



Her Majesty's Attorney General for Jersey
Code on the decision to prosecute:
Supplementary guidance
Domestic abuse

Introduction

- 1) This guidance is supplementary to the Code on the Decision to Prosecute dated 1 March 2016 ("the Code"). It does not modify or amend the Code but is rather guidance as to how the Code might be applied in relation to allegations of domestic abuse.
- 2) The purpose of issuing this Guidance is to ensure consistency of approach and clarity regarding the approach to evidential and public interest considerations in relation to allegations of domestic abuse.

Guidance

3) Definition of Domestic Abuse:

"Any incident or pattern of incidents of controlling coercive 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."

- 4) This can encompass, but is not limited to, the following types of abuse
psychological, physical, sexual, financial and emotional.
- 5) Controlling behaviour is: a range of acts designed to make a person subordinate and/or dependent by isolating them from sources of support, exploiting their resources and capacities for personal gain, depriving them of the means needed for independence, resistance and escape and regulating their everyday behaviour.
- 6) Coercive behaviour is: an act or a pattern of acts of assaults, threats, humiliation and intimidation or other abuse that is used to harm, punish or frighten the victim.
- 7) Not all of the elements of abuse listed above amount to criminal conduct but identifying such conduct is important as it may support the specific criminal offence which is charged.
- 8) Men, women and children can be victims of domestic abuse. Family members are defined as mother, father, son, daughter, brother, sister and grandparents whether

directly related, in-laws or step-family. However, this is not an exhaustive list and may also be extended to uncles, aunts and cousins etc.

- 9) The same evidentiary and public interest considerations apply in domestic abuse cases irrespective of the ethnicities, sexualities, ages, disabilities, immigration status, religions or beliefs and socio-economic backgrounds of the parties.
- 10) The definition of domestic abuse refers to *“those aged 16 or over”* but this policy will also apply to criminal allegations which occur in a domestic context involving victims and abusers whatever their age.
- 11) Prosecutors should be careful not to make assumptions with regard to a victim’s age, or the nature of their relationship with their abuser, or physical stature/appearance or gender stereotypes. As much information as possible should be obtained from the police about the circumstances of the relationship to enable prosecutors to properly assess the specific requirements and needs of the complainant, and the level of support which is required and can be provided through relevant support services.
- 12) It may not always be straightforward to identify the primary aggressor and true complainant in a case of domestic abuse. It is possible in some cases that a primary ‘complainant’ of abuse or violence may have acted in a manner in which they are then seen as the perpetrator. For example, retaliation against the primary aggressor after years of abuse.

Evidence

- 13) Evidence that can be used to prove a case includes, **but is not limited to**, the complainant’s account, that of a friend, neighbour or child or young person who may have been nearby, any admissions by the suspect, calls to the emergency services (which may include evidence of admission) medical evidence, photographs and other forensic evidence.

Assessing the evidential test when a complainant who has made a written statement of complaint subsequently withdraws that complaint

- 14) Sometimes complainants will withdraw their complaints. That does not necessarily mean that the offence did not take place and, subject to the evidentiary test continuing to be passed, the case should be prosecuted. In cases where there is sufficient other evidence it might be possible to proceed without relying on the evidence of the complainant at all.
- 15) If this happens, the reason why the complainant has asked the case to be withdrawn must be ascertained. The complainant should be invited by the police to make a written statement, taken by an officer from the Public Protection Unit, which explains the reasons for wishing to withdraw support for the prosecution, indicating whether they have been pressurised to withdraw support and providing any other relevant information. The complainant should also indicate whether the contents of their original statement were true and confirm whether, notwithstanding their wish to withdraw the case, they will attend court to give evidence if a decision is made that the case should proceed.

- 16) In circumstances where the complainant states that their original complaint was true, for the purposes of assessing the evidential test, it should be assumed that the witness would attend Court and give evidence in accordance with the contents of their original complaint.
- 17) If in a subsequent statement a complainant indicates that the contents of their original statement were untrue in whole or in part, the effect of any inconsistency needs to be assessed in determining whether the evidential test is passed. In such circumstances Centeniers should refer the prosecution to a Legal Adviser.
- 18) If it is suspected that the complainant has been pressured or frightened into withdrawing the complaint, the States of Jersey Police should investigate further. If it is found that the complainant's withdrawal was based on fear or intimidation, the evidence will be considered and it will be decided whether further charges should be brought. Consideration will also be given to the possible application of Article 64 of the Police Procedures and Criminal Evidence (Jersey) Law 2003 in respect of first-hand hearsay. In such circumstances Centeniers should refer the case to a Legal Adviser.
- 19) If the evidential test is passed and the complainant does not want the prosecution to continue, Centeniers should consult with a Legal Adviser in order to assess whether a prosecution remains in the public interest.

Public Interest

- 20) In cases involving an allegation of domestic abuse, if the evidential test is passed, the public interest will be generally in favour of a prosecution even if, for example, the injury was minor or the parties have reconciled. A Parish Hall disposal will rarely be appropriate.
- 21) In assessing the public interest, information should be obtained about the family circumstances and any children or other dependants living in an abusive household. The impact on children must always be taken into consideration, as it may increase the seriousness of the offence and affect the final charging decision. It is also possible that other agencies or organisations (such as the Children's Service, schools or voluntary organisations etc) may have been made aware of the abuse, or other proceedings such as family proceedings may be taking place as a result. Where possible, officers should ask the police to seek such information to help inform the final charging decision. The receipt of this information should not delay the decision to charge where the evidentiary test is passed.
- 22) Care should be taken to differentiate between public and private interest considerations. For example, the fact that, if charged and/or convicted a suspect may lose their employment is a private rather than a public interest consideration. The personal consequences to a suspect should not provide him or her with any immunity against prosecution.
- 23) The following factors may also be useful when considering the public interest:

a) the seriousness of the offence:

- i) the more serious the offence, the more likely it is that a prosecution is required;
- ii) whether the offence is likely to be repeated;

b) the culpability of the defendant:

- i) the extent to which the offending was pre-meditated;
- ii) whether the defendant has any previous convictions or out of court disposals;
- iii) whether the offending is likely to be continued, repeated or escalated;
- iv) the suspect's age or level of maturity;
- v) whether the suspect was suffering from any mental or physical ill health before, or at the time of the offence taking place;

c) the circumstances of and the harm caused to the complainant:

- i) complainant's injuries – whether physical **or** psychological;
- ii) whether a weapon was used;
- iii) whether the offence was motivated by any form of discrimination against the complainant's ethnicity, gender identity or sexual orientation, mental or physical capacity, age, religion, immigration status, employment status, social background etc;
- iv) if there were any children or other vulnerable dependants living in the household;
- v) whether the offence took place in the presence of, or near a child;
- vi) whether the complainant is/was pregnant at the time of the offence;
- vii) any continuing threat to the health and safety of the complainant (irrespective of the relationship status), or anyone else who is, or may become involved;
- viii) the history of the relationship, particularly if there has been any violence in the past.

d) whether the suspect was under the age of 18 at the time of the offence;

e) any other factors which may present as relevant to the public interest.

Charging decision

24) All available charges should be considered. In the appendix to this Guidance, examples of behaviours constituting domestic abuse are set out with the corresponding criminal offence.

Avoiding charging delays – 'cooling off periods'

25) All charging decisions should be made speedily and with specific attention to the complainant's, and any children's or other dependants', safety in mind. Delaying charging decisions to allow the matter to 'cool off' for the complainant to decide whether he/she wants to support a prosecution, or for the complainant and/or defendant to 'calm down', should not occur.

- 26) Complainants may be further harassed or abused during any such period, and may be at enhanced risk as a result of their reporting the incident - it is therefore essential that the appropriate charging of a suspect takes place as soon as possible.

Parish Hall Enquiry

- 27) Cases should only be considered for disposal at a Parish Hall Enquiry when the evidential test is passed. It is not appropriate for the Parish Hall Enquiry to consider imposing sanctions in cases where there is insufficient evidence.
- 28) There will be cases when disposal at a Parish Hall Enquiry may be appropriate. This would be the case in the following circumstances:
- a) there has been no previous suggestion of domestic abuse made to the police or any third party;
 - b) the use or threat of force is minor;
 - c) the victim has indicated that he or she does not wish to support a prosecution; and
 - d) it is the assessment of the police that there are no safeguarding concerns with regard to the victim and any children or dependant living in the home.
- 29) In cases where all of the above factors are present, officers should consult with a Legal Adviser prior to listing the case for a Parish Hall Enquiry.
- 30) The particular dynamics of domestic abuse mean it is crucial that prosecutors proactively address the security and safety of the complainant, and any children, from the point of charge and throughout the prosecution. An incident of domestic abuse is not usually a one-off incident, and will, in most cases increase in frequency and severity. It is only after suffering abuse for some time that victims may come forward to report to the States of Jersey Police. Prosecutors need to be aware that certain actions, such as the complainant supporting a prosecution, may place the complainant and/or any children, or other family members at increased risk. In addition, many complainants will often be in a situation where they are unable to effectively resist the abuse perpetrated or escape from the perpetrator.

Bail

- 31) Where a suspect is released after being arrested in connection with an offence of alleged domestic abuse, the Police may impose conditions upon their bail while enquiries are ongoing. Conditions placed upon bail may only be for the purposes of:
- a) ensuring the suspect's surrender to custody;
 - b) ensuring the suspect's attendance at parish hall inquiry;
 - c) ensuring the suspect does not commit an offence while on bail;
 - d) ensuring the suspect does not interfere with witnesses or otherwise obstruct the course of justice, whether in relation to himself or herself, or any other person; or
 - e) for the suspect's own protection or, if the suspect is under the age of 18, for the suspect's own welfare or in the suspect's own interests.

- 32) When determining what, if any, conditions may be necessary, proportionate and enforceable, an officer's primary concern should be the safety of the complainant and any children or dependant in the home. The States of Jersey Police must collect all relevant information available to them about the offence and the suspect to allow them to make an informed decision regarding the use of bail conditions, including consultation with Independent Domestic Violence Advisers. This information will also help officers to formulate decisions in relation to whether it is appropriate to seek a remand into custody should the suspect be charged with the offence at a later date.
- 33) Information to be considered by officers will include:
- a) the complainant's whereabouts or living arrangements – the complainant's address should be cross-referenced with the suspect's address to consider proximity and suitability. Where the complainant is in a refuge or other safe location, details of their whereabouts should not be disclosed as part of the bail arrangements;
 - b) the complainant's fears regarding the suspect's behaviour, including their fear of further offences occurring;
 - c) information regarding the children or any other dependants (e.g. care arrangements for children, other family members, and/or risk of violence);
 - d) areas/locations the complainant frequently visits or attends (place of work, school, church etc.);
 - e) the impact on the complainant if the complainant and the suspect are at the same location for the purposes of work, education, etc.;
 - f) methods of contact between the complainant and the suspect;
 - g) any history the suspect has of complying with bail conditions.
- 34) Serious consideration must be given as to whether it is appropriate for suspects to be detained in custody. Where conditions upon the suspect's bail would not ensure the safety of the complainant and/or any dependents, it may be necessary to undertake the investigation while they remain in police custody. The safeguarding considerations relevant to the risks inherent in releasing a suspect on conditional bail must always be considered. In this regard, the interests of the complainant and any children or dependants should always take precedence over interests of the suspect.
- 35) An officer placing conditions upon a suspect's bail pre-charge must provide to the suspect a hard copy of the States of Jersey Police Bail Form which records the suspect's bail conditions. The record must provide the reasons for the imposition of any conditions as per the list detailed at paragraph 31(a) – (e) above.
- 36) Where a defendant is charged with an offence involving an allegation of domestic abuse, the same considerations relating to whether release on bail with conditions is appropriate will apply. The Centenier charging a defendant must provide to the defendant a hard copy of a Centenier's bail form which records the bail conditions placed upon the defendant and the reasons for the imposition of any conditions. The record must provide the reasons for the imposition of any conditions as per the list detailed at paragraph 31(a) to (e) above. In addition to these reasons, following charge conditions may also be imposed for the purpose of enabling inquiries or reports to be made.

37) The defendant should be brought before the Magistrate's Court at the first available opportunity, which may not necessarily be the normal day for an offence committed in that Parish. It is important for the safeguarding of complainants of domestic abuse and any children or dependant that the Court should be seized of the case at the earliest practical opportunity.

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