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# Domestic Violence: The Criminal Law Response

**Simon Parsons** examines the law relating to domestic violence and calls for simplification

**D**omestic violence is serious and should be severely dealt with by the criminal law. There is no offence of domestic violence as such; instead the criminal law responds to it with a number of different offences which will be examined in this article, as will the issue of how a prosecution for domestic violence is facilitated. The punishments and orders available to deal with domestic violence will also be examined.

There is a legal definition of domestic violence in the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (LASPO): “[D]omestic violence’ means any incident of threatening behaviour, violence or abuse (whether psychological, physical, sexual, financial or emotional) between individuals who are associated with each other.” (Schedule 1, Pt.1, para.12(9))

This definition to a large extent mirrors the non-legal definition of domestic violence that was used by the Government until March 31, 2013, when the non-legal definition was changed so that “domestic violence and abuse” is now defined as follows: “Any incident or pattern of incidents of controlling, coercive or 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. This can encompass, but is not limited to, the following types of abuse: psychological, physical, sexual, financial and emotional. ([www.homeoffice.gov.uk/crime/violence-against-women-girls/domestic-violence](http://www.homeoffice.gov.uk/crime/violence-against-women-girls/domestic-violence))

This new definition, which is not a legal definition, includes so called “honour” based violence, female genital mutilation and forced marriage, and is clear that victims are not confined to one gender or ethnic group. It also makes clear that domestic violence is not limited to physical contact but also includes other forms of abuse, including psychological and emotional abuse. This new definition provides welcome clarity and reflects the fact that young people are just as likely to suffer domestic abuse as any other age group. The definition in LASPO will need to be changed to reflect this clarity.

## Domestic Violence Offences

The new definition has to be wide because domestic violence takes many forms. To deal with it, the criminal law provides a variety of offences that can be prosecuted. The law is complex but, to aid prosecutors, the CPS has produced an aide-memoire, reproduced in the box on p.291.

In addition, there are now two specific offences of stalking which have been added to the Protection from Harassment Act 1997 (PHA) by the Protection of Freedoms Act 2012. The first is the basic offence of “stalking” (PHA, s.2A) and the second an aggravated offence of “stalking involving fear of violence or serious alarm or distress” (PHA, s.4A). The former offence could be used in response to excessive contact whilst the latter could be a response to menacing telephone calls, text messages or letters. So there is an array of offences that can be used to prosecute domestic violence, but it has to be so because of the large number of behaviours which can count as domestic violence. It is not feasible to define a domestic violence offence, or even offences, which cover all of this conduct. Perhaps what is more important is how a prosecution involving domestic violence is facilitated and what orders are available after a conviction or indeed an acquittal.

## How is a Domestic Violence Prosecution Facilitated?

Given the large number of offences that can be used to prosecute domestic violence, there needs to be specialization to facilitate the effective prosecution of these offences. This has been achieved in a number of ways.

First, there is the use of Independent Domestic Violence Advisers (IDVAs) whose role is, among other things, to help victims in respect of the prosecution of domestic violence. There are also witness units, the aim of which is to provide a single point of contact for victims and witnesses, minimizing the stress of attending court and keeping victims and witnesses up to date with any news in a way that is convenient to them. This is especially important in respect of victims of domestic violence, who may be vulnerable. Witness-care units are jointly staffed by the police and the CPS.

Secondly, there is the Code of Practice for Victims of Crime. The Code dictates that all victims must be told when a suspect has been arrested and why an offender received a particular sentence, as a matter of course. A victim’s rights include the right to information about the crime within specified time-scales, including the right to be notified of any arrest and court cases. There is also the right to an enhanced service in the case of vulnerable or intimidated victims, which includes victims of domestic violence.

Thirdly, every CPS area, including CPS Direct, has a co-ordinator responsible for domestic violence, and Crown

Prosecutors are given training in respect of domestic violence. This has increased the conviction rate for criminal offences relating to domestic violence.

Fourthly, there has been the roll-out of specialist domestic violence courts (SDVCs). SDVCs identify domestic-violence-related cases and carry out a fast-track process. This has encouraged a multi-agency approach to domestic violence within the criminal justice process. These specialized courts have increased the conviction rate of domestic violence offences. In 2007-08 the CPS prosecuted 75,000 cases involving domestic violence against women and girls. By 2011-12 that number was 91,000. Over the same period, the number of convictions rose from 52,000 to almost 67,000.

Fifth, there are special measures for victims and witnesses. These are a series of provisions that help vulnerable and intimidated witnesses give their best evidence in court and help to relieve some of the stress associated with giving evidence. Special measures apply to prosecution and defence witnesses, but not to the defendant. Victims of domestic violence, who are very likely to be vulnerable and intimidated as a witness, can make use of these special measures. The special measures available to vulnerable and intimidated witnesses, with the agreement of the court, include: screens in the courtroom to prevent the witness from seeing the defendant; live links, allowing a witness to give evidence away from the courtroom; evidence in private, allowing a witness privacy by clearing the public gallery in cases involving sexual offences and intimidation; removal of wigs and gowns by Judges and barristers; visually recorded statements – these allow a witness to use a pre-recorded video statement as their main prosecution evidence; intermediaries – specialists who help witnesses with communication difficulties; and the use of communication aids, eg alphabet boards (ss.23-30 of the Youth Justice and Criminal Evidence Act 1999). These measures may be the difference between a domestic violence prosecution succeeding or failing because, without the victim's evidence, the CPS is frequently unwilling to proceed with a prosecution.

### What Follows Conviction or Acquittal?

The offences that are used to prosecute domestic violence all have their own punishments. For example, the punishment for murder is life imprisonment, although most murderers (including those who kill through domestic violence) serve 15 years before being eligible to apply to be released on licence, unless there is an aggravating feature to the murder (for example, the domestic violence that killed was premeditated).

However, there is an order which is particularly useful in relation to domestic violence: the restraining order. A restraining order is a court order intended to protect victims of domestic violence from further harm or harassment by keeping the abuser away from the victim. This may involve keeping the abuser from the scene of the violence, which may include the victim's home or place of work. It is a civil order and previously could only be imposed upon a defendant following their conviction of the basic or aggravated forms of harassment under the PHA. However, s.12 the Domestic Violence, Crime and Victims Act 2004 amended the PHA to allow for a restraining order to be made either when a defendant is convicted of any offence (PHA, s.5) or, more controversially, when a defendant is acquitted of any offence (PHA, s.5A) if the court considers

the order is necessary to protect a person from harassment by the defendant. The court will have regard to the evidence it heard during the criminal trial when determining whether a restraining order is required.

However, further evidence may be required, especially where the defendant has been acquitted and the civil standard of proof is applied. Breach of a restraining order is a criminal offence for which the punishment is a maximum of five years' imprisonment on indictment. (The criminal standard of proof is applied when there is a prosecution for the alleged breach of a civil order). There is a defence of reasonable excuse.

### Conclusion

The response of the law to domestic violence is complex and confusing, since not only is there the criminal law response outlined above but there is also the civil law response.

Under the Family Law Act 1996, a person who has been subject to domestic violence can apply for a non-molestation order from a civil court in which the civil standard of proof applies. Breach of a non-molestation order is a criminal offence for which the punishment is a maximum of five years' imprisonment on indictment. Non-molestation orders are similar to restraining orders in that both can be made where the court is satisfied, to the civil standard of proof, that either the victim or another person requires protection from the abuser.

The PHA also has a civil side, as, in a civil action for the statutory tort of harassment, there can be an award of damages together with a civil injunction, the violation of which is a criminal offence also carrying a maximum of five years' imprisonment on indictment. In addition there is the anti-social behaviour order (ASBO) created by the Crime and Disorder Act 1998 (CDA). This order can also be used to tackle domestic violence. ASBOs are civil orders to protect the public from behaviour that causes or is likely to cause harassment, alarm or distress. An order contains conditions prohibiting an individual from carrying out specific anti-social acts or from entering defined areas. The orders are not criminal sanctions and are not intended to punish the individual. They are designed to be preventative, not punitive.

There is the "stand-alone ASBO", which can be obtained in civil proceedings under s.1 of the CDA, or the "order on conviction ASBO", which can be obtained in criminal proceedings under s.1C of the CDA. Both are civil orders but a heightened civil burden of proof applies, which the House of Lords has stated should be equivalent to the criminal standard of proof (*R (on the application of McCann) v. Manchester Crown Court* [2002] UKHL 39; being civil orders, the protections offered by arts.6(2) and 6(3) of the European Convention on Human Rights do not apply). Breach of an ASBO is a criminal offence for which the punishment is a maximum of five years' imprisonment on indictment. There is a defence of reasonable excuse.

The law needs to be simplified but its complexity grows. For example, domestic violence protection notices and orders (DVPOs) are available in the West Mercia, Wiltshire and Greater Manchester police areas. DVPOs give victims, who might otherwise have had to flee their home, time to get the support they need. Before these orders, there was a gap in protection, because police could not charge the abuse for lack of evidence (and therefore the abuser could not be subject to bail

**Examples of domestic violence offences**

**Example of Behaviour:** Neglecting, abandoning or ill-treating a child.  
**Possible Offences:** Child cruelty.  
**Example of Behaviour:** "Honour crimes".  
**Possible Offences:** Murder, aiding and abetting suicide.  
**Example of Behaviour:** Female circumcision.  
**Possible Offences:** Female genital mutilation.  
**Example of Behaviour:** Forcing entry into a house.  
**Possible Offences:** Using violence to secure entry.  
**Example of Behaviour:** Pressuring a victim/witness to "drop the case" or not to give evidence.  
**Possible Offences:** Witness intimidation, obstructing the course of justice, conspiracy to pervert the course of justice.  
**Example of Behaviour:** Physical violence, with or without weapons, including: punching, slapping, pushing, kicking, head-butting, and hair-pulling.  
**Possible Offences:** Common assault, actual/grievous bodily harm, wounding, attempted murder.  
**Example of Behaviour:** Violence resulting in death.  
**Possible Offences:** Murder, manslaughter.  
**Example of Behaviour:** Violence resulting in miscarriage.  
**Possible Offences:** Child destruction, procuring a miscarriage or abortion.  
**Example of Behaviour:** Choking, strangling, suffocating.  
**Possible Offences:** Common assault, actual/grievous bodily harm, attempting to choke, strangle or suffocate.  
**Example of Behaviour:** Spitting at a person.  
**Possible Offences:** Common assault.  
**Example of Behaviour:** Threatening with an article used as a weapon, eg a knife, tool, telephone, chair.  
**Possible Offences:** Threats to kill, common assault, affray, threatening behaviour.  
**Example of Behaviour:** Throwing articles, eg crockery, even if they miss their target.  
**Possible Offences:** Common assault, actual/grievous bodily harm, wounding, criminal damage, affray, threatening behaviour.

**Example of Behaviour:** Tying someone up.  
**Possible Offences:** Common assault, actual bodily harm, false imprisonment.  
**Example of Behaviour:** Threatening to kill someone.  
**Possible Offences:** Threats to kill, harassment.  
**Example of Behaviour:** Threats to cause injury.  
**Possible Offences:** Common assault, affray, threatening behaviour.  
**Example of Behaviour:** Threats seriously to damage or undermine social status.  
**Possible Offences:** Harassment, blackmail.  
**Example of Behaviour:** Damaging or destroying property or threatening to damage or destroy property.  
**Possible Offences:** Criminal damage, threatening to cause criminal damage, harassment.  
**Example of Behaviour:** Harming or threatening to harm a pet.  
**Possible Offences:** Criminal damage, threatening to cause criminal damage, cruelty to animals, harassment.  
**Example of Behaviour:** Locking someone in a room or house or preventing him or her from leaving.  
**Possible Offences:** False imprisonment, harassment.  
**Example of Behaviour:** Preventing someone from visiting relatives or friends.  
**Possible Offences:** False imprisonment, kidnapping, harassment.  
**Example of Behaviour:** Preventing someone from seeking aid, eg medical attention.  
**Possible Offences:** False imprisonment, actual bodily harm.  
**Example of Behaviour:** Preventing someone from dressing as they choose or forcing them to wear particular make-up, jewellery and hairstyles.  
**Possible Offences:** Actual bodily harm, harassment.  
**Example of Behaviour:** Racial abuse.  
**Possible Offences:** Racially aggravated threatening behaviour, disorderly conduct or harassment.  
**Example of Behaviour:** "Outing", eg sexual orientation or HIV status.

**Possible Offences:** Harassment, actual bodily harm, blackmail.  
**Example of Behaviour:** Enforced financial dependence or unreasonably depriving someone of money.  
**Possible Offences:** Harassment.  
**Example of Behaviour:** Abuse related to dowry demand.  
**Possible Offences:** Blackmail, harassment, common assault, actual/grievous bodily harm.  
**Example of Behaviour:** Unreasonable financial demands.  
**Possible Offences:** Blackmail, harassment.  
**Example of Behaviour:** Forced marriage.  
**Possible Offences:** Kidnap, blackmail, false imprisonment, common assault, actual/grievous bodily harm, rape, sexual assault.  
**Example of Behaviour:** Enforced sexual activity.  
**Possible Offences:** Rape, indecent assault, harassment, living off immoral earnings.  
**Example of Behaviour:** Persistent verbal abuse, eg constant unreasonable criticism.  
**Possible Offences:** Harassment, actual bodily harm.  
**Example of Behaviour:** Breaching the conditions of a non-molestation order.  
**Possible Offences:** Breach of non-molestation order.  
**Example of Behaviour:** Offensive/obscene/ menacing telephone calls, text messages or letters.  
**Possible Offences:** Improper use of public telecommunication systems, malicious communications, actual/grievous bodily harm, harassment.  
**Example of Behaviour:** Excessive contact, eg numerous phone calls to check someone's whereabouts.  
**Possible Offences:** Harassment, false imprisonment.  
**Example of Behaviour:** Secret or enforced administration of drugs.  
**Possible Offences:** Common assault, actual bodily harm, grievous bodily harm, administering poison."

\* [www.cps.gov.uk/legal/d\\_to\\_g/domestic\\_violence\\_aide-memoire/index.html](http://www.cps.gov.uk/legal/d_to_g/domestic_violence_aide-memoire/index.html)

conditions or remanded in custody) and because the process of granting an injunction took time. DVPOs close that gap. They give police and magistrates the power to protect a victim immediately after an attack, by stopping the abuser from contacting the victim or returning home for up to 28 days. These orders are to be welcomed and they should be rolled out throughout England and Wales but they do add to the complexity of the law.

Most victims of domestic violence (and many lawyers) find the law's response to domestic violence bewildering. The law needs to be simplified. That simplification could be achieved by giving the jurisdiction for dealing with domestic violence solely to the criminal justice process. There is evidence that this is already happening de facto since the number of applications for non-molestation orders

is reducing, as many victims of domestic violence turn first to the criminal justice process. This trend may be increased by the reduction in the availability of civil legal aid. The reason for this switch is that the criminal justice process has specialized in response to domestic violence, in particular with the introduction of SDVCs. This specialization is lacking in the civil courts. In addition, there is a case for rationalizing the number of different orders currently available to deal with domestic violence so that victims have a better understanding of the legal process and thus know where to go and what to apply for.

**Author details**

Associate Professor of Law, Southampton Solent University