



"To be at the heart of safeguarding excellence"

Factsheet –By Marisa de Jager

Domestic Abuse

1. Introduction

Domestic abuse can affect anyone regardless of ethnicity, religion, class, age, sexuality, disability or lifestyle. However the vast majority of the victims of domestic violence are women and children, and women are also considerably more likely to experience repeated and severe forms of violence, and sexual abuse.

Domestic abuse can also affect men and occur in a range of relationships including heterosexual, gay, lesbian, bisexual and transgender relationships, and also within extended families.

Domestic abuse does not discriminate and as an organisation we have taken the view to include all diversity groups within this policy as they are all potential victims of domestic violence. We accept that for many victims it can take repeated incidences before they seek support, however we believe that each incidence of domestic violence, including the first, is a serious offence.

2. Referrals

The Police are usually the first point of contact with children, families or adults in which domestic violence has taken place. Members of the Public can raise concerns regarding issues of Domestic Violence by contacting the Police or Professionals they are in contact with.

The Police inform Children's Social Care when they have responded to an incident of domestic violence where a child is present or normally resident within the household

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or have contact with non-resident children. The DASH should be completed by the Officer attending the incident where applicable in line with ACPO guidelines.

Legislation relevant to Domestic Abuse:

Domestic Violence Crime and Victim's Act 2004

The Act criminalises the breach of non-molestation orders under the *Family Law Act 1996*; by extending the availability of restraining orders under the *Protection from Harassment Act 1997*; and by making common assault an arrestable offence. There is also a provision included on a new offence of causing or allowing the death of a child or adult at risk. The new offence is designed to protect adults at risk as well as vulnerable children.

It sets out the circumstances under which a person is guilty of an offence of causing or allowing the death of a child or an adult at risk. It limits the offence to where the victim has died of an unlawful act, so it will not apply where the death was an accident. The offence only applies to members of the household who had frequent contact with the victim and could therefore be reasonably expected both to be aware of any risk to the victim, and to have a duty to protect him or her from harm.

The household member must have failed to take reasonable steps to protect the victim. What will constitute 'reasonable steps' will depend on the circumstances of the person and their relationship to the victim.

The victim must also have been at significant risk of serious physical harm. The risk is likely to be demonstrated by a history of violence towards the person, or towards others in the household. The offence will not apply if the victim died of a single blow when there was no previous history of abuse, nor any reason to suspect a risk.

Where there is no reason to suspect the victim is at risk, other members of the household cannot reasonably be expected to have taken steps to prevent the abuse. They will therefore not be guilty of the new offence, even where it is clear that one of them is guilty of a homicide offence.

Where, for example, there are two defendants and it is established that one must have caused the death and the other must have failed to take reasonable steps to prevent it, the prosecution does not have to prove which is which.

A person who visits the household frequently and for long periods can be regarded as a member of the household for these purposes. This will apply whatever the formal relationship of the person to the victim. Subsection (4)(b) covers situations where the victim might have lived in different households at different times. Only the members of the household where the victim suffered fatal harm could be guilty of the offence.

A defendant can be charged with failing to take reasonable steps to protect the victim, even where the victim died as a result of the act of a person who lacks criminal responsibility. There is a safeguard to ensure that a person who lacks criminal responsibility cannot be charged with the criminal act of causing the death by virtue of the definition in this section if he could not otherwise be charged with an offence.

- **Domestic Violence, Crime and Victims (Amendment) Act 2012**

Domestic Violence, Crime and Victims Act 2004 created the offence of “causing or allowing the death of a child or vulnerable adult”. The Domestic Violence, Crime and Victims (Amendment) Act 2012 has amended this provision to create an offence of *causing or allowing a child or vulnerable adult to die or suffer serious physical harm*.

This offence is relevant to persons who may be said to be “vulnerable” but where there is no lack of capacity. The person alleged to have caused the harm must have lived in the same household as the vulnerable adult (adult at risk) and they must have been in frequent contact with him/her. Serious physical harm is equivalent to grievous bodily harm.

If convicted, the perpetrator will be liable to a term of imprisonment not exceeding 10 years or to a fine or both a prison term and a fine.

- **Protection from Harassment Act 1997**

This Act creates both criminal and civil remedies for persons who are victims of harassment through another person's 'course of conduct'. A course of conduct must involve conduct on at least two occasions and 'conduct' includes speech. 'Harassment' under the Act includes alarming a person that violence will be used against them, or causing them distress.

Police and Criminal Evidence Act 1984 (PACE)

Section 17: Involves powers to enter and search premises without a warrant for the purpose of saving life and limb. It enables a police officer to arrest any person who is suspected of committing an arrestable offence, or is about to commit one. An arrestable offence is one that attracts a maximum penalty of 5 years imprisonment or more, or a penalty fixed by law, or for certain other specified offences such as indecent assault on a woman.

Section 24A: A constable who has reasonable grounds for suspecting that any offence has been committed may arrest the relevant person if the constable has reasonable grounds for believing that the arrest is necessary to prevent the relevant person from causing physical harm to self or other Statutes relating to physical abuse where action will most commonly be taken by the police:

- a) Common Assault can include pushing, pulling hair, hitting and the administration of medication by force. *Criminal Justice Act 1998* – Section 39.
- b) Actual Bodily Harm relates to the presence of physical signs of assault from bruising to an actual fracture Emotional abuse can be included in this category 'whereby the action / inaction of a carer has a clear emotional / psychological impact on the vulnerable adult'. This is covered by: *Offences against the Person Act 1861* – Section 20.
- c) Grievous Bodily Harm with Intent inserts an element of intention into any act or action covered by the previous section. *Offences against the Person Act 1861* – Section 18.

d) Unlawful Homicide includes Manslaughter and Murder, which are offences contrary to Common Law.

Youth Justice and Criminal Evidence Act 1999

This Act provides new measures to make it easier for vulnerable witnesses (including adults at risk) to give evidence in the criminal courts. The court can allow special measures for eligible witnesses, i.e. if the court considers that the quality of evidence given by the witness could be improved because the witness:

- suffers from a mental disorder within the meaning of the *Mental Health Act 1983*
- otherwise has a significant impairment of intelligence and social functioning
- the witness has a physical disability or is suffering from a physical disorder

The possible special measures are set out in Section 23-30 of the Act. They include provision for screens, video recording of evidence in chief, pre-recorded cross-examination and examination through an intermediary or with the use of communication aids.

A party will apply for special measures in respect of eligible witnesses. If special measures would improve the quality of the witness's evidence, i.e. improve its completeness, coherence and accuracy, then special measures may be used. The court must balance on the one hand the potential to improve the quality of the evidence with the risk of inhibiting the testing of evidence by the defendant.

Crime and Disorder Act 1998

Section 115: establishes the power to disclose information, which is central to the Act's partnership approach. The police have an important and general power at common law to disclose information for the prevention, detection and reduction of crime. However, some other public bodies which collect information may not previously have had power to disclose it to the police and others. This section therefore puts beyond doubt the power of any organisation to disclose information to police authorities, local authorities,

probation committees, health authorities, or to persons acting on their behalf, so long as such disclosure is necessary or expedient for the purposes of this Act. These bodies also have the power to use this information.