



Policy for Prosecuting Cases of Domestic Violence

PUBLIC
PROSECUTION
SERVICE

Independent, Fair
and Effective

Policy for Prosecuting Cases of Domestic Violence

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The Public Prosecution Service

Vision

To deliver an excellent service to the community in an independent, fair and effective manner, working in partnership with others in the criminal justice system, valuing and developing our staff, and thereby providing a prosecution service in which the people of Northern Ireland can have confidence.

The Public Prosecution Service (PPS) will be the principal public prosecuting authority for Northern Ireland.

The service is established by the commencement of the Justice (NI) Act 2002. The Act defines the Public Prosecution Service, its statutory duties and commitments and the legislative framework within which it provides its services.

The PPS is headed by the Director of Public Prosecutions for Northern Ireland. Subject to the full implementation of the PPS¹, the Director is to take responsibility for all criminal cases previously prosecuted by the Department of the Director of Public Prosecutions and the Police Service of Northern Ireland.

Whilst the PPS works closely with the police and a range of other criminal justice agencies, it is wholly independent; its decisions are impartial, based on an independent and professional assessment of the available evidence and the public interest.

¹ Whilst the PPS came into effect as a statutory body in June 2005, the new PPS structures are not yet fully in place throughout Northern Ireland and as of March 2006, the full range of services is available in the Belfast Region and in the five Police Districts in Fermanagh and Tyrone only.

1

Introduction

- 1.1 This document explains the way we, the Public Prosecution Service for Northern Ireland (PPS), deal with cases involving domestic violence.
- 1.2 We regard allegations of violence in a domestic context as serious and view the prosecution of such cases as highly important. Their domestic nature is considered to be an aggravating factor because of the abuse of trust. Victims know and often live with or have lived with their abuser. Additionally, there is often a continuing threat to the victim's safety and, in the worst cases, the victim's life. The safety of children and others may also be at risk.
- 1.3 When we are deciding whether to prosecute, the safety of the victim, children and any other person at risk will be an important consideration for us.
- 1.4 People should feel safe and be safe in their personal relationships. Domestic violence can have a devastating effect not only upon the victim but also upon families. Children who witness, or who are aware of, domestic violence are particularly affected.
- 1.5 We, the PPS, are determined to prosecute cases effectively and in addition, work within a multi-agency approach¹. Where we are aware that there are concurrent criminal and civil proceedings, we will work to ensure, insofar as we can, that the criminal proceedings are dealt with as expeditiously as possible.
- 1.6 We will continue to work with our colleagues in the criminal justice system and with voluntary and community groups to help us improve our understanding of domestic violence. We are committed to training all our prosecutors. This training will be taken forward in partnership with colleagues from the criminal justice and the voluntary sectors to ensure the consistent implementation of our policy. We realise the victims of domestic violence – particularly those who may have suffered over a considerable time – have difficult decisions to make that will affect their lives and the lives of those close to them.
- 1.7 We acknowledge that barriers exist, in respect of cases involving domestic violence, which means that some people are less likely to report offences.
- 1.8 Victims who are, or have been in a relationship with their abuser, may blame themselves or feel that agencies may blame them, as well as facing

wider difficulties such as disruption to the lives of their children and families.

1.9 Some individuals may face additional hurdles. People from minority ethnic communities may have experienced racism. They may fear that they will not be believed, or that they will not be treated properly. As a result they may be reluctant to report offences or support a prosecution. Cultural and religious beliefs may also have the same effect. In cases involving domestic violence in same sex relationships, victims may fear homophobic reactions from the criminal justice system, as well as being “outed” by the process. Disabled people and some elderly victims of domestic violence may fear reporting offences, particularly if the abuser is also a carer.

1.10 We work with a number of local organisations for example, Victim Support and the NSPCC, which offer support to victims throughout the process from reporting the crime to giving evidence in court. Special measures can be used to help a victim or witness give evidence (see paragraph 9.1). We will consider every case carefully and sensitively. Our decisions will be objective but made within a framework that promotes

safety and support for victims and keeps them informed.

1.11 We know that domestic violence is most likely to be a pattern of behaviour. We also know that domestic violence is likely to become more frequent and more serious the longer it continues and can result in death. Sometimes, therefore, we will take proceedings even if a victim asks us not to do so. In these cases, we will make the fullest enquiries through the police, to ensure that our decision to prosecute is made against a background of all available information taking into account the safety of the victim and any children.

¹The PPS is represented on the Regional Steering Group on Domestic Violence, the Domestic Violence and Law Sub Group and the Raising the Standards Group.

2

What is Domestic Violence?

2.1 There is no statutory offence of domestic violence. "Domestic violence" is a general term to describe a range of behaviour often used by one person to control and dominate another with whom they have, or have had, an intimate or family relationship. It is often a series of abusive incidents that has a cumulative effect on the victim.

2.2 When taking decisions as to prosecution in cases of domestic violence we will adopt the following definition:

"Any criminal offence arising from any incident of threatening behaviour, violence or abuse (psychological, physical, verbal, sexual, financial or emotional) inflicted on one person by another where they are or have been intimate partners or family members, irrespective of gender or sexual orientation."

2.3 Domestic violence and abuse is essentially a pattern of behaviour which

is characterised by the exercise of control and the misuse of power by one person over another within an intimate relationship or a family. It is usually frequent and persistent. It knows no boundaries as regards age, gender, race, religion, sexual orientation, income, geography or disability. In the majority of cases the relationship will be between current or former partners; the abuser will be male and the victim female. However our definition also includes male victims abused by females, victims in same sex relationships and victims of abusive family members.

2.4 It can also include violence by a son, daughter or any other person who has a relationship with the victim by birth, marriage or guardianship. It can also include violence inflicted on, or witnessed by, children. An adult is defined as any person seventeen years or over and persons under seventeen years who are married or co-habiting.

2.5 This definition is consistent with that used by police and the Regional Steering Group on Domestic Violence.

2.6 It should be noted not all instances of domestic abuse constitutes a criminal offence. Some examples of behaviour which may constitute a criminal offence are listed at Annex A.

3

The Role of the PPS

- 3.1 The Public Prosecution Service (PPS) is the prosecuting service for Northern Ireland. It is part of the criminal justice system, which includes other organisations such as the police, the courts, the Probation Service and the Prison Service.
- 3.2 We are a public service headed by the Director of Public Prosecutions for Northern Ireland. There is also a Deputy Director. Both of these posts are public appointments made by the Attorney General for Northern Ireland. We are independent of the police, government and voluntary organisations. Our independence is of fundamental importance. We take decisions in respect of prosecutions with fairness, impartiality and integrity.
- 3.3 The police are responsible for investigating allegations of domestic violence, gathering the evidence and reporting the matter to us. The PPS has responsibility for deciding the charge(s) in all domestic violence cases which go to court. This means prosecutors may be involved at a relatively early stage in cases involving domestic violence. The decision to prosecute a case is our responsibility, not that of the victim or the police, however the views of the victim are an important consideration for us.
- 3.4 Where we decide to withdraw or substantially amend a charge we will, where possible, inform the victim of the decision. However, at court some matters are dealt with very quickly so we may not always be able to inform the victim of this.
- 3.5 Normally prosecutions in the Magistrates' and Youth Courts and appeals at the County Court are conducted by Public Prosecutors who are barristers or solicitors who work for the Prosecution Service. Independent Counsel prosecute on behalf of the Prosecution Service in these Courts as necessary, for example, because of the unavailability of public prosecutors or the particular nature of the case. Generally, independent Counsel represent the Prosecution Service at the Crown Court, High Court and Court of Appeal. These Counsel are fully briefed by the Prosecution Service prior to any Court hearing and are normally accompanied in Court by a member of support staff from the Prosecution Service.

4

The Code for Prosecutors

4.1 The Code for Prosecutors gives guidance on how we make decisions about whether or not to prosecute. It is a public document.

4.2 Prosecutions are initiated or continued by the Public Prosecution Service where it is satisfied that the Test for Prosecution is met. This is a two stage test as follows:

i. **The Evidential Test**; the evidence which can be adduced in court is sufficient to provide a reasonable prospect of conviction; and

ii **The Public Interest Test**; prosecution is required in the public interest.

4.3 The Public Prosecutor must analyse and evaluate all of the material submitted in a thorough and critical manner. The Evidential Test must be passed before the Public Interest Test is considered. Each of these stages must be separately considered and passed before a decision to prosecute can be taken.

The Evidential Test

4.4 Public Prosecutors determine whether there is sufficient evidence to provide a reasonable prospect of conviction against each defendant on each charge.

4.5 A reasonable prospect of conviction exists if, in relation to an identifiable individual, there is credible evidence which the prosecution can adduce before a court upon which evidence an impartial jury or magistrate or judge properly directed in accordance with the law, may reasonably be expected to find proved beyond reasonable doubt the commission of a criminal offence by the individual who is prosecuted. Further details in respect of the terms used in this paragraph are included at Annex B.

The Public Interest Test

4.6 Broadly, the presumption is that the public interest requires prosecution where there has been a contravention of the criminal law. This presumption provides the starting point for consideration of each individual case. In some instances the serious nature of the case will make the presumption a very strong one but there are circumstances in which, although the evidence is sufficient to provide a reasonable prospect of conviction, prosecution is not required in the public interest.

4.7 When considering the public interest test, one of the factors we take into account is the consequences for the victim of the decision whether or not to prosecute, and any views expressed by the victim or the victim's family.

4.8 The public interest test is explained in further detail at section 6 on page 12.

The Burden and Standard of Proof

4.9 For there to be a conviction in the criminal court, the prosecution has to prove the defendant's guilt beyond a reasonable doubt.

4.10 This is a very high standard of proof and there are many reasons why a defendant may not be convicted. Witnesses should not assume that a defendant has been acquitted because their evidence has not been believed.

5

Is There Enough Evidence to Prosecute?

5.1 Police gather all the available evidence and report the case to us. We will consider the evidence carefully and make our decisions as quickly as is possible. We will also try to make sure that cases progress through the court without unnecessary delay.

5.2 Domestic violence nearly always takes place in private and, at times, the victim may be the only witness. This may mean that unless the defendant pleads guilty it will usually be necessary for the victim to give evidence in court. However, we will also consider what other evidence may be available in every case which may allow the prosecution to proceed. We recognise that many victims of domestic violence will find this process very difficult and may need practical and emotional support. Support is available from a number of organisations. Contact details for some of these support organisations are included at Annex C.

5.3 We are also aware that some complaints of domestic violence are not made straight away for fear of reprisals, intimidation or for other reasons. Again, domestic violence support services or local PSNI Domestic Violence Officers will be able to offer help and advice to victims who are unsure about what action to take.

What happens when the victim withdraws support for the prosecution or no longer wishes to give evidence?

5.4 Sometimes a victim will ask the police not to proceed any further with the case and say that they no longer wish to give evidence. This does not mean that the case will automatically be stopped. As a general rule, we will prosecute cases where there is sufficient evidence and there are no factors preventing us from doing so.

5.5 When this happens we have to find out why before we can decide what action to take. This may involve delaying the court proceedings to investigate the facts and decide the best course of action.

5.6 We will take the following steps:

- if the information about the victim's decision has come from the defendant, we will ask the police to find out from the victim whether the information is true and to make further enquiries;
- we will ask the police to take a written statement from the victim explaining the reasons for withdrawing support, saying whether the original statement was true and whether the victim has been put under pressure to withdraw support and providing any other relevant information;

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- we will ask the police for their views about the case and, in particular, to carry out a full assessment of the risks to the victim, including details of any history of domestic violence in the relationship, any child and any other person's safety, and to include details of what support is available to the victim; and
 - we will also ask the police how they think the victim might react to being required to attend court.
- 5.7 If we suspect that the victim has been pressured or frightened into withdrawing the complaint, we will ask the police to investigate further. The investigation may reveal new offences, for example, harassment or witness intimidation. If necessary we will ask the court to delay any hearings so that a thorough investigation can take place before we make a decision in respect of the case
- 5.8 If the victim confirms that the complaint is true but still wants to withdraw, we will consider first whether it is possible to continue without the victim's evidence (the evidential test) and then, if it is possible, whether we should continue with the case against the victim's wishes (the public interest test).
- 5.9 We will explore all these options fully before we decide whether or not to proceed with the prosecution.
- 5.10 The safety of the victim, children or any other potentially vulnerable person will be a prime consideration in reaching our decision.
- What happens when a decision is taken to continue with a prosecution against the victim's wishes?**
- 5.11 Generally, the more serious the offence (because of, for example, the level of violence used or the real and continuing threat to the victim or others), the more likely we are to prosecute in the public interest, even if the victims say that they do not wish us to do so.
- 5.12 If we think that the case should continue and that it would be necessary to call the victim to prove the case, we have to decide:
- whether we should require the victim to give evidence in person in court; or
 - whether we should apply to use the victim's statement as evidence without the victim having to give evidence in court.
- 5.13 Under current legislation, we can require a husband or wife to give

evidence about an assault or threat of injury by their partner. We can also compel unmarried partners or family members to give evidence.

- 5.14 In cases where it is necessary to call victims against their wishes, that decision will only be taken by an experienced prosecutor after consultation with the police and with the safety of the victim and any child or vulnerable person as a prime consideration.
- 5.15 The law allows us to use the victim's statement in court without calling the victim, but only in very limited circumstances. It is for the court to make the decision whether to allow such a statement to be used in this manner and only if it is convinced that it is in the interests of justice to do so. If the victim is the only witness to the offence it may be difficult to satisfy the court that justice is being served when the defence cannot cross-examine the only witness against them.

6

Is it in the Public Interest to Prosecute?

- 6.1 We always think very carefully about the interests of the victim when we decide where the public interest lies. We prosecute cases on behalf of the public at large and not just in the interests of any particular individual.
- 6.2 There can be difficulties in striking this balance. The views and interests of the victim are very important but they cannot be the final word in respect of a decision as to prosecution. The acts of an individual have to be put in the context of the wider society and balanced against the risks to other individuals. The safety of children is also important to us. If there are children living in a household in which there is abuse, it is important to know about the effect it has on them.
- 6.3 In cases of domestic violence, if the evidential test is passed and the victim is willing to give evidence, we will usually prosecute.
- 6.4 If the victim withdraws support for the prosecution but we have enough evidence to proceed, we still have to decide whether to prosecute. Some examples of what helps us to decide are:
- the seriousness of the offence;
 - the victim's injuries;
 - if the defendant used a weapon;
 - if the defendant has made any threats before or after the attack;
 - if the defendant planned the attack;
 - if there are any children living in the household;
 - the possibility of the defendant offending again;
 - the continuing threat to the health and safety of the victim or anyone else who is, or may become, involved;
 - the history of the relationship, particularly if there has been any violence or abuse in the past;
 - the defendant's criminal history, particularly any previous violence or abuse;
 - the current state of the victim's relationship with the defendant;
 - the effect on the victim and on that relationship of continuing with the prosecution against the victim's wishes.

7

Dealing with the Case at Court

7.1 The charges in domestic violence cases will reflect the seriousness of what took place. This includes the severity of any injury suffered by the victim. A PPS lawyer will make a decision regarding all charges in all domestic violence cases prior to the first appearance of the case at court. The charges should enable the court to impose a suitable sentence where the defendant is convicted.

However, we will, where possible, do our best to keep victims informed and victims may at any stage after the case has been submitted to us by police, contact our information line staffed by our Community Liaison Team to obtain information in respect of the case in which they are involved (see paragraph 8.1).

7.2 In some cases we may consider accepting a guilty plea from the defendant to a different charge. This might arise, for a variety of reasons including, for example, if new evidence comes to light or evidence becomes unavailable.

7.3 When considering whether we will do this, we will, whenever possible, make enquiries of victims so that the position can be explained and their views and interests taken into account. However sometimes these issues are dealt with relatively quickly at court and in some circumstances it is not always possible to speak to the victim at this stage.

8

Avoiding Unnecessary Delay

- 8.1 Where possible, we will make sure that cases of domestic violence are not delayed without very good reason and we will do our best to ensure that the victim is kept informed of the reason for any significant delay in the proceedings.
- 8.2 As part of our range of enhanced services offered to victims and witnesses we have developed regional Community Liaison Teams. The Community Liaison Teams have dedicated, specially trained staff who provide a range of services such as the provision of information to victims and witnesses including those involved in cases of domestic violence. Information is provided via a specially staffed information line, and on request, Community Liaison staff can also refer victims and witnesses directly to specialist support services such as Victim Support. Letters providing information to victims are also sent at key stages in the prosecution process. In every case victims are informed in writing when a decision as to prosecution or disposal has been taken in respect of the case in which they are involved and what that decision is.
- 8.3 We are currently working with our criminal justice partners to improve the progress of cases through the criminal justice system. Our Community Liaison section is responsible for ascertaining witness availability in consultation with the Officer-in-charge of the case. This is checked in advance of cases being listed for contest. As a result, trials are more likely to go ahead on the date fixed by the court without the need for adjournments. Adjournments may also be sought by the defence for a variety of reasons including the availability of their witnesses and seeking time to prepare their case. The decision in respect of any adjournment sought is ultimately a matter for the Resident Magistrate or Judge.

9

Helping Victims and Witnesses Give Evidence

Special measures

9.1 In some cases the court may agree to allow a witness to give evidence with the help of "special measures". These are available to help the following witnesses:

Vulnerable witnesses

- children under 17 years;
- those 17 or over who may be considered vulnerable because of incapacity, such as a physical or mental disorder; or

Intimidated witnesses

- witnesses whose evidence is likely to be affected because they are afraid or distressed about giving evidence.

9.2 Special measures that the court could allow include:

- the use of screens in the courtroom to shield a victim or other witness from the defendant;
- giving evidence away from the courtroom through a live television link;
- clearing the public gallery in sexual cases or cases involving intimidation; and
- the use of communication aids for vulnerable witnesses.

9.3 Although we ask the court to allow

special measures, the granting of the request is not automatic and the Resident Magistrate or Judge makes the final decision. The court can take into account the domestic circumstances of the witness if they are afraid or distressed about giving evidence. The evidence in respect of the victim's fear or distress in this context may be provided by the Officer-in-charge of the case or a Doctor. Victims of sexual crimes are presumed to be eligible for special measures if they want them and they satisfy the statutory criteria.

9.4 It is important that we have all the available information that could help us apply for special measures for a witness. In most cases it will be the police who will pass on the information to us. Sometimes we may get the information from the witnesses directly.

9.5 Ideally, early decisions should be taken about special measures to assist victims and witnesses. However, where there is a change in circumstances it is possible to apply at a later stage of the proceedings.

Reporting restrictions

9.6 In some cases, the law allows us to apply for an order preventing the reporting of certain details of witnesses in the media that may lead to their identification.

9.7 The court must follow a specified procedure when considering an application and must determine whether a witness is eligible and whether the reporting restriction will be likely to improve the quality of the witness's evidence or the level of the witness's cooperation.

9.8 Where an order is made, the effect will be that no matter relating to the witness during his or her lifetime shall be included in any publication if it is likely to identify him or her as a witness in the proceedings.

Victim Impact Statements

9.9 A statement may be sought regarding the effect a crime has had on a victim. In this way, the courts can better understand not only the crime but the effect it has had on the victim as an individual. These statements can be taken into account by the courts post conviction when a defendant is being sentenced.

Support for Victims and Witnesses at Court

9.10 Specialist support organisations exist throughout Northern Ireland. Contact details for some of these organisations are included at Annex C

9.11 Belfast Magistrates' Court and all Crown Courts have a Witness Service,

which is provided by Victim Support and in some areas, the NSPCC provides a Young Witness Service. The Witness Service may be able to arrange pre-court familiarisation visits if needed and are able to explain what might happen at court. They are not, however, allowed to discuss the details of the case.

9.12 When a witness attends court, the prosecutor presenting the case will introduce themselves and answer any general questions that a witness may have.

9.13 Sometimes, the person prosecuting may be a barrister (also known as counsel) who is not a member of the PPS but who has been employed by us to present the case in court. We expect every barrister we employ to be familiar with our policies and procedures and to act in accordance with them.

9.14 A witness who has made a written statement will be allowed to read that statement before giving evidence to refresh his or her memory. Where the evidence has been recorded on video and is to be used as evidence-in-chief, arrangements can be made for the witness to refresh his or her memory by watching the video recording before the hearing.

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- 9.15 We will make sure that appropriate arrangements are made to have an interpreter available for a prosecution witness for the court proceedings when one is needed.
- 9.16 We will pay reasonable expenses to a witness for attending court.
- 9.17 If witnesses are kept waiting, we will try to ensure they are told the reasons for the delay and the estimated time when they will be required to give evidence.
- 9.18 Wherever possible, we will try to ensure that separate accommodation facilities are made available for prosecution witnesses.

10

Bail

- 10.1 Once police charge a defendant to appear before a court the Magistrate or Judge must decide whether to release the defendant on bail or whether to keep him/her in custody. Once the accused appears before the court, the Magistrate or Judge will make the decision about bail after hearing from the prosecution and defence. We can appeal, in certain circumstances, against a decision to grant bail.
- 10.2 To protect victims, children and other witnesses from the risk of danger, threats, pressure or other acts by the defendant that might obstruct the course of justice, we may ask the court to impose conditions of bail, or remand the defendant in custody. The court can only agree if we can show that there are substantial grounds for doing so. Further details in respect of these grounds are included at Annex D.
- 10.3 Conditions that the court can impose include requirements not to make contact with any named person or to keep away from certain areas. In making our decisions we will take account of information provided to us by the police about the fears of a victim or witness about harassment or repeat offending. Some examples of common bail conditions and what happens if bail conditions are breached are set out in Annex D.
- 10.4 We will work with the police and the courts to make sure that information in respect of a change in bail conditions or the custody status of the defendant is available to the victim or witness.

11

Sentencing

- 11.1 When a defendant pleads guilty or is found guilty, the court has to decide on the sentence to impose and can choose from a broad range of penalties.
- 11.2 We regard cases of domestic violence as being serious in nature and treat the “domestic” aspect as an aggravating factor. We will make sure that the court has all the information it needs to sentence appropriately including any relevant information contained in a Victim Impact Statement, telling the court about the effects of the crime on the victim.
- 11.3 We will correct any misleading information given by the defence and consider carefully any sentence that is passed to make sure that it reflects the crime.
- 11.4 On conviction or on pleading guilty the defendant or his/her legal representative is entitled to enter a plea in mitigation of sentence. This may include information in respect of previous good character or other factors the defendant wishes to be considered prior to a sentence being imposed. Ultimately these issues are a matter for the judge or magistrate to consider as part of their decision in respect of sentencing.
- 11.5 Section 36 of the Criminal Justice Act 1988 gives the Attorney General power to seek leave from the Court of Appeal to review a sentence which he considers to be unduly lenient. In every case where a prosecutor considers that the sentence imposed is or may be unduly lenient the prosecutor should report the case immediately to the Public Prosecution Service. The Public Prosecution Service may bring a case to the attention of the Attorney General in order that he may consider whether to appeal on the grounds that the sentence imposed was unduly lenient. An unduly lenient sentence is one that falls outside the range of sentences that a Judge, taking into account all relevant facts, including guidance on sentencing from the Court of Appeal, could reasonably consider to be appropriate. It is only if the sentence imposed falls entirely outside the range of sentences that could reasonably be considered appropriate that it can be considered unduly lenient.

12

Conclusion

- 12.1 We are committed to improving the way cases of domestic violence are dealt with in the criminal justice system and we want victims and witnesses to have confidence in the way in which we take decisions and progress cases involving domestic violence.
- 12.2 We recognise and welcome the invaluable advice, emotional support and practical help and information that may be offered to victims and witnesses by support agencies.
- 12.3 We hope that this document will help victims of domestic violence to understand the work of the PPS, how we make our decisions and the different stages of the prosecution process.
- 12.4 We will continue to work with our colleagues in the criminal justice system and the voluntary and community sector at national and local levels to help us develop best practice.
- 12.5 We will monitor the way we deal with cases of domestic violence.
- 12.6 We will review this policy statement regularly so that it reflects current law and social perspectives. We welcome any comments and observations that will assist us in doing this.

Annex A: Examples of types of behaviour that can occur in cases of domestic violence and which might amount to a criminal offence

Here are some examples of types of behavior that can occur in cases of domestic violence and which MIGHT amount to a criminal offence. Whether any particular behaviour does amount to a criminal offence will always depend on the circumstances of the particular case. These examples should therefore be treated only as guidelines.

Examples of behaviour	Possible offences
Pressurising a victim/witness to “drop the case” or not to give evidence.	Witness intimidation, conspiracy to pervert the course of justice.
Physical violence, with or without weapons, inc: punching, slapping, pushing, kicking, headbutting, and hair pulling.	Common assault, actual/grievous bodily harm, wounding, attempted murder.
Violence resulting in death.	Murder, manslaughter.
Violence resulting in miscarriage.	Child destruction, procuring a miscarriage or abortion.
Choking, strangling, suffocating.	Common assault, actual/grievous bodily harm, attempted murder.
Spitting at a person.	Common assault.
Threatening with an article used as a weapon e.g. a knife, tool, telephone or chair.	Threats to kill, common assault. Possession of an offensive weapon (if in a public place)
Throwing articles, e.g. crockery, even if they miss their target.	Common assault, criminal damage.
Tying someone up.	Common assault, actual bodily harm, false imprisonment.
Threatening to kill someone.	Threats to kill, harassment ¹ .
Threats to cause injury.	Common assault, harassment ¹ .

Examples of behaviour	Possible offences
Damaging or destroying property or threatening to damage or destroy property	Criminal damage, threatening to cause criminal damage, harassment ¹ .
Harming or threatening to harm a pet	Criminal damage, threatening to cause criminal damage, cruelty to animals, harassment ¹ .
Locking someone in a room or house or preventing him or her from leaving	False imprisonment, harassment ¹ .
Preventing someone from visiting relatives or friends	False imprisonment, kidnapping, harassment ¹ .
Preventing someone from seeking aid, e.g. medical attention	False imprisonment, actual bodily harm
Preventing someone from dressing as they choose or forcing them to wear a particular make-up, jewellery and hairstyles	Actual bodily harm ² , harassment ¹ .
Racial abuse	Assault (s47) ³ disorderly behaviour ⁴ , or harassment ¹ .
"Outing", e.g. sexual orientation or HIV status	Harassment ¹ , actual bodily harm ² , blackmail
Enforced financial dependence or unreasonably depriving someone of money	Harassment ¹
Unreasonable financial demands	Blackmail, harassment ¹ .

Examples of behaviour	Possible offences
Forced marriage	Kidnap, blackmail, false imprisonment, common assault, actual/grievous bodily harm, rape, indecent assault.
Enforced sexual activity	Rape, indecent assault, harassment ¹ , living off immoral earnings.
Persistent verbal abuse, e.g. constant unreasonable criticism	Harassment ¹ , actual bodily harm ² .
Offensive/obscene/menacing telephone calls, text messages or letters	Improper use of public telecommunication systems, malicious communications, actual/grievous bodily harm, harassment ¹ .
Excessive contact, e.g. numerous 'phone calls to check someone's whereabouts	Harassment ¹ .
Secret or enforced administration of drugs	Common assault, actual bodily harm ² , grievous bodily harm, administering poison.
Neglecting, abandoning or ill-treating a child	Child cruelty.
Forcing entry into a house	Criminal damage aggravated burglary ⁵ , breach of occupation order or non molestation order ⁶ .

¹The behaviour must constitute a course of conduct, namely conduct on at least two occasions. The Protection from Harassment (Northern Ireland) Order 1997 provides conduct may include speech.

²Actual physical or mental harm must be proved to have resulted from the behaviour.

³The Criminal Justice (No.2) Northern Ireland Order 2004 increased penalties for a number of offences aggravated by hostility. An offence is aggravated by hostility if hostility is based on the victim's membership or presumed membership of a racial, religious or sexual orientation group, disability or presumed disability. This came into force on 28th September 2004.

⁴The conduct must occur in a public place.

⁵Where the defendant enters as a trespasser with intent to steal, inflict grievous bodily harm, rape or do unlawful damage.

⁶Non molestation and occupation orders are civil orders which may be obtained under the Family Homes and Domestic Violence (NI) Order 1998. If a non molestation order (or an occupation order where a non molestation order has also been obtained) is in force and has been served on the defendant, then breach of the order is a criminal offence.

Annex B: Explanation of terms used at paragraph 4.5 in respect of the evidential test

Element	Description
identifiable individual	<p>There will often be cases where it is clear that an offence has been committed but there is difficulty identifying who has committed it. Prosecution can only take place where the evidence sufficiently identifies a particular person responsible. Where no such person can be identified, there can be no prosecution.</p>
credible evidence	<p>This means evidence which is capable of belief. It may be necessary to consult with a witness before coming to a decision as to whether the evidence of that witness is credible. It may be that a witness is likely to be so discredited that no court could safely act on his / her evidence. In such a case it may be concluded that there is no reasonable prospect of obtaining a conviction. If, however, it is judged that a court in all the circumstances of the case could reasonably act on the evidence of a witness, notwithstanding any particular difficulties, then such evidence is credible and must be taken into account.</p> <p>Public Prosecutors must therefore make an assessment of the quality of the evidence. Where there are substantial concerns as to the credibility of essential evidence, criminal proceedings may not be proper as the evidential test may not be capable of being met. There will be many cases in which the evidence does not give any cause for concern. But there will also be cases in which the evidence may not be as cogent as it first appears.</p> <p>Prosecutors should not ignore evidence because they are not sure that it can be used or is reliable. But they must look closely at it when deciding if there is a reasonable prospect of conviction.</p>

Element	Description
evidence which the prosecution can adduce	<p>Only evidence which is available and legally admissible can be taken into account in reaching a prosecution decision.</p> <p>There are technical legal rules concerning whether or not particular types and pieces of evidence are admissible in court. For example, a court may refuse to admit evidence that has been obtained improperly, irregularly or unlawfully. If evidence is inadmissible then that evidence cannot be weighed in determining whether there is a reasonable prospect of a conviction.</p> <p>Public Prosecutors must therefore seek to anticipate whether it likely that evidence will be admitted or excluded by the court. For example, is it likely that the evidence will be excluded because of the way in which it was gathered? If so, Public Prosecutors must consider whether there is sufficient other evidence for a reasonable prospect of conviction.</p>
an impartial jury (or other tribunal)	<p>The test is not whether a particular jury or a particular judge or magistrate will convict. If such a test was adopted then prosecution might depend upon an assessment of how different juries in different parts of the country reacted or different judges reacted. This would be wrong. The test must be how an impartial jury or judge is likely to conclude.</p>
may reasonably be expected to find	<p>It is impossible to know with absolute certainty whether or not a conviction will be obtained in a particular case.</p> <p>What is required by the evidential test is that there is a reasonable prospect of a conviction on the evidence. The weighing of evidence is not a mathematical science but rather a matter of judgement for the prosecutor.</p>

Element	Description
beyond reasonable doubt	<p>The evidence available to the prosecutor must be sufficient to reach the high standard required by the criminal courts.</p> <p>It is necessary for the prosecution to establish its case beyond reasonable doubt.</p>
commission of a criminal offence	<p>This requires that regard is had to the law in order to identify what offence or offences may have been committed and to consider the evidence against each of the ingredients which establish the particular offence.</p>

Annex C: Contact details of some Northern Ireland support organisations

Women's Aid	129 University Street Belfast BT7 1HP 028 90 249041 Email: infor@womensaidni.org 24 hour Domestic Violence Helpline: 08009171414
Victim Support Northern Ireland	Annsgate House 70 – 74 Ann Street Belfast BT1 4EH 028 90 244 039 Email: info@victimsupportni.gov.uk
Children in Northern Ireland	Unit 9 40 Montgomery Road Belfast BT6 9HL 028 90 401 290 Email: Pauline@ci-ni.org.uk
Men's Advisory Project	Cathedral Buildings 64 Donegall Street Belfast BT1 2GT 028 90 241 929 Email: mensadvisoryproject@hotmail.com
The Rainbow Project	2-8 Commercial Court Belfast BT1 2NB 028 90 319030 Email: infor@rainbow-project.org
National Society for the Prevention of Cruelty to Children	NSPCC Child Protection Helpline 0800 800 5000 Text Phone 0800 056 0566

Annex D: Bail

A court can remand a defendant in custody or grant bail, with or without conditions attached. Before the first court hearing, the police can also retain a defendant in custody or grant bail, but their powers to do so are more limited than the court's.

EXAMPLES OF BAIL CONDITIONS IMPOSED BY COURTS

A court can impose any condition that seems appropriate in the circumstances of the particular case. Here are some examples of typical bail conditions imposed by courts:

The defendant must not contact, either directly or indirectly, a named person or persons, for example the victim and any children

This means no contact whatsoever, including by telephone, fax or letter or through another person, e.g. the defendant cannot get a relative to make contact on his/her behalf.

The defendant must not go to a named place, for example the victim's place of work, shopping area or children's school

This is usually a specific address, but may also be a street, a town, or an area. Sometimes the court will say that the defendant must not go within a specified distance of a place, e.g. within half a mile of Victoria Road.

The defendant must reside at a named address

This means live and sleep each night there.

The defendant must report to a named police station on a given day or days at a given time

For example, every weekday morning at 10.00 am

The defendant must abide by a curfew between certain specified hours

This means remain indoors, for example, from 9pm until 8am.

The defendant must provide a security to the court

If it is thought that the defendant might not attend the next court hearing, the court can order that a set sum of money be paid into the court. If the defendant does fail to attend the next hearing then the money can be forfeited.

The defendant must provide a surety

A friend or relative must agree to ensure that the defendant attends court, or the friend or relative could lose a specified sum of money.

EXCEPTIONS

Sometimes, for practical reasons, there are exceptions attached to the bail conditions. For example:

the defendant must not go to a named place except:

- *to attend court;*
- *to see their solicitor by prior appointment;*
- *to collect their belongings once at an appointed time and accompanied by a police officer or other specified person;*
- *to see the children at a specified time.*

Breaching bail conditions

If the defendant breaches bail conditions, the police can arrest the defendant and the court will re-consider the issue of bail and bail conditions. Sometimes, despite bail conditions that say, for example, a defendant cannot contact the victim or return home, the victim contacts the defendant or invites or allows the defendant to return home. There are all kinds of reasons why victims sometimes do this, but if the defendant responds in such a way as to continue the contact, then the defendant is breaching bail conditions because the police or the court have not released the defendant from the conditions of bail they imposed. It does not matter that the victim has agreed to the contact; the victim is not subject to the bail conditions, the defendant is. The defendant is responsible for complying with any conditions imposed by the police or the court until released from those conditions by the police or court. The defendant may apply to the court to vary the bail conditions.



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For further information about the PPS,
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