

Scoping Document

Evidence-Led Domestic Abuse Prosecutions follow up Inspection

Background

Evidence Led Domestic Abuse Prosecutions - CPS guidance

1. CPS legal guidance on prosecuting cases of domestic abuse¹ sets out that the prosecution strategy should, from the outset, consider the possibility of proceeding without the victim's support and this should be clearly recorded within the pre- and post-charge reviews. Prosecutors should consider potential evidence other than that of the victim that can be adduced, including but not limited to 999 calls, body worn footage, injuries seen by others, independent witness statements and telephone/digital evidence. Prosecutors should also consider whether any statements of the victim are admissible as evidence under the res gestae principle, s.118 Criminal Justice Act 2003². Basing a prosecution on these other sources of evidence, without the victim's evidence is known as an Evidence-Led Prosecution (ELP).
2. A victim may withdraw their support for a prosecution at any stage of the proceedings both pre-charge and post-charge. If, after considering a victim's reasons for retracting their allegation or withdrawal of support, it is deemed inappropriate to compel them to attend court to give evidence by seeking a witness summons or witness warrant, the prosecutor has a duty to review the case and determine if there remains sufficient evidence, without the victim, to prosecute the case. Prosecutors must also consider whether there is sufficient evidence for an evidence-led prosecution even where the victim does not consent to engage with the process from the outset and so never provides a formal statement of complaint.

The 10 case strategy principles

3. Since 2015 HMCPSP has consistently reported that the CPS could do more to improve the quality of their case analysis and strategy in reviews. In efforts to address this the CPS have developed 10 principles which outline the responsibilities of a prosecutor in developing a case strategy. The first principle "*Evidential stage: thoughtful analysis,*" the fourth principle "*The future of the case: thinking ahead*" and the fifth principle "*The full picture: understanding the human context*" are of particular relevance to ELP.

Joint Inspection Evidence led domestic abuse prosecutions

4. In January 2020, HMICFRS and HMCPSP published a joint report entitled "*Evidence led domestic abuse prosecutions*"³. HMCPSP inspectors examined 160 domestic abuse

¹ [Domestic Abuse | The Crown Prosecution Service](#)

² [Criminal Justice Act 2003](#)

³ [2020-01-20 ELDA report](#)

cases from the magistrates' courts units in four CPS Areas: Cymru-Wales, Mersey-Cheshire, Thames and Chiltern and West Midlands. A further 40 files were inspected where CPS Direct had made the decision to take no further action.

5. The inspection found that in 42.1% of relevant cases an ELP was not properly considered at the pre-charge stage. At post-charge, it was found that there was no consideration of an ELP in 40.1% of relevant cases. There was an identified need for greater awareness, and proper recording, of the consideration of ELPs at both pre-charge and post-charge stage.
6. Of the eight recommendations made, four were directed to the CPS:
 - a. **Police supervisors and Crown Prosecution Service legal managers should maximise opportunities to share examples of good work and successful outcomes with their teams.**
 - b. **As well as the Crown Prosecution Service's bespoke e-learning, which all Area prosecutors have to complete, the police and Crown Prosecution Service should ensure that refresher training in domestic abuse, and particularly evidence led cases, is available to staff as appropriate.**
 - c. **Prosecutors should ensure that in all domestic abuse cases, they set out clearly at the charging stage whether an ELP is viable and, if so, define an effective prosecution strategy.**
 - d. **At review stage, prosecutors should, in all appropriate domestic abuse cases, clearly outline a strategy for proceeding with an ELP.**
7. Following the publication of the 2020 report, the CPS rolled out domestic abuse refresher training from November 2022. This included a focus on ELPs and was aligned with the CPS case strategy project.

The service from the CPS to victims of domestic abuse

8. In March 2023 HMCPSI published a report "*The service from the CPS to victims of domestic abuse – a thematic inspection of the handling by the Crown Prosecution Service of domestic abuse cases in the magistrates' courts*"⁴.
9. HMCPSI inspectors examined 300 domestic abuse cases from the magistrates' courts units in six CPS Areas: Cymru-Wales, East of England, East Midlands, West Midlands, North East and South East. The file sample included cases where the decision was made to take no further action.
10. In this inspection our case file examination findings highlighted that there had been a deterioration in effective ELP analysis. Out of 294 relevant cases, only 21.4% (63 files) were assessed as fully meeting the standard for consideration of ELP.
11. The report noted the following ELP compliance issue:

⁴ [The service from the CPS to victims of domestic abuse](#)

‘Prosecutors are not addressing evidence-led principle sufficiently well, or at all, at the pre-charge review stage.’

12. The March 2023 report also assessed the quality of post-charge reviews and decisions, and specifically where the decision was taken to discontinue, withdraw or offer no evidence, whether the prosecutor or advocate properly considered an ELP. We found that there was a better consideration of an ELP when the victim had withdrawn post-charge than when the possibility was hypothetical, as it often is pre-charge. However, there was still room for improvement, with 54.0% of cases fully meeting the required standard of consideration of an ELP. It should be noted that in the 2023 inspection, our file examination was conducted using a different file examination methodology so a direct comparison to 2020 was not possible.
13. It is noted within our 2023 report that the CPS and Areas themselves had identified a lack of consideration of ELP and had provided recent training to their prosecutors. This training, as well as the nationally rolled-out Domestic Abuse refresher training, may have been too recent to have impacted on the cases examined within the March 2023 file sample.

Progress against the 2020 recommendations

14. The CPS keep all recommendations under review and engages with HMCPSI on a quarterly basis to consider its progress in delivering change to meet recommendations. The CPS has closed the first two recommendations, those relating to maximising opportunities to share examples of good work and successful outcomes with their casework teams, and ensuring refresher training is available to staff as appropriate, but the recommendations about consideration of ELP at reviews remains open.
15. The CPS has carried out assurance work to assess the wider impact of the case strategy programme, but there is no specific assurance on ELP. HMCPSI has therefore decided on a risk-based approach, given the sensitivity and importance of high-quality decision making in domestic abuse cases, to carry out this follow-up inspection to assess the current position.

Inspection Question

16. Has the CPS successfully implemented the four recommendations made in the Criminal Justice Joint Inspectorate report “*Evidence led domestic abuse prosecutions*”?

Out of scope

17. We considered whether an assessment of protective orders made in favour of the victim, e.g. Restraining Orders should be included. It is important that the safety of the victim is considered, and appropriate applications made for protective orders even in circumstances where the victim is not supporting a prosecution. However, as this is a follow-up inspection we will focus this inspection purely on the implementation of the recommendations about the consideration of ELP at pre- and post-charge review.

Follow-Up Methodology

18. The inspection will be conducted by way of an examination of domestic abuse magistrates' courts cases and interviews. A question set and accompanying guidance for the file examination has been prepared.

Recommendations 1 and 2

19. Interviews will be conducted with central legal training team (CLTT) and CPS national leads for domestic abuse to obtain evidence to assess progress against recommendations 1 and 2. This will include assessment of the training provided to prosecutors in relation to ELP and assurance processes, and sharing of good practice and successful outcomes.

Recommendations 3 and 4

20. We will assess case files from all 14 CPS Areas. A minimum of eight magistrates' courts domestic abuse cases will be examined per Area. This will provide evidence as to whether ELPs are being considered and dealt with consistently across England and Wales at pre-charge and post-charge review stages.
21. A judgement on progress will be made by reference to the volume of cases where ELP is properly considered in reviews. An achieved rating will be given where there is an increase of a minimum of 20% from the assessments in the 2020 inspection. Any level of improvement less than 20% will result in a not achieved assessment.
22. To allow a direct comparison with the 2020 results, the file examination methodology will have inspectors assess the same questions as used in the 2020 inspection relating to evidence led using yes/no answers.

File selection criteria

23. The file selection criteria are set out below and mirrors that of the 2020 inspection to allow for a direct comparison to assess progress against the recommendation.
24. Of the eight selected files for examination, two will be cases where the CPS decided no further action (NFA) at the pre-charge stage. This is to enable direct comparison with the 2020 report and will enable inspectors to consider whether prosecutors are adequately considering ELP prior to making the decision that there is not a realistic prospect of conviction.
25. The remaining six files will be taken from charged, finalised cases. At charging stage, there is likely to be a mix of files where victims are supportive of prosecution and where they are not. Of the six files, at least two will feature the victim withdrawing support for prosecution post-charge. This will enable assessment as to whether prosecutors are considering ELP both when it is a hypothetical scenario and when it is a reality. The outcomes of these cases may be discontinuance or continuation to trial and will assess cases where both an ELP is not possible and where the prosecution can proceed as an ELP.

Document request

26. The following documents will be requested from each CPS Area, CPS Headquarters and CLTT and will be analysed as part of the inspection:

- Training brief of the Domestic Abuse refresher training (from CLTT)
- Details of the rollout of the domestic Abuse refresher training (from CLTT)
- Any local training regarding ELP (Area)
- Evidence of Areas sharing ELP good practice and successful outcomes with their teams (Area, CLTT and HQ)
- Training records (Area and CLTT)
- Any further local or national guidance regarding ELP (Areas and HQ)
- Minutes from meetings (JOIM/CQC) where ELP was discussed in a domestic abuse context (Area)
- Any national guidance developed by CPS or as part of the joint national action plan on domestic abuse. (HQ)