

**Love, fear and control —
does the criminal justice system
reduce domestic abuse?**

By Penelope Gibbs
August 2018

About Transform Justice

Transform Justice is a national charity campaigning for a fairer, more humane, more open and effective justice system. Penelope Gibbs set up the charity in 2012 to help create a better justice system in the UK. Transform Justice promotes change through generating research and evidence to show how the system could be improved, and by persuading practitioners and politicians to make those changes.

The research and production of this report has been kindly supported by the Hadley Trust.

About Penelope Gibbs

Penelope Gibbs worked as a radio producer at the BBC before being inspired to move into the voluntary sector. She set up the Voluntary Action Media Unit at TimeBank before she joined the Prison Reform Trust to run the Out of Trouble campaign to reduce child and youth imprisonment in the UK. Under her watch, the number of children in prison in the UK fell by a third. Penelope has also sat as a magistrate. She has been director of Transform Justice since its foundation.

Contact

For further information contact:

Penelope Gibbs
Director

Transform Justice
43 Lawford Road
London NW5 2LG

penelope@transformjustice.org.uk
www.transformjustice.org.uk
Registered charity number 1150989
Company number 08031781

Contents

01	Foreword
03	Executive summary
05	Introduction
07	The criminal justice process for domestic abuse cases – is the law broken?
13	Out of court responses to domestic abuse – overused or underestimated?
18	Domestic violence protection orders – just a sticking plaster?
21	Programmes for perpetrators – once an abuser, always an abuser?
26	Conclusion
27	Recommendations
28	End notes

Foreword

There can be no doubting the seriousness of domestic abuse as a challenge both for the criminal justice system and for society more generally. However, as this report sets out, despite many years of research, mountains of legislation and political rhetoric, our progress in reducing the harm has been, at best, mixed. One significant reason for this is that many of the strategies and tactics being deployed have not been rigorously tested. Where there has been testing – such as the multiple US-based experiments testing the effectiveness of arrest-based intervention by the police – the evidence has been either wilfully misread or only partially adopted.

The worst example of wilful misreading of the evidence is the continuing deployment of the “myth of 35”. The claim that women reporting domestic abuse for the first time will have been the victim of at least 35 prior instances remains common currency – cited as “facts” by, for example¹, the Guardian, Victim Support, Women’s Aid and the National Assembly for Wales. Yet, the figure is false. To use a very contemporary analogy, it is “fake news”. As research² has clearly shown, the “fact” has no basis in research and should not be used. The consequences of its use are serious. No case of domestic abuse can be treated as a “first-time” incident and, therefore, many of the low-harm interventions such as out of court disposals, family group conferencing and restorative justice have been firmly removed from the list of approved procedures. Instead, there has been a heavy reliance on the formal processes of prosecution and court-based orders and interventions.

Yet, more recent research in the UK and Australia³ has highlighted the need for a much more targeted approach. This work, led by practitioners, has suggested that we should be focusing far more effort on the very small group of highly harmful offenders who are responsible for a disproportionate amount of the harm in domestic abuse. The research also shows that

most domestic abuse does not escalate in harm and that there are some promising treatments, such as a short programme based around motivational interviewing, which can successfully reduce harm without the need to prosecute offenders.

It is time to use this new research to evolve our current strategies into an approach that targets the most harmful, makes better and more accurate use of the best evidence and is supported by an increasing commitment to test and evaluate before adoption. This is not an argument in favour of reducing the commitment to tackling domestic abuse. Rather it is a plea for an evidence-based approach.

The pressure from ministers and inspectorates for action by the police and criminal justice agencies has seen some police forces become so risk-averse that they rate every domestic abuse case as “high risk”. Instead of such counter-productive approaches, we need to see an approach in which each element of our domestic abuse strategy, from initial police risk assessment to post court sentence supervision, is held up to the light of evidence. With that in mind, rather than throwing the kitchen sink at every case, an evidence-based approach might start with a more reliable, tested risk triage and then target responses dependent on whether the case was generic (once-only – the majority of cases), chronic (repetitive low harm), severe (repeat and high harm) or acute (a single or first time, very high harm, grievous bodily harm and up). Matching the most appropriate intervention to each case would offer a better chance of reducing harm and protecting victims and their families and reintegrating offenders wherever that is possible and appropriate.

*Dr Peter Neyroud
Lecturer in Evidence-based Policing
University of Cambridge*

Figure 1

Trends in domestic abuse over time

Source: Crime Survey for England and Wales 2017, Estimated number of victims of domestic abuse by year, 2005 – 2017.⁴



Executive summary

In my view the criminal justice system is a very blunt tool to address domestic abuse. Disposals which assist perpetrators in addressing issues which lead to domestic abuse are more likely to meet needs of all parties, including complainants, than the stress and uncertainty of the criminal process. (defence lawyer)

I think that the whole system should work better. I don't like the idea of just a slap on the wrist and victims feeling unprotected and perpetrators feeling like they have impunity and that there are no consequences, etc. On the other hand, I'm sort of against the whole criminal justice system – I think it does a really, really bad job. (magistrate)

Where officers are not arresting and attempting to charge perpetrators, domestic abuse victims are not being properly protected, and criminals are not being brought to justice. (police inspectorate)⁵

Domestic abuse⁶ is an immensely contentious area. Campaigners, police and victims agree they want to stop it, but not how this can be achieved. Some are fatalistic about the chances of changing the behaviour of those who abuse, and want all efforts focussed on furthering gender equality, supporting victims and imprisoning perpetrators. Others believe we can only reduce abuse through reforming perpetrators.

The recent government consultation on combatting domestic abuse focussed on an expansion of restrictive civil orders and on prosecution, conviction and harsher sentences. But the College of Policing says there is no evidence that criminal sanctions stop abusers abusing. What's more, harsher sentences are associated with higher rates of reoffending. So criminal sanctions punish, but don't help victims in the long term.

This argument against increased sanctions is common amongst many justice reform campaigners. What complicates matters in domestic abuse cases is the

complex emotional backdrop. Victims often love the perpetrators, who may be their husband or their child, and don't want to destroy their relationship with them by involving outside agencies. This creates tension between respecting victims' wishes and using criminal law. While everyone wants abuse to stop, views differ about how to do it.

But if criminal sanctions don't work well and restrictive civil orders are of limited value, what does reduce domestic abuse and the harm it wreaks? Everyone agrees that victims need more support to stay safely in their own homes or to be rehoused (if they want to), to report abuse and to leave abusive relationships. But opinions are divided as to what else is worth doing. Some are fatalistic and feel that it is not worth spending money on perpetrator programmes – that the evidence shows they don't work because abusers are entrenched and manipulative. But others say that behaviour change is possible, with the right programmes and the right incentives. In fact there is good evidence from England and elsewhere that some perpetrator programmes do have significant success in stopping abusers continuing to abuse, and in improving relationships. And it's clear that many victims' greatest desire is for the abuse to stop and their perpetrators to get help. In one study over half the victims interviewed wanted their perpetrators to be arrested, but most did not want their partner to be prosecuted. Instead, they wanted to "teach him a lesson" and to send an important symbolic message.

This report highlights problems with the current criminal justice response to domestic abuse cases, and outlines the interventions available, the evidence (or lack of) on their impact, and the next steps required to reduce abuse. High attrition rate in domestic abuse cases continues to be a concern. Scepticism around the use of out of court responses such as community resolutions, cautions and restorative justice means their role is potentially underestimated. The government's proposals

to expand use of the domestic violence protection order is unlikely to make a positive impact. Instead, we need to work out whether all commonly used perpetrator programmes work and expand those that do.

Some abusers need to be imprisoned to protect current and future victims. But we cannot lock up every abuser and throw away the key. We need to stop throwing money at “solutions”, like short prison sentences, court fines and ASBO-like orders, which don’t reduce abuse, and focus instead on supporting victims and on behaviour change. Behaviour change takes time, skilled facilitators and the best of evidence of what approaches work. If we focus on getting that right, we’ll save a generation of victims – partners, family members and children – from abuse.

Sources

Transform Justice reviewed relevant academic articles and government reports. We also conducted a survey, promoted online, to which 68 people responded, including 23 defence lawyers, 11 prosecutors and 20 magistrates. The survey was conducted between 29 May and 15 June 2018. We conducted telephone interviews with 8 stakeholders, and Penelope Gibbs, Director of Transform Justice, attended two events organised by the MoJ/Home Office team working on the government’s domestic abuse consultation. All the quotations used in this report are from our survey or from telephone interviews unless otherwise stated.

Leanne Robinson did much of the research for this report and Fionnuala Ratcliffe helped revise and edit it. Thanks also to Rob Allen, William Hughes, Natalia Schiffin, Edward Gretton, Chris Stanley and Philippa Budgen for commenting on the draft. The report incorporated many of their comments, but it represents the independent views of Transform Justice.

The survey and all research and interviews focussed on cases which (if they got to court) would be heard entirely in the magistrates’ court i.e. not the most serious cases. Cases which might attract a sentence of over six months for a single offence are heard in the Crown Court. But of cases involving domestic abuse only 12%⁷ are heard in the Crown Court.

Introduction

Background

Is domestic abuse increasing or decreasing? Charging practice in relation to domestic abuse has changed so much that police data is an unreliable indicator of how much domestic abuse there is. The Crime Survey for England and Wales⁸ (CSEW), which asks people if they have been victim of particular crimes, suggests that domestic abuse affects a large but decreasing number of people. An estimated 7.5% of women (1.2 million) and 4.3% of men (713,000) experienced domestic abuse in 2016/17. The number of victims of domestic abuse estimated by the CSEW has fallen from around 2.7 million year ending March 2005 to 1.9 million victims in the year ending March 2017. Since 2013 the number of women experiencing abuse has fallen much more steeply than that of men (see figure 1).

Most domestic abuse is never reported to the police (four in five victims of partner abuse did not report the abuse to the police in 2015⁹), though it may be known to social services, housing and health professionals. Victims used to struggle to get the police to deal with domestic abuse allegations and the inspectorate is still critical of officers for dismissing complaints too often¹⁰. But the climate has changed and when abuse is reported to the police, whether by the victim or someone else, they are unlikely these days to ignore it. Once the police are called out, there is a plethora of possible responses from simply listening, to recording and doing nothing else (no further action or NFA), to out of court disposals and community resolutions, to civil orders and/or prosecution (see figure 2). Police discretion is fettered by guidance and by the policy of government and the inspectorate, which favours prosecution.

Who are domestic abuse victims and perpetrators?

Domestic abuse covers both intimate partner abuse (man on woman, woman on man and same sex) and abuse within families (parents against adult children, children against parents, sibling against sibling). It covers both a one-off incident of violence such as throwing furniture across the room and long-term coercive control involving no physical violence. The government uses the term domestic abuse rather than domestic violence to encompass abuse which is not physical.

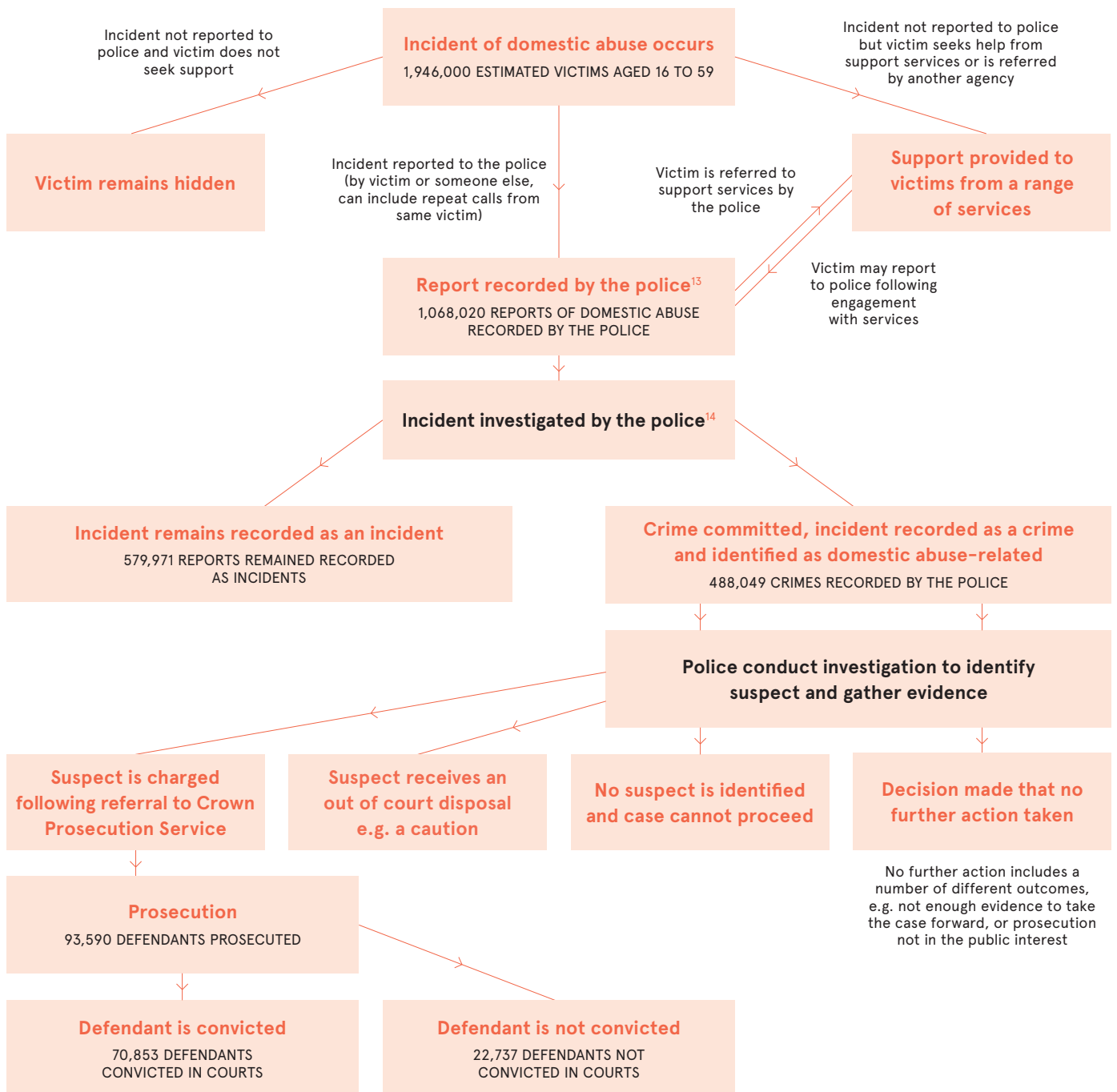
Younger women (16–24) are significantly more likely to be victims of domestic abuse¹¹ than women over 45, as are women with a long-term illness or disability. Women who live in poorer households are also more liable to become victims – those living in households with an income of less than £10,000 were more than four times as likely (14.3%) to have experienced partner abuse in the last 12 months than women living in households with an income of £50,000 or more (3.3%).

We have no detailed data on who perpetrators are, though there are strong indications that many have problems with their use of drink and drugs. A study looking at those suffering severe and multiple disadvantage suggested that of those who were homeless, involved in offending and had substance misuse problems, 48% were perpetrators of domestic violence.¹²

Figure 2

How do cases of domestic abuse flow through the criminal justice system?

Source: Adapted from the Office for National Statistics Domestic Abuse in England and Wales report 2017



The criminal justice process for domestic abuse cases – is the law broken?

There should of course be a duty on the police to take domestic violence allegations seriously and protect those making the complaints as far as possible, but the prevalent "always believe the victim" culture is unhelpful in cases which will inevitably collapse before trial if there is no willing complainant. Complainants have all sorts of reasons for not supporting a formal prosecution which are routinely ignored by police because the domestic violence policy is too restrictive. (defence lawyer)

There isn't a single court room that appears to have all the special measures available with a bench or judge who understand how they should be set up, and then what? The two walk in or out of the same front door. The introduction of a witness should be as slick as changing a tyre in a formula one team, not a dodgy screen which reveals the victim's feet or shadow for example and often depends on the defendant standing on one side of the dock. (defence lawyer)

Attrition of domestic abuse cases

Most involved in the criminal justice process (including violence against women and girls – VAWG – campaigners) feel that it is not working well in the case of domestic abuse. Many arrests result in no further action, and many trials collapse. But the reasons why it is not working well are contested, and there is little recent research on "attrition" of cases – the gradual process by which cases are dropped by the police or the prosecution between charge and court date.

Our research suggests the key reasons for attrition are:

- The victim's reluctance to give evidence at all stages of the process. A neighbour may call the police about an incident, which the victim then refuses to verify. The victim may give evidence, but then retract it. They may refuse to come to court to give evidence, or just not turn up. This reluctance to give evidence

may derive from fear of the repercussions, from a lack of faith in the criminal justice process and/or from a desire to deal with the abuse their own way – to keep control of what happens both to them and the perpetrator. (70 responses to our survey said the most significant issues influencing successful convictions were the alleged victim withdrawing their complaint and/or not turning up at court). Some campaigners and lawyers suggest that those accused of abuse sometimes deliberately opt to go to trial because they predict their alleged victim will not turn up to give evidence and their case will thus be dismissed.

- The need for cases which come to trial to have good enough evidence to meet the criminal standard of proof – beyond reasonable doubt. Given that in domestic abuse cases the evidence is sometimes only one person's word against another (and the victim may be reluctant), they often fail the "suitable for prosecution" test.
- The alleged victim is not sufficiently supported before and in court. Giving evidence against a family member or a partner is a stressful, sometimes traumatic, experience. Victims and VAWG workers complain that victims are not given sufficient support in court, either in preparing for the hearing, or in the hearing itself. They want all victims to be supported by advocates and for special measures, such as screens, to be more available.

The government is concerned by the small proportion of domestic violence referrals to the police which culminate in convictions. They want to increase use of the civil domestic violence protection order (DVPO), thus circumventing the criminal justice process, and to:

- Improve the collection of evidence through the use of specialist, trained police officers and through equipping police with body-worn cameras.

- Speed up court proceedings to increase the likelihood that the victim will give evidence. Some courts are piloting a process whereby “straightforward” cases are fast-tracked. These cases are heard two weeks and a day after the resident judge has reviewed the case and should be completed within two hours.
- Proceed with more trials where the victim does not give evidence. This of course relies on the availability of video evidence (from body-worn cameras) and of testimony from other witnesses.

The tension in these proposed reforms is between the need to ensure that perpetrators do not “get away” with their crimes and continue to abuse, and the need to ensure that the fundamental principles of a fair justice system are upheld. Those accused of crime are considered innocent until proven guilty (or until they admit guilt) and recent actual and near miscarriages of justice show that alleged victims’ evidence should always be subject to some scrutiny.

There is no consensus as to what measures will most improve the criminal justice process. We asked respondents what one change would most improve the process and got almost as many responses as respondents, with some diametrically opposed (see figure 3). The most responses were for more support for alleged victims, including the provision of IDVAs (independent domestic violence advocates) and the greater use of special measures such as the ability to give evidence on video. Others advocated greater use of witness summons – to force alleged victims to come to court, and earlier abandonment of cases which would be likely to collapse. The variety and conflict between responses shows how difficult it is to resolve this issue, particularly when it’s not clear justice can be achieved through the criminal process.

Figure 3

What one change could be made to the criminal justice process to ensure that the right DA cases get to court and do not collapse?

Source: Quotes from Transform Justice survey



Do criminal sentences for abusers work?

My concern over locking [perpetrators] up is that they lose that structure and livelihood that they do have...If you have children in the relationship, and they lose their job, then the family income is losing out. I think the government needs to think more about appropriate sentences for domestic abuse. It absolutely might terrify them...but prison might actually put [perpetrators] on the path toward more criminal activity. (police officer)

So much of the criminal justice system is geared just towards moving the person along -making a restraining order so they can't go near that person again. As if that's going to solve a societal problem? (magistrate)

Thousands (70,853 according to the Crown Prosecution Service¹⁵ y/e March 2017) of people are convicted of domestic abuse each year, but the courts do not collect data so we don't know what sentences abusers receive. Domestic abuse is not itself labelled as an offence, though it is an "aggravating factor" in a range of offences including criminal damage, public order and sexual offences. We know from research done by the Sentencing Council that "on average, sentences for those offences committed in a domestic context were more severe, with higher proportions of offenders given custodial or community sentences and lower proportions given fines, discharges or other sentences".¹⁶

According to the Sentencing Council the most common sentence for domestic abuse related offences was the community order, followed by fine, custodial sentence, discharge and suspended sentence order. Some community and custodial sentences will involve a behaviour change programme, but most domestic abuse perpetrators will receive a sentence which is unlikely to reduce their reoffending – many community sentences consist solely of unpaid work in the community. For the last year for which figures are

available (y/e March 2017) only 3% of all those convicted of domestic abuse completed a programme designed to address this offence.¹⁷

Evidence for the effectiveness of the criminal justice process in reducing abuse is thin. The What Works Centre at the College of Policing published an analysis of the effect of criminal sanctions on domestic abuse reoffending.¹⁸ From international studies they concluded that "criminal justice sanctions for intimate partner violence have no consistent effect on subsequent offending". In 15 studies, prosecution was associated with reduced offending. In 17, it had no effect and in four it led to increased offending. Some studies assessed the impact of different types of sanction. More severe sentences were associated with increased offending, "specifically, prison sentences were associated with higher rates of recidivism 36% of the time and had no effect in the remainder". So, either those imprisoned are more likely to reoffend or the sanction itself exacerbates the abusive behaviour. The report states: "It was not possible to separate the effect of these sanctions on recidivism by the type of offender. As the more serious offenders were given custodial sentences (and more severe sentences), it may be their disposition which caused them to reoffend rather than the effect of the sanction".

Our survey respondents (including police officers and magistrates) were not convinced that most court sanctions had any influence on reoffending. They were least convinced by the efficacy of the fine (which 59 out of 66 thought not very/not at all effective) and the conditional discharge (41 of 67 respondents said not very/not at all effective). Community sentences designed to reduce domestic abuse were felt to be most effective. The most common response for short custodial sentences was "somewhat effective".

The Sentencing Council has only recently published new guidelines¹⁹ which predict: "Overall, it is likely that

there will be an increase in severity as courts apply the new guideline which ensures that sentencers treat cases committed in a domestic context as more serious". These guidelines highlight the need to consider the impact of domestic abuse on children. Despite this, the government are proposing to increase criminal sanctions for domestic abuse, where children are involved, through introducing a statutory aggravating factor in sentencing. Courts would then increase sentences "within the statutory maximum penalty available for the offence". The impact assessment²⁰ suggests this change would "give a clear acknowledgement of the negative impact domestic abuse can have" and would increase the number of domestic abuse perpetrators in prison by 80-130 at any one time.

The purposes of sentencing go beyond rehabilitation, but it seems misplaced to introduce legislation to increase the punitiveness of sentences if there is no evidence the measure will reduce abuse. International evidence indicates that criminal sanctions have no measurable effect on the offending of domestic abuse perpetrators, and that the most severe sanctions may inspire more, rather than less, offending.

What do victims want?

Not many [victims] want to make statements, but because we're so determined to try and get something, we somehow coerce them to write a statement. So in a statement they say 'I don't want to make a statement', which is a statement. I don't know how we keep doing this. (police officer)

In my case the perpetrator ignored the first order, he just harassed me via my friends and used them to find out information about me; the order didn't stop him from having contact with my friends. This meant that he found out where I was located and attacked me again a lot more violently next time. (victim)

As with so many issues in the domestic abuse field, there is fierce debate as to what victims want to happen to their abusers, and as to how much attention the authorities should pay to victims' stated wishes. As with any crime, it is the state which prosecutes, in the public interest. Police are under huge pressure to prosecute in domestic abuse cases, regardless of whether the victim co-operates. Many campaigners think this is the right strategy given that many victims are prevented by fear from co-operating with the police. But other advocates suggest victims want to avoid prosecution for valid reasons and should be listened to.

Hoyle and Sanders interviewed victims of domestic violence in the Thames Valley area in the late 1990s²¹: "Over half of the women in our study (31) said they had wanted the offender to be arrested leaving a large minority (22) not wanting the police to do what is traditionally considered their role, that is to invoke the criminal law. Of those who did want the perpetrator to be arrested, the majority did not want him to be prosecuted. They wanted an arrest without any further criminal justice intervention to 'teach him a lesson' or to resolve the immediate situation temporarily".

More recent research has supported these findings. The evaluation of Project CARA (see page 15 for full description) found that the single biggest predictor of future reporting of domestic abuse incidents was victim satisfaction with the police response. Victim satisfaction was found to be more about how they are treated than the outcome. Victims wanted to be treated politely and respectfully, with the police doing all expected of them, regardless of whether the victim wanted the perpetrator to be arrested or not. When asked in the study what exactly the victim wanted from the police at the time of the incident, the most popular response (57%) was to "get help for the offender", with only 28% of victims wanting an arrest to be made.²²

Victim Support specialist staff feel that the key reasons why victims do not report abuse to the police are fear of the perpetrator's reaction and fear of not being believed. In addition, 14% of the staff surveyed believed that victims "may not want to see their partner punished or want to protect their partner from prosecution or the involvement of statutory agencies...This suggests that some survivors value their relationship, or the relationship that their partner has with their children, and do not want to risk it being broken up by the involvement of the police or social services".²³

"I'm the kind of person who doesn't like the police involved in my life, I don't like the court. I tried to live my life so I don't put myself in problems or certain situations where I have to encounter the police or go to court. I'm Jamaican and I've got a phobia of going to the police station and going to court houses because that carries a stigma like you are a bad person. For us we try not to go there".²⁴
(domestic abuse survivor)

Victim Support recommends that "the CPS should work to improve communications and publicity around successful prosecutions of domestic abuse, including locally, to send a message that it is taken seriously". Domestic abusers can be and are convicted, but criminal convictions have little success in stopping abuse – which is what most victims want.

Specialist domestic violence courts – how special are they?

Some areas in England and Wales offer specialist domestic violence courts. These were modelled on US problem-solving courts. In the States, domestic violence courts feature specially trained judges (who usually preside over their court every week), programmes specifically designed to address abusive behaviour, support for victims and regular review of perpetrators' progress. It is not clear how many specialist courts are now running in England and Wales – in 2013 there were 138²⁵ but there are no up to date figures.

The US model appears to have been watered down considerably. Specialist Domestic Violence Courts in England and Wales often do not have dedicated judges (any magistrate on the bench can preside), the training judges receive is not extensive, domestic abuse trials are held in non-specialist courts, there is no provision for review of perpetrators' progress and the sentences meted out are often not specific to domestic abuse. A recent report commissioned by the Police and Crime Commissioner of Northumbria also found that in this county, the domestic violence courts do not have access to a specialist domestic violence advocate to represent the interests and concerns of the victim.²⁶ Given the high "drop-out" rate of domestic abuse cases, it would make sense to reform and revive specialist domestic abuse courts for those cases where prosecution is clearly in the public and victim's interest.

Out of court responses to domestic abuse – overused or underestimated?

There are a lot of people who get very nervous around domestics because historically it's been driven into the police that domestics lead to murders. I appreciate that some do but, with that in mind, people err on the side of extreme caution. They think 'well, we have to arrest somebody, because that's positive action'... There's a lot of fear out there. (police officer)

I have prosecuted hundreds, if not thousands of DA cases. In 9 out of 10 cases, all the complainant wants is for the abuse to stop - very rarely do they want the trauma of re-living it in court. If diversions could achieve this objective in appropriate cases I believe it would help victims 'move on' (if possible) from the abuse more quickly and in terms that work for them. (prosecutor and defence lawyer)

Domestic abuse and out of court disposals

Out of court disposals offer a way of dealing with usually low level and often first time offending in a proportionate way that does not require taking the offender to court. The use of out of court disposals, as well as the terminology used, varies among different police forces, but they should only be used when someone has admitted responsibility for their offence.

Out of court disposals and diversionary approaches – such as cautions and community resolutions – have been used extensively to deal with domestic abuse incidents for many years, but recently the police have been heavily criticised for such approaches. Criticism has come from VAWG campaigners who view out of court disposals as soft and ineffective justice, and from the police inspectorate. In their 2017 report the inspectorate welcomed a reduction in the use of cautions year on year (from 13% to 6% of all cases)²⁷: "Charge is always the preferred option where the case passes the evidential and public interest tests...The police service must satisfy itself that simple cautions are not being used inappropriately in domestic abuse

cases". Police guidance also dissuades officers from using cautions: "By nature, [domestic abuse cases] involve the aggravating factor of breach of trust, and abuse is not often reported on the first occasion. Controlling or coercive behaviour may also influence the victim's views on a caution".²⁸

Despite dissuasion, police still make use of out of court disposals and approaches for the lowest level domestic abuse offences. The main formal disposal is the simple caution. But community resolutions are also used – a type of out of court disposal used by the police to deal with low level crime and antisocial behaviour. These informal police interventions are supposed to be used for the most minor offences where one party admits the offence. According to the inspectorate, 6% of all domestic abuse incidents were dealt using a caution and just over 1% using community resolution.²⁹

Despite the requirement that community resolutions are only used for low level crimes, recently published research revealed that all police forces in England, Wales and Northern Ireland use community resolutions for domestic abuse cases, in some cases for more serious crimes.³⁰ In 2014 more than 5,000 domestic abuse incidents and, in some forces, one in twenty domestic abuse offences, were dealt with this way. Out of court resolutions were used in a range of cases including malicious wounding and actual bodily harm. Nearly all were dealt with on the street, with the perpetrator often just asked to apologise to the victim or to the police officer.

How effective are out of court disposals?

Victims commonly do not come to court, even when summoned, and when they do, often refuse to give evidence. Domestic abuse cases regularly rely on each other's version of events so 'beyond reasonable doubt' is very hard. Keeping lower level offences out

of court and into tailored programmes would plug a gap...(magistrate)

There is no recent national research on the effectiveness of out of court disposals for domestic abuse but evidence for out of court disposals in general is very positive. People who receive a caution reoffend less than people who go to court. 15% of those cautioned in 2015 were known to reoffend within a year, half the proportion of those who received a conditional or absolute discharge in court. Those given a caution who did reoffend committed fewer offences than those reoffending after any court-imposed orders. The better results for diversion are found – albeit to a lesser extent – even when the differences between the offenders are taken into account. A 2011 study found that more victims were “satisfied” or “extremely satisfied” with the out of court disposal, compared to those where the offender went to court.³¹

In 1990, a study conducted by Buchan and Edwards³² (the most recent available) trialled the concept of deferred simple police cautions for “minor” domestic assaults. In these cases, the police could defer the decision to prosecute or caution for two months, to allow the police to make enquiries and the victim and offender to seek help from other agencies. They concluded that most victims were satisfied with the procedure and felt that their safety was a major consideration. Importantly, 52% reiterated that they would not have supported a prosecution in court if the offender had been charged. Of the offenders in the study, 28% claimed the process had helped them change their behaviour and 85% did not come to police attention again during the monitoring period (six months).

Domestic abuse is always potentially serious and should never be ignored, but use of out of court disposals does not need to imply this. Antipathy

or resistance to the use of out of court responses to domestic abuse has previously been based on a belief that most abusers suffer considerable abuse before first calling the police and that the first callout should be treated as a response to a pattern of abuse rather than a one-off incident. But evidence for this belief has recently been challenged.³³ This research suggests that many victims who call the police for the first time have not suffered a long history of abuse.

The reality is that police officers use out of court approaches extensively for domestic abuse and the evidence base for their effectiveness (in many cases) is as strong, if not stronger, than that for formal criminal sanctions. Instead of assertions that out of court responses are inappropriate, we need more research on the short and long-term effects of out of court disposals and resolutions.

Project CARA

In Hampshire, local police and other agencies wanted to try a new approach to using out of court disposals with those accused of domestic abuse. They felt that too many cases resulted in no further action. A local charity, the Hampton Trust, worked with the police on Project CARA (Cautioning and Relationship Abuse).

The police started giving conditional cautions to carefully screened perpetrators of domestic abuse – those with little or no history of domestic abuse who admitted guilt. Perpetrators had to attend two workshops which dealt with understanding emotional abuse and the impact of abuse on families, recognising the feelings that lead to violence and identifying and dealing with issues such as alcoholism and other substance abuse. Researchers tracked differences in behaviour and offending between those who went on the CARA programme and those who didn't.

The programme was successful. A year post-caution, CARA demonstrated a 65% reduction in the number of individuals re-arrested, and a 49% drop in the number of further offences committed.³⁴ 94% of those attending the workshop reported a change in attitude towards their partner and 91% said it assisted with issues in their relationship.³⁵ Comments made by perpetrators post-workshop reflected how they'd learnt to communicate "calmly and honestly", "listening more... less arguing".

Victims felt the programme made a difference too. In cases where the offender had attended a workshop, 81.3% of victims reported an improvement in subsequent behaviour, compared with the control sample (44.8%). One said "the workshop helped him recognise the drinking was triggering his violence", another that "he is more open about himself and now talks about how he feels".

Normally police are not allowed to use conditional cautions for domestic abuse incidents. For this programme, Hampshire police had to get special permission to do so. Yet 57 of 68 respondents to our survey favoured greater use of out of court disposals if they included tailored, evidence-based perpetrator programmes such as the one offered in Hampshire.

Restorative justice and domestic abuse

Restorative justice brings those harmed by crime or conflict, and those responsible for the harm, into communication. It can be used at any stage of the criminal justice system alongside or as part of a sentence or out of court disposal. Its use ranges from on the street responses, where police officers use restorative skills to resolve conflict in minor crimes and incidents, to post-sentence restorative justice conferences which are held in addition to a formal criminal justice process, sometimes for serious and complex crimes.

The use of restorative justice for domestic abuse is a divisive issue. Many campaigners in the VAWG movement are opposed to restorative justice for domestic abuse in principle. They believe that “intimate partner violence is systematic, patterned behaviour on the part of the abuser designed to control their partner”³⁶ and that this creates an inherent power imbalance whereby restorative justice may re-victimise the already “vulnerable” and endanger the safety of the victim. Others argue that restorative justice, done properly, gives victims the opportunity to take control and have a voice in a way that the formal justice process often does not, and that valid concerns around risk can be addressed with effective safeguarding and properly trained facilitators.³⁷

There is some positive international evidence for its effectiveness in domestic abuse cases. The numbers involved in research are small, but some models seem successful. “Research with thirty-two families [in USA] involved in family group conferences reported positive outcomes for the majority of families including reduced levels of abuse compared with a control group, an improvement in children’s development and an extension of social support (Pennell and Burford 2000)”. However, a “study of ‘Circles of Peace’ project in Arizona found no evidence that it reduced incidents of domestic abuse or violence compared with

standard domestic abuse perpetrator programmes (Mills et al 2013)”.³⁸ Overall, research findings suggest restorative justice which involves facilitated meetings or conferences can help resolve conflict and influence the perpetrator to understand the harm they’ve done. And that it may be particularly effective in the case of abuse of family members.

But there is not nearly enough research about the use of restorative justice for domestic abuse. A particularly big gap is on restorative justice delivered by the police, despite the fact that most restorative justice used in domestic abuse cases in England and Wales is led by them. Its extensive use is contrary to national policy – both the government and the national standards body say that “on-street” restorative justice should not be used in domestic abuse cases – but seems to be locally condoned. Recently Nicole Westmarland, Clare McGlynn and Clarissa Humphreys looked at the practice in one police force area.³⁹

The researchers found that there were many instances where restorative justice was being used inappropriately. An example of poor practice was of Tom and Sophie, a couple in their early 30s:

After an argument with Sophie, Tom (who was a previous known domestic abuse offender) smashed the glass panel in the front door leaving glass and blood on the floor. Tom was known to police for previous non-domestic assault as well as the previous domestic abuse. Sophie was pregnant and told the police that she feared Tom. Police arrested Tom for criminal damage. The case outcome was an adult simple caution and adult restorative approach. No senior level authorization for the restorative approach to take place was logged. Tom admitted guilt and agreed to pay Sophie for the damage. The restorative approach was recorded in the police officer’s pocketbook. Tom was warned to stay away from Sophie’s house.

This case is contrary to all guidance, given that the abuser had a history of abusing, the victim was pregnant and nothing was done to ensure that the abuser did not come back to the house.

The researchers who were given access to the data of this police force concluded that while the language of restorative justice was used, the spirit of restorative justice was often missing. Police officers were given too much discretion to interpret, and potentially co-opt, meanings of restorative justice. In some cases, the police seem to be using restorative justice to respond to cases they didn't think would benefit from further criminal justice intervention (a 'new NFA').

Given that so much "restorative justice" is going on more or less under the radar, it's not surprising that some practice in using it is poor. But police officers undoubtedly believe it is an effective way of dealing with some domestic abuse cases and there are many positive signs that it can work.⁴⁰ So the answer is surely to stop turning a blind eye, find out more and have a debate about its uses and abuses. After that, a more evidence-informed policy and practice can be developed and implemented by the police, prosecutors and courts.

Domestic violence protection orders – just a sticking plaster?

What is a domestic violence protection order?

We saw this as an opportunity to give a victim a breathing space to get full advice and support. Sadly, reading the stats this is not used enough by the police due to the poor level of training. (family lawyer involved in DVPO pilot)

The domestic violence protection order was introduced in 2014 as a result of a review of international evidence of what works to protect domestic abuse victims. Many European countries had introduced removal or “go” orders, which enabled the police to “force” a perpetrator of domestic violence to leave a household for a period of time. This was identified as a gap in police powers in England and Wales and the DVPO was developed.

The DVPO offers a way of protecting victims using civil law. It is a restrictive order imposed on a perpetrator when police want to protect the victim but don’t want to, or don’t have the evidence to, prosecute. It’s imposed by a criminal court on the balance of probabilities for 14–28 days and may prohibit the perpetrator from contacting the victim and/or going to the victim’s home.

The DVPO was piloted in three police force areas in 2011–12 and then rolled out throughout England and Wales. But its slow take-up suggests police either do not have the resources to use it, can’t see a role for it or are not sufficiently aware of it. The police inspectorate has criticised forces for failing to make sufficient use of DVPOs and said “there still appears to be a lack of appropriately robust action in enforcing breaches of DVPOs”. Despite the relatively low take-up, the government has proposed that the DVPO be extended so that it can be applied for by more people (including by the victim), in more circumstances and be imposed by civil and family, as well as criminal,

courts. It will also be renamed the domestic abuse protection order – DAPO. The government want to abolish the current maximum time length (28 days) so the DAPO could be imposed for as long as requested.

Despite government enthusiasm, it is still not clear whether the DVPO is effective or cost effective.

Do DVPOs reduce reoffending?

They’re ineffective. It’s designed to create this safe period where you could get into a victim and properly signpost and support them. That’s fine, but the offender is still coming back. Ultimately, your dream victim is going to say ‘in those 3 days or however long they’re away, I’m going to give a statement, I do want them out of the address and out of my life’. But those are not the victims we deal with in domestic abuse cases because of the nature of the offence. (police officer)

Long term they don’t really have much effect at all because they’re only 28 days. (police officer)

In the evaluation⁴¹ of the DVPO pilot, the order was compared in reducing reoffending with arrest followed by no further action, a low bar. It was not compared with out of court disposals, community resolutions, court-imposed sanctions or other approaches. It did reduce reoffending in the follow-up period (9–18 months) but only in the more serious cases – where the police had been called out three or more times before the order was imposed. Use of the DVPO on average reduced offending by one incident in the follow-up period. The evaluation suggests that imposing a DVPO may actually increase offending in cases where the police had been called out just once. There is no data on the long-term effect on the recidivism of perpetrators subject to DVPOs.

The DVPO may reduce domestic abuse a bit, but the evaluation suggests it is not cost-effective. When factoring in the costs of imposition, reduction in

recidivism etc: "Overall, considering both costs and benefits associated with DVPOs, the analysis indicates that the net economic and social impact of DVPOs was -£896,518 across the three police forces. This is equivalent to a return of 23 pence for every pound spent on DVPOs – i.e. a negative return on investment".

The evaluation has not been followed up despite the relatively small sample size of 123 matched samples, so we have no wide scale research, nor up to date data on the impact of the DVPO.

Are victims in favour of the DVPO?

Whilst you can slap an order on somebody, you need to balance that out with better protection for victims. I don't think they're well executed. (criminologist)

I was not able to get one because his stalking was not 'threatening harm' and he had not made overt threats I could prove. When he wouldn't stop calling, the police officer told me to change my number. (victim)

Victims interviewed for the original evaluation were in the main positive about the DVPO, particularly about the break it afforded them to re-group and work out what to do. For many (60%) it was a route to access support, which victims find difficult to do when still living with the perpetrator. A minority of victims were not so enthusiastic. "They felt that DVPOs had affected them negatively, and that they would not support another order. This was due to a perception of a loss of control over their situation and subsequent support that was offered to them".⁴²

Does the DVPO have sufficient teeth?

The existence of an order is particularly useful when there is a breach – it allows arrest/further action without need to rely on evidence of victim in many cases – it allows victims to be helped/protected

who (for whatever reason) are reluctant to help themselves. (police officer)

One of the criticisms of the DVPO is that it is difficult to enforce – partly because the authorities do not know when it has been breached, partly because the sanctions for breach are considered too "soft".

The only way perpetrators might be properly monitored is if they wore GPS tags, which set off an alarm when they entered a "prohibited" area such as the home of the victim. Otherwise the police would need to follow perpetrators 24/7. They don't and, unless they happen to come across the perpetrator in the wrong place, the police rely on the victim to report breaches. There is no current data on the number of DVPOs which are breached. The most recent Home Office report quotes 18% of DVPOs as having been breached.⁴³ The original evaluation said that only 1% of orders were officially breached but nearly half the victims interviewed said "their" perpetrator had contacted them by phone or in person. It's not clear whether these interactions were reported. Either way, the DVPO does not seem to have a strong deterrent effect.

Victims and VAWG workers criticise the response to breach of the DVPO. Though it can be punished with a fine of up to £5,000 or two months imprisonment, they say it seldom is. The VAWG sector blames the lack of criminal sanction for the fact that the DVPO is often breached: "a civil sanction for breaching a DVPO is no deterrent to dangerous perpetrators, who will do anything in their power to maintain control over a victim".⁴⁴ The government has proposed that the sanction for breach of the new DAPO should be criminal, though this would also raise the standard of proof to "beyond reasonable doubt". However, there is no evidence to suggest a criminal sanction would work more effectively than a civil sanction, given that punishment for breach of criminal sanctions does not seem to act as a deterrent.⁴⁵

What next for DVPOs?

On the basis of the evidence, it's far from clear that the DVPO is worth extending. It gives victims some protection while it is in force, but only seems to be effective in more serious cases. If the DVPO is made much easier to impose, and of potentially infinite length, the danger is that its credibility (and its cost-effectiveness) will be eroded still further. The police do not have the resources to actively monitor all those who are subject to the DVPO now, so a big increase in DAPOs may lead to it losing any force.

Victims and the VAWG sector favour the DVPO/DAPO because it appears to offer short-term protection. But there may be better and more cost-effective options to achieve both short and long-term reductions in offending.

Programmes for perpetrators – once an abuser, always an abuser?

Addressing the mindset of those who perpetrate domestic abuse is critical. In my experience the controlling/abusive behaviour has often been repeated through generations and thus normalised. If offenders can be faced with the abnormality and consequences of their behaviour instead of justifying, some effective change can happen. (defence lawyer)

At the end of the day, if you help the people who are offending, and it does work, then you've helped the victim. I'm at a loss really as to why people are so against it. (police officer)

Refuge does not believe that perpetrator programmes are an effective or appropriate way of reducing domestic violence.⁴⁶ (Refuge policy paper)

What are perpetrator programmes and do they work?

Many people believe that abusers cannot be reformed, so they need to be corralled and contained. It's true that the evidence for effectiveness of perpetrator programmes is mixed, but there are many positive signs.

A perpetrator programme is a programme which aims to change the behaviour of those who abuse and is specifically designed to address this crime. They aim to help perpetrators to:

- Understand what violence, abuse, coercion and control are
- Unpick why they are abusive, exploring their past use of abuse to identify the attitudes and beliefs that underpin their behaviour, making way for change
- Learn that they are in control of their own behaviour and can choose not to be abusive
- Take responsibility for their behaviour, without blaming others or minimising it
- Build empathy and realise the impact of their abuse on their partner and children
- Learn how to notice when they are becoming abusive and how to stop
- Learn different, non-abusive ways of dealing with difficulties in their relationship
- Deal non-abusively with their partner's anger
- Develop negotiation and listening skills and learn how to build a respectful relationship

There are a variety of models for perpetrator programmes, most with roots in cognitive behaviour therapy and in the Duluth model. The Duluth model is based on feminist theory - that men use violence within relationships to exercise power and control. In England and Wales, there is huge variety in the perpetrator programmes offered, and the rigour which which they are evaluated. Her Majesty's Prison and Probation Service (HMPPS) accredits programmes run as part of criminal sentences, while the charity Respect accredits voluntary and community-based programmes. Many programmes offered are not accredited by any organisation.

If only randomised controlled trials are considered, there is no clear evidence for perpetrator programmes working. The College of Policing states in its systematic review of perpetrator programmes that: "the findings from this review of reviews were inconclusive in terms of effectiveness of any one programme type of domestic violence perpetrator programmes in reducing recidivism or any one model being more effective than another".⁴⁷ However, by digging deeper and broadening the evidence base beyond randomised control trials, there are signs of success. For instance, if a perpetrator has a motivational interview before starting, such programmes do lead to less offending.⁴⁸

The most positive results for UK perpetrator programmes are from Project Mirabal, a major research programme (2009-2015) to investigate the extent to which perpetrator programmes reduce violence and increase safety for women and children, and the routes by which they contribute to coordinated community responses to domestic violence. The project's review of community-based perpetrator programmes⁴⁹ found "remarkable results in terms of the reduction in physical and sexual violence. A total of 30% of women involved in the programme reported being made to 'do something sexual' they did not want to do in the three months before the programme started. That was reduced to

zero a year after starting the programme. Similarly, victims who reported having a weapon used against them reduced from 29% to zero. Those who said they were slapped, punched or had something thrown at them reduced from 87% to 7%. Far fewer women reported being physically injured after the programme (61% before compared to 2% after), and the extent to which children saw or overheard violence also dropped substantially, from 80% to 8%". Other results were less dramatic. For example, almost three-quarters of victims still felt that their partner did not take enough responsibility for their behaviour.

Accredited programmes for domestic abusers in prison and probation

I also favour unicorns and Santa Claus, but have as little belief in them as I have in 'tailored, evidence-based' perpetrator programmes being adequately funded. (prosecutor)

The probation service is failing their domestic abuse perpetrators who are wanting an intervention because they're having to wait so long. We get phone calls from out of area all the time. I had a guy turn up at one of our group's last night - he just randomly turned up to the venue - he said he found out through his social worker and he said to me 'I want to get involved in your programme'. I had to say 'I'm really sorry, but I can't put you on because you're on probation'. (manager for community-based perpetrator programme)

One would hope that nearly all those who are convicted of domestic abuse and receive a custodial or community sentence get support with their rehabilitation. Programmes are run to help perpetrators on criminal sentences change their behaviour, but it is not clear how available they are, nor whether they work.

Three accredited programmes have recently been used by probation and prison staff to address domestic

abuse – Building Better Relationships, Healthy Relationships and Kaizen. These programmes are accredited by a government-appointed panel on the basis that they are grounded in sound behaviour change theory, and that there are plans for them to be evaluated.

The last HMPPS domestic abuse programme to be evaluated – the Integrated Domestic Abuse Programme or IDAP – was discontinued five years ago. The evaluation was published in 2015⁵⁰ and showed the programme to be successful in reducing offending, but the programme had already fallen out of favour: “The move away from IDAP as a central community justice intervention for abusive men, [was] driven by the view that it is unresponsive to the diverse perspectives and circumstances of participants, that it is excessively confrontational, and that it has a rigid theoretical basis linked to a feminist perspective”.⁵¹

We don’t know how many perpetrators complete any of the three programmes now on offer, who they are delivered by, nor whether the course participants’ behaviour changes in any way. This is worrying, particularly given that there are significant differences in the two main programmes. Some facilitators of the programme feel that Building Better Relationships may not be sufficiently challenging of perpetrators: “It feels like we can go through almost the entire programme without actually getting to know them that well or look at the reasons why they are here. It doesn’t really confront them and get them to acknowledge their own behaviour”.⁵² But others feel that it is more conducive to open discussion.

Transform Justice sent FOI requests to the Ministry of Justice to discover more about the evaluation of these three programmes and discovered:

1. The Healthy Relationships programme ran from 2003 in prisons but was never evaluated since

“two feasibility studies in 2013 and 2014... concluded that there had been insufficient participants to carry this out”. Yet in the nine years from 2009/10 1660 prisoners completed this programme.

2. It is not clear when Kaizen (introduced in 2017) or Building Better Relationships (introduced in 2012) will be evaluated. The Ministry of Justice said: “Timings for evaluations of BBR and Kaizen have not yet been finalised; plans will be developed following scoping work to establish the most appropriate methods and timing for evaluation”.

The risk of this lack of evaluation is that the programmes may be ineffective, or even counter-productive. From 1992, sex offenders in prison were referred to a programme (the Core Sex Offender Treatment Programme) which was adapted slightly over the years but not re-evaluated. In 2016 researchers found that the course was in fact exacerbating the risk of participants offending after being released from prison.⁵³ But by that time the damage had presumably been done.

Assuming all the courses delivered in prison are worthwhile, they would be even more worthwhile if they were followed up on release from prison. But anecdotal evidence suggests they aren’t. Prisoners come out brandishing a certificate, but no one supports them to put what they have learnt into practice.

Regardless of whether they have been imprisoned for domestic abuse, there are many prisoners who have previous convictions for domestic abuse. The prisons inspectorate have recently begun checking whether any work is being done with these prisoners to prevent them abusing on release, but so far no prison appears to be doing so. In Belmarsh prison: “Despite the prison’s most recent needs analysis, undertaken in 2017, which identified that 31% of prisoners in their sample had domestic violence markers in their OASys report, no specific interventions were available to

address domestic abuse". At Woodhill prison: "Even though some prisoners convicted of domestic violence and sex offences stayed at the establishment for much of their time in custody, there was no current needs analysis and still no strategy for the delivery of structured offence-focused work for them".

There is some data on how many perpetrators start and complete behaviour change programmes mandated as part of their sentences. Of the 88,211⁵⁴ sentenced to imprisonment in 2017 (for all offences), only 228 (0.3%) completed a domestic abuse programme. The most recent data for those who completed domestic violence programmes delivered by probation in the community is from 2016. In that year 2,041 people completed programmes – this represents 2% of all those who received community sentences. In the case of both prison and probation delivered domestic abuse programmes, there has been a recent decline in the numbers completed. A third fewer programmes were completed 2018 vs 2017 in prison and a third fewer as part of community sentences 2017 vs 2015⁵⁵. In addition, perpetrators are increasingly unlikely to complete the probation delivered programmes they start. In 2017 fewer than half the programmes started were completed whereas in 2015 62% were. There is no information as to why the drop out rate is so high, nor what is done to address the problem.

The weak evidence base for the effectiveness of perpetrator programmes delivered in prison adds extra ballast to the arguments against using short prison sentences for those accused of domestic abuse. But there will always be some people in prison who are there for serious crimes of domestic abuse, or who have a background of domestic abuse. It makes sense to provide tested programmes to all these men to help them change their abusive behaviour. And to ensure that sufficient programmes are provided by probation and completed by those convicted of abuse.

Deferred prosecution – an untapped opportunity to respond to domestic abuse

Deferred prosecution is a potentially powerful tool in the legal armoury available to the police in tackling domestic abuse. It offers those who would otherwise be prosecuted for summary crimes the opportunity to undertake a rehabilitative programme instead. If they complete the rehabilitative programme, they can move on with their lives. Those who fail to complete the programme are prosecuted and must go to court. Deferred prosecution has been piloted in the West Midlands and in County Durham. It offers the criminal justice system huge savings, and those who have committed offences the opportunity to accept their punishment while avoiding court.

Domestic abuse cases have until recently been excluded from the pilot programmes due to official policies favouring prosecution. However, the Checkpoint programme in County Durham has recently started including domestic abuse. Checkpoint now offers support to victims as well as specific programmes for perpetrators.⁵⁶ Only perpetrators who are deemed medium risk⁵⁷ are offered deferred prosecution. Of the 299 who have agreed to go on the programme, only 34 have failed to complete it.

Deferred prosecution may be the best way of dealing with some incidents of domestic abuse:

- The perpetrator would not formally have to accept guilt to be eligible for deferred prosecution – they couldn't deny liability altogether but could remain silent in their police interview
- The perpetrator would be dealt with and begin his/her rehabilitative programme far more quickly than if prosecuted
- The problems of prosecuting and convicting domestic abuse in court would be avoided

- The victim would be spared having to give evidence
- The perpetrator would complete a programme tailored to changing their abusive behaviour
- There is a strong incentive for perpetrators to complete programmes and stop abusing since they are prosecuted if they do not abide by the strict conditions of the programme
- Perpetrators who complete the programme do not have a criminal sanction on their record, making it easier to gain or retain employment, and thus support the family financially

perpetrators who are more reluctant to change and more difficult to reach, but desistance theory suggests that, given the right societal and logistical support, everyone can move on from crime.

We need up to date evaluations, more data on the availability of programmes and research on the barriers to their use. It would also be worth designing a short domestic abuse programme, similar to Project CARA, so short sentences could be rehabilitative.

Both deferred prosecution pilots have positive feedback on the ground but no evaluation has yet been published.

Addressing the barriers to the use of perpetrator programmes

One of the great challenges for all perpetrator programmes is that they can take a long time to set up and deliver. A community sentence needs to be at least two years long if a perpetrator programme is to be recommended. This means most sentences, or DVPOs, are not long enough to encompass a behaviour change programme. There are not enough programmes available either – 36 respondents to our survey said there was insufficient availability of domestic abuse perpetrator programmes for all those who might benefit (compared to two who said there were enough).

Unfortunately, a fatalistic attitude to perpetrator programmes, supported by the What Works evaluation of international programmes,⁵⁸ still pervades the domestic abuse agenda (10 of 27 respondents to our survey said perpetrator programmes did not work). Yet domestic abuse programmes can and do change behaviour. As with any crime, there will be some

Conclusion

There is great frustration amongst those who deal with domestic abuse that the system is not working. Practitioners and lawyers feel that huge amounts of time and money are spent pursuing cases through the criminal courts, to no good end. There is disagreement as to the way forward. Support workers and victims blame the police for not taking domestic abuse seriously enough, prosecutors blame police for not preparing cases properly, defence lawyers blame the prosecution for proceeding with weak cases. Meanwhile the abusers themselves often blame the victim for their behaviour.

Everyone blames the government for not spending enough on measures to combat gender inequality, on supporting victims, on perpetrator programmes, on police numbers, etc. Needless to say this blame game is unhelpful. It would be great to loosen the purse strings but this is unlikely to happen. With the resources available we need to find out more about what works to reduce domestic abuse, and focus efforts on those approaches. Criminal sanctions rarely reduce abuse, and the DVPO is not cost-effective. The most serious offenders need to be charged, prosecuted and very possibly detained, to protect current and future victims. But the vast majority of offences dealt with in the magistrates' court could be dealt with out of court, with deferred prosecution, out of court disposals and/or restorative justice.

Above all we need to continue to explore how to motivate perpetrators to understand the damage they wreak and to learn to behave differently. Perpetrator programmes don't always work, but no behaviour change programme always does. Behaviour change is always going to be difficult, and desistance is a bumpy road. We are still learning what works best in these areas - we need to add to that learning and progress it, not stop because we don't always get it right. The good news is that domestic abuse overall has gone down significantly in recent years. So behaviour is changing. Let's focus on accelerating that process.

Recommendations

1. Improve the evidence base for what works in reducing domestic abuse. Look at existing and new approaches and programmes, including restorative justice.
2. Pause any moves to make criminal sentences harsher, given evidence that criminal sanctions do not reduce abuse and more punitive sanctions may make behaviour worse.
3. Reform and revive specialist domestic abuse courts for those cases where prosecution is clearly in the public and victim's interest
4. Where cases are referred for prosecution, work out what support victims most need to prevent cases collapsing.
5. Incentivise the use of specialist out of court disposals such as those delivered by Project CARA in Hampshire.
6. Rewrite police guidance to support appropriate use of out of court disposals and approaches for domestic abuse incidents.
7. Review plans to expand the domestic violence protection order given limited evidence of its effectiveness.
8. Evaluate the domestic abuse programmes delivered by prisons and probation.
9. Expand the availability of successful accredited perpetrator programmes, both those delivered by prisons and probation, and in the community.
10. Pilot deferred prosecution for those accused of domestic abuse.
11. Work out why domestic abuse has reduced significantly and how to accelerate that societal change.

End notes

- 1 Google search 1st August 2018
- 2 Strang, H.S., Sherman, L.W. and Neyroud, P.W. (2014) Tracking the evidence for a 'mythical number': Do UK domestic abuse victims suffer an average of 35 assaults before someone calls the police? *Policing: A Journal of Policy and Practice*, 8(2), 222-228.
- 3 Sherman, L.W., Strang, H.S. and O'Connor, D. (2017) Introduction – Key Facts about Domestic Abuse: Lessons from Eight Studies. *Cambridge Journal of Evidence-based Policing*, 1, 2-3, 59-64.
- 4 No data point is available for the year ending March 2008 because comparable questions on stalking, an offence that makes up the domestic abuse category, were not included in that year.
- 5 <https://www.justiceinspectors.gov.uk/hmicfrs/wp-content/uploads/progress-report-on-the-police-response-to-domestic-abuse.pdf> A progress report on the police response to domestic abuse, HMICFRS
- 6 Any incident or pattern of incidents of controlling, coercive, threatening behaviour, violence or abuse between those aged 16 or over who are, or have been, intimate partners or family members regardless of gender or sexuality. The abuse can encompass, but is not limited to: psychological, physical, sexual, financial, or emotional. <https://www.gov.uk/guidance/domestic-violence-and-abuse>
- 7 https://www.cps.gov.uk/sites/default/files/documents/publications/cps-vawg-report-2017_0.pdf
- 8 <https://www.ons.gov.uk/peoplepopulationandcommunity/crimeandjustice/articles/domesticabusefindingsfromthecrimesurveyforenglandandwales/yearendingmarch2017>. The methodology for measuring domestic abuse in CSEW is heavily criticised by many Domestic Abuse organisations because it does not reflect patterns of abuse, caps the number of incidents, and conflates intimate partner violence with family violence (e.g violence between siblings). [http://www.research.lancs.ac.uk/portal/en/publications/the-decline-in-the-rate-of-domestic-violence-has-stopped\(810443df-48b1-459f-bc1e-cdf04d085e0c\).html](http://www.research.lancs.ac.uk/portal/en/publications/the-decline-in-the-rate-of-domestic-violence-has-stopped(810443df-48b1-459f-bc1e-cdf04d085e0c).html)
- 9 <https://www.ons.gov.uk/peoplepopulationandcommunity/crimeandjustice/articles/domesticabusefindingsfromthecrimesurveyforenglandandwales/yearendingmarch2017>
- 10 <https://www.justiceinspectors.gov.uk/hmicfrs/wp-content/uploads/progress-report-on-the-police-response-to-domestic-abuse.pdf>
- 11 <https://www.ons.gov.uk/peoplepopulationandcommunity/crimeandjustice/articles/womenmostatriskofexperiencingpartnerabuseinenglandandwales/yearendingmarch2015to2017#characteristics-of-women-who-are-most-at-risk-of-experiencing-partner-abuse>
- 12 <https://lankellychase.org.uk/resources/publications/hard-edges/>
- 13 The NCRS does not require a crime to be recorded if the police deem it neither appropriate nor necessary. This includes incidents reported by someone other than the victim and the victim fails to confirm the crime, those where the victim cannot be traced and those being dealt with by another force.
- 14 If it is clear when an offence is first reported that a crime has occurred, a crime may be recorded in accordance with National Crime Recording Standard without an incident first being recorded
- 15 <https://www.ons.gov.uk/peoplepopulationandcommunity/crimeandjustice/datasets/domesticabuseinenglandandwalesbulletintables> the ONS cites Crown Prosecution Service data
- 16 <https://www.sentencingcouncil.org.uk/publications/item/overarching-principles-domestic-abuse-final-resource-assessment/>
- 17 <https://www.gov.uk/government/statistics/annual-national-offender-management-service-digest-2016-to-2017> <https://www.ons.gov.uk/peoplepopulationandcommunity/crimeandjustice/datasets/domesticabuseinenglandandwalesbulletintables>
- 18 <http://whatworks.college.police.uk/toolkit/Pages/Intervention.aspx?InterventionID=27>
- 19 <https://www.sentencingcouncil.org.uk/publications/item/overarching-principles-domestic-abuse-definitive-guideline/>
- 20 https://consult.justice.gov.uk/homeoffice-moj/domestic-abuse-consultation/supporting_documents/ConsultationDomesticAbuseViolenceBillimpactassessment.pdf
- 21 <https://academic.oup.com/bjc/article-abstract/40/1/14/398947>
- 22 <https://link.springer.com/article/10.1007/s41887-017-0007-x>
- 23 https://www.victimsupport.org.uk/sites/default/files/V_Survivor%E2%80%99s%20justice.pdf
- 24 ibid
- 25 Figures from the Centre for Justice Innovation
- 26 <http://www.northumbria-pcc.gov.uk/volunteers/court-observers/special-domestic-violence-courts-special/>
- 27 <https://www.justiceinspectors.gov.uk/hmicfrs/our-work/article/domestic-violence-and-abuse/>
- 28 <https://www.app.college.police.uk/app-content/major-investigation-and-public-protection/domestic-abuse/arrest-and-other-positive-approaches/#cautions>
- 29 <https://www.justiceinspectors.gov.uk/hmicfrs/our-work/article/domestic-violence-and-abuse/>
- 30 <https://academic.oup.com/bjc/article/58/1/1/3058237>
- 31 http://www.transformjustice.org.uk/wp-content/uploads/2017/12/November2017_Less-is-more.pdf
- 32 <http://etheses.lse.ac.uk/1241/1/U056249.pdf>
- 33 Strang, H.S., Sherman, L.W. and Neyroud, P.W. (2014) Tracking the evidence for a 'mythical number': Do UK domestic abuse victims suffer an average of 35 assaults before someone calls the police? *Policing: A Journal of Policy and Practice*, 8(2), 222-228.

- 34 <https://www.hamptontrust.org.uk/our-programmes/cara/>
- 35 <https://link.springer.com/article/10.1007/s41887-017-0007-x>
- 36 <https://www.refuge.org.uk/wp-content/uploads/2017/04/Refuge-position-paper-restorative-justice-in-cases-of-intimate-partner-violence-May-2016.pdf>
- 37 <https://restorativejustice.org.uk/blog/restorative-justice-and-domestic-violence-%E2%80%93-getting-it-right>
- 38 <http://dro.dur.ac.uk/24713/> Westmarland, N. and McGlynn, C. and Humphreys, C. (2018) 'Using restorative justice approaches to police domestic violence and abuse.', *Journal of gender-based violence*.
- 39 *ibid*
- 40 <http://dro.dur.ac.uk/24713/> Westmarland, N. and McGlynn, C. and Humphreys, C. (2018) 'Using restorative justice approaches to police domestic violence and abuse.', *Journal of gender-based violence*.
- 41 <https://www.gov.uk/government/publications/evaluation-of-the-pilot-of-domestic-violence-protection-orders>
- 42 <https://www.gov.uk/government/publications/evaluation-of-the-pilot-of-domestic-violence-protection-orders>
- 43 <https://www.gov.uk/government/publications/domestic-violence-protection-orders-assessment-of-national-roll-out>
- 44 <https://www.womensaid.org.uk/8548-2/>
- 45 The high number of prisoners recalled for breach of licence conditions and of breaches of suspended sentence orders indicate that the sanctions for breach do not have a strong deterrent effect
- 46 <https://www.refuge.org.uk/wp-content/uploads/2017/04/Perpetrator-programmes-position-paper-2016.pdf> This refers to current perpetrator programmes
- 47 http://whatworks.college.police.uk/Research/Systematic_Review_Series/Documents/perpetrator_programmes.pdf
- 48 <http://whatworks.college.police.uk/toolkit/Pages/Intervention.aspx?InterventionID=41>
- 49 attended by men who had volunteered or who had been referred by social services, a family court or by a partner telling them that if they don't get "professional help", their relationship would be over. https://www.nr-foundation.org.uk/downloads/Project_Mirabal-Final_report.pdf
- 50 <https://www.gov.uk/government/publications/outcome-evaluation-of-idap-and-cdvp>
- 51 <http://journals.sagepub.com/doi/abs/10.1177/0264550517701199>
- 52 Facilitator quoted in <http://journals.sagepub.com/doi/abs/10.1177/0264550517701199>
- 53 <https://www.gov.uk/government/publications/impact-evaluation-of-the-prison-based-core-sex-offender-treatment-programme>
- 54 <https://www.gov.uk/government/statistics/criminal-justice-system-statistics-quarterly-march-2017>
- 55 <https://www.gov.uk/government/statistics/annual-national-offender-management-service-digest-2016-to-2017>
- 56 <https://democracy.durham.gov.uk/documents/s82503/20171026CheckpointUpdate.pdf>
- 57 DASH risk assessment model
- 58 http://whatworks.college.police.uk/Research/Systematic_Review_Series/Documents/perpetrator_programmes.pdf

Transform Justice

Transform Justice

43 Lawford Road
London NW5 2LG

penelope@transformjustice.org.uk
www.transformjustice.org.uk