely imprisoned
- Extensive internal injuries; 'substantial force' used, fractured eye socket and eye injury requiring surgery
- Graphic account in statement
- Def stated all activity was consensual; facial assault accidental
- Prosecution directed 14/3/2016 – rape, sexual assault by penetration and s18 assault



R v XL cont'd

- 19/4/2016 - withdrawal statement
- Meeting with IP to explore reasons for withdrawal
- 25/4/2016 – decision to compel IP, unable to locate
- 5/7/2016 – decision to proceed in absentia
- 5/7/2016 – PI with contested hearsay application
- 19/10/16 – NG plea all charges at arraignment
- 20/2/17 – trial date
- Complete disengagement of victim
- Strength of the res gestae evidence
- Competing evidential and public interest factors
- Offer to plead so s20 assault accepted
- No further contact from IP



Witness Summons

- Should only be considered when other avenues above have been exhausted.
- Consideration should be given to the specific facts of the case and the possible impact on the complainant's safety and wellbeing and that of dependants.
- Seek views of PSNI and support organisations, where appropriate, on how they perceive the complainant will react if summonsed against their wishes.
- Police provide up to date risk assessment and details of any concurrent civil and/or family proceedings



Witness Summons – Child or Young Person

Article 3 United Nations Convention of the Rights of the Child (1989)

“In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration”



Witness Summons – Child or Young Person

- Considered only in very limited and exceptional cases
- Decision to issue witness summons must be made in consultation with AD
- Factors to consider :
 - the nature and seriousness of the case;
 - the usefulness of the material evidence the child can provide;
 - the age and maturity of the child - do they have a sufficient mental understanding to give evidence;
 - whether giving evidence would be detrimental to the child's welfare or safety; and,
 - the repercussions should the child fail to comply with the summons request.
- Always remember special measures if child/young person being summonsed



Witness Summons – Factors to Consider

Low

- Minor offence
- Isolated incident
- Minor or no injury
- Confirmation relationship ended/separated
- Low likelihood future incidents
- Low risk future harm to complainant/children
- No longer reside in same household
- No further incidents reported to PSNI
- No history of volatile relationship
- No on going civil proceedings

High

- Serious Offence
- Serial Offender
- Serious Injury
- High Level Dependence/contact between IP and Defendant
- High Likelihood future incidents
- Premeditated
- High Risk future harm to complaint/children
- Witnessed/Overheard by children
- Committed against a child
- Pregnancy
- Reside in same household



Third Parties

- May be appropriate to witness summons third parties who may have information integral to the prosecution case.
 - May provide vital background information about the abuse that has taken place,
 - May even in some circumstances, lessen the risk towards the complainant by the perpetrator.
- Could be a risk of Defendant committing offences against third party such as witness intimidation
 - If any such risk is perceived ask PSNI to assess risk level



Warrants

- [Article 118E\(2\)\(b\)](#) of the Magistrates Court (NI) Order 1981
 - Permits a DJ to issue a warrant for any person able to give material evidence or produce a document at a hearing
 - Must prove that the summons has been served
 - No just excuse for failure to attend on receipt of summons
 - Warrant if executed places individual on their own recognizance to reappear when required by DJ
- intention of obtaining the warrant should be to assist attendance at court and not to penalise or criminalise complainants
- Always keep in mind safety of complainant and/or dependants
- Seen as an exceptional course of action - used only if necessary
- Permission must be sought from DV SPP Specialist before making application for a warrant



Reluctant Witnesses

- IP may indicate willingness to attend court but fail to do so; explore reasons.
- Consider whether the case can proceed without them
 - using either other evidence, or
 - through making an application Article 18 of the Criminal Justice (NI) Order 2004 to have the complainant's statement admitted, as an exception to the hearsay rule, if any of the conditions in article 18(2) are met.-
- May attend but not wish to give evidence – always check whether special measures would assist
- Complainant may say they cannot recall the circumstances of the incident. May wish to refresh the complainant's memory through verifying their statement under Article 41 of the 2004 Order
- If the complainant denies having made the statement then the officer who recorded the statement may be required to give evidence to prove the complainant did make that statement



Hostile Witnesses

- The complainant may give evidence that directly contradicts what they have said previously
- May want to consider applying to have other previous statements made by the complainant admitted as evidence under articles [23](#) and [24](#) .
- complainant remains resolute in not supporting the prosecution despite attending court, prosecutors should consider requesting leave from the court to treat the witness as 'hostile' under [section 3 of the Criminal Procedure Act 1865](#) .
- Such applications should be made at the first signs of hostility
 - demonstrated through the making of deliberately inconsistent statements.
- Before a witness can be treated as a hostile witness the judge must take account of the demeanour of the witness as well as the terms of any inconsistent statement
- The court has absolute discretion as to whether a witness may be treated as hostile. (Rice v Howard (1886) 16 QBD 681).



Hostile Witnesses

If leave is granted then the :

- Complainant should be handed their statement and
- Asked to confirm that they made and signed the statement
- (The officer who took the statement may have to be called to prove this aspect of the case if the complainant disputes it).
- The relevant parts of the statement are then read to the complainant and the complainant is asked to confirm these extracts have been accurately read out.
- These extracts then become part of the prosecution case under Article 23 of the 2004 Order.



Special Measures

- Giving evidence can be a traumatic experience for complainants of DV&A
- Stress can be greatly increased or intensified as a result of facing their attacker
- Where complainants and witnesses feel vulnerable or intimidated, special measures can allow them to give their 'best evidence'.
- Ensure police provide statement detailing reasons and nature of special measures sought
- Seek any supporting documentation if required e.g. medicals
- Consider special measures at earliest stage ie when taking decision, gives victim certainty
- Registered intermediary may also be required



Acceptability of Pleas to Lesser Offences

- If considering a plea to a lesser offence or alternative/fewer charges, check :
 - The plea sufficiently/proportionally reflects the criminality of the offending
 - Defendant's antecedents
 - Advantageous to the complainant/dependants not to give evidence
 - Complainant's views on the pleas offered
 - Whether the plea fetters the discretion of the court in relation to sentencing
 - Whether the difference between the prosecution and defence versions to the extent a Newton Hearing would be required
- Any basis of a plea should be recorded and signed by both defence and prosecution and retained on file



Victim Personal Statements

Victim Personal Statement provides an opportunity to explain in their own words how a crime has affected them.

R v Perkins, Bennett and Hall [2013] EWCA Crim 323 emphasised:

- it was for complainants to decide whether to make a statement;
- the complainant's opinion about type and level of sentence should not be included;
- a statement was evidence and should be treated as such and served in a timely manner instead of a 'haphazard' and slovenly way;
- responsibility for presenting admissible evidence remained with the prosecution and;
- the statement could be challenged in cross-examination and could give rise to disclosure obligations and even used after conviction to question a complainants credibility.



Deceased Victims

- Will be dealt with by the Serious Crime Unit.
- Of 37 murder files received 2015 – 2017, 11 victims are women.
- Prosecutors should pay particular attention to the unfair or distorted picture that can be given of the complainant, particularly with regard to their mental health or perceived 'bad' character.
- When an IP dies whether or not as a direct result of the crime the PPS Victim and Witness Policy should be referred to regarding prosecutors duties under the Victim's Charter.
- Challenges of admitting defendant bad character and DV history.



R v L [2018] – ongoing case

- Death of IP on 20/9/2017
- Defendant, IP's former boyfriend, alleged to have cut her throat following argument
- Witnessed by vulnerable son, '999' call outlining circumstances
- Previous violent criminal history, including propensity to use knives
- Def stated he was attacked with knife, injuries caused in scuffle
- Bad character admitted pre-committal; prosecution contended:
 - Obsession with knives
 - Previous violent conduct using knives
 - Previous domestic violence with the IP
 - Previous domestic violence with another IP



R v L cont'd

- Significantly defendant attacked IP's character; alleged she assaulted him with scissors previously and assaulted generally on multiple other occasions.
- **Also** application to admit bad character under Art 6(1)(g) 2004 Order (where attack made upon another's character) in addition to Art 6(1)(d) relevant to an important matter in issue between the parties
- Opposed by the defence.
- Application to be renewed in Crown Court.



R v L cont'd

- Res gestae to admit '999' call by son not admitted.
- Opposed by the defence per dicta in R v Andrews:

“I would strongly deprecate any attempt in criminal proceedings to use the doctrine as a device to avoid calling, when he is available, the maker of the statement. Thus to deprive the defence of the opportunity to cross examine him, would not be consistent with the fundamental duty of the prosecution to place all the relevant material facts before the court, so as to ensure that justice is done ”

- Citing AG Ref [No 1 of 2003] on the same point re unfairness.
- Relying on ECHR judgement in Al-Khawaja & Tahery v UK and Horncastle re sole and decisive evidence of the witness.



Sentencing

- All Prosecutors should have in mind at the time of charge or review, whether a restraining order is appropriate in the event of a conviction or an acquittal.
- Always ask police to seek the views of the complainant
- [Section 13](#) of the Domestic Violence, Crime and Victims Act 2004 (Restraining Orders) is commenced by the Domestic Violence, Crime and Victims Act 2004 (Commencement No.11) Order 2009.
- [Article 7\(1\)](#) of the 1997 Order to extend a court's power to enable it to make a restraining order in a much wider range of circumstances. On conviction for **any** offence, the court will be able to make a restraining order **for the purpose of protecting a person from conduct which amounts to harassment or will cause a fear of violence.**
- [Section 13\(5\)](#) of the Act inserts a new [Article 7A](#) into the 1997 Order provides that on *acquittal* for **any** offence, the court may make a restraining order **if it considers it necessary to protect a person from harassment by the Defendant** (Article 7A(1)).



Sentencing cont'd

R v Brownlee (NICA) 21/9/2015

- Two counts wounding with intent to cause GBH, common assault and false imprisonment
- Applicant sought leave to appeal extended custodial sentence - 6 years' imprisonment and 4 years' extension on contest
- Long term relationship with IP, cycle of separation / reconciliation
- PSR described a “painful, degrading and humiliating experience”
- Both parties vulnerable - alcohol abuse and social circumstances
- Trial judge found defendant ‘dangerous’ within Criminal Justice (NI) Order 1978, following R v Lang [2005] and R v EB [2010].
- Trial judge did not note pre-existing domestic relationship as an aggravating factor



Sentencing cont'd

R v Brownlee (NICA) 21/9/2015

“The use of violence in such a setting is always a significant aggravating factor. It represents a serious breach of the trust and confidence which the other party to the relationship invests in the assailant. It also exploits the vulnerability of that person. Where violence is used in such a context, invariably the starting point for the sentence should be appropriately increased. We note that it is expressly recognised in the Magistrates’ Courts guidelines for assault and a similar consequence should follow in the Crown Court.”

- Sentence upheld



Directing on Files

- Ensure a reason is noted for no prosecution decision
- Mark DV motivation on appropriate charges on CMS
- Ensure if additional charges are required these are added before pleas are accepted
- Ensure DV protocol is complied with upon receipt of withdrawal statement
- If deciding not to issue a witness summons for high risk MARAC case record reasons for same
- In cases involving abusive texts/phone calls ensure DIR/PDIR is sent to clarify if IP has kept them, whether IO viewed them and recorded them in notebook, whether screenshots were taken of them etc.
- Ensure 999 tapes are requested and application completed
- Ensure BWF is requested and application completed
- Lawyer reviewing charge should remain directing officer where possible
- Where admissions in interview will, in most cases, be in public interest to proceed
- Ensure SOC and PIF checked re instructions for restraining order
- View photos of injuries prior to directing
- Ensure DV history/related cases have been considered
- If unsure about whether nature of relationship is domestic check with DV specialist



At Court

- Lay any additional charges before court as soon as possible
- Outline domestic nature of offence to court
- IO should provide full brief in advance of any bail application or variation
- In some cases may be appropriate to confirm whether permission will be granted to appeal
- Ensure results are recorded on CPR
 - Including if restraining order is granted
 - Reasons adjournment refused
 - Reasons charges dismissed
- Ensure variation form completed
- Most cases will be suitable to seek an adjournment of contest to clarify
 - Reasons for non attendance
 - If medical issues raised on day adjourn to complete risk assessment
 - Whether witness summons required where not previously indicated
- Restraining orders can be sought on acquittal
- Ensure SOC and PIF checked re instructions for restraining order
- Ensure to request IP notified of terms of restraining order by VWCU
- Where possible ensure IO is in attendance at any consultation
- Ensure special measures applications are dealt with in advance of the contest date
- If witness summons has issued be clear as to whether permission has been granted to seek an arrest warrant in advance
- Check views of IP before accepting pleas to fewer or less charges and note views of IP/IO re-same
- Upon receipt of an overnight charge ensure FF request includes specifics that are outstanding e.g.
 - Copies of orders
 - Interview summaries
 - ABE tapes
- If a Defendant is on V/L or released unexpectedly please ask liaison officer to inform IO or IP ASAP



Issues relevant to particular groups

Teenager (peer relationship)

- May manifest in a different ways e.g. abuse through social media may be more prevalent in relationships between young people
- The parents of those involved may not know about the 'relationship'
- Unlikely to be financially independent
- May have a fear of 'getting into trouble'
- May see their abuser at school or college/university
- May fear repercussions
- If the perpetrator and victim are under 16 years old and a sexual relationship was taking place, need to examine whether the sexual relations are/were, 'consensual';
- Perpetrator is over 16 years of age, was there any coercive control or manipulation present in any sexual activity that has been taking place?



Issues relevant to particular groups

Teenagers and young people (Care Homes)

- Domestic abuse in within the Care Home setting can be seen through various forms, including:
 - 'perceived' relationships - victim's relationship with other young people in the home, or those outside the home, may be a relationship of exploitation or coercion;
 - victims may be coerced into sexual activity in return for status or protection,
 - some victims may be given alcohol or drugs, or may be abused under the influence of drugs or alcohol;
 - victims may be given 'trophy' statuses or 'passed around' where they may then be abused by multiple defendants.
- Victimisation can take place through mobile communication and also through social media networks



Issues relevant to particular groups

Child to parent violence and familial abuse

Victims may not report abuse as a result of a number of barriers:

- Shame or embarrassment that they are being subjected to abuse by a younger family member;
- Disagreement between family members as to how the abuse should be handled;
- Lack of awareness that the behaviour actually constitutes abuse;
- Little understanding of the issues which may contribute to the abuse perpetrated
- May feel that there are no support services available to them in these scenarios;
- Parents/other victims may not want the defendant to end up with a criminal record
- Victims may be unaware of the support and services available for the young person.



Issues relevant to particular groups

Sexual Orientation Gender Identity

- Pre-existing isolation from the complainant's family as a result of the individual's sexual orientation or gender identity
- Fear their preferences or relationship choices may be 'outed' by an intimate partner
- Fear removal of children by Social Services
- There may be coercive or controlling behaviours used by those family members to deny or hide an individual's sexual or gender identity
- May even be physically abused or forced into marriage by family in the belief that this may 'rectify' their sexual orientation or gender identity
- [Section 46 of the Youth Justice and Criminal Evidence Act 1999](#) to alleviate worries about the publicity of any court proceedings; this may be particularly helpful where the complainant is fearful of repercussions of their sexual orientation or gender identity being revealed to the wider community, especially where such a disclosure may place them at risk or harm.
- fear homophobic or trans phobic reactions from the statutory services when reporting incidents



Issues relevant to particular groups

- Grown up in a generation where domestic abuse was 'tolerated'
- Fear that they will be left without a carer or companion
- Feel unable to cope leaving their family home after many years
- Less knowledge of support services available to them
- No financial independence
- Fear negative reactions they may receive from their family
- Concerns over additional health needs
- Fear the unknown
- Abuse may begin as a result of 'care-giver' stress or anxiety
- The victim's mental health may also lead to them being more vulnerable and at increased risk of abuse
- Inter-familial or age-related abuse, and not just abuse between intimate partners.
- May take the form of neglect of care or medication

Older Complainants



Issues relevant to particular groups

Disability Issues – mental and physical

- Negative attitudes towards either their mental or physical impairment and may often feel isolated
- May be specifically targeted as a result of their mental health condition or physical impairment
- Inability to understand that what has occurred is an offence
- Inability to effectively communicate
- May experience other types of abuse as a result of their specific disability
- May be unwilling to report abuse due to limited access to services
- Possible low self-esteem
- Enforced dependence on others to carry out those tasks
- Early identification of specific support needs is critical



Issues relevant to particular groups

Minority Ethnic Communities

- Perceptions of racism in the CJS
- Fear they may not be believed or treated fairly
- Pressure from family and the wider community
- May take different forms:
 - Honour based/ forced marriage
 - Dowry-related violence
 - Enforcement of cultural/traditional roles eg: FGM
 - Attacks to minimise the female's physical appearance
 - Preventing the victim from finishing education
 - Disowning of the victim by the family or community for 'shameful behaviour'
- May be perpetrated by multiple offenders



Issues relevant to particular groups

Minority Ethnic Communities

- Can be triggered by a number of issues including:
 - Loss of virginity
 - Being in a 'secret' or 'unsuitable' relationship
 - Disclosure of rape or sexual abuse
 - Pregnancy (particularly where pregnancy occurs outside marriage, or from a 'secret' or 'unsuitable' relationship) and/or forced abortion or termination of pregnancy or;
 - Lifestyle (alcohol or sexual activity) being revealed.
- May be unable to speak /understand English to a confident level
- Victims may be made to feel ashamed by their community / may fear isolation by the community
- Ensure that family members do not act as interpreters



Potential Future Developments

- Domestic Abuse Bill proposes to introduce to NI a charge of Controlling and Coercive Behaviour
 - An offender will follow a course of conduct which is used to control, dominate or exploit a complainant.
 - Will be used in range of offences; can include financial abuse
- DOJ propose a domestic abuse aggravator to enhance sentencing of offenders of domestic violence
- Domestic Homicide Reviews
- Direct committal



THANK YOU

