

Arrest and other positive approaches

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Police officers have a duty to take positive action when dealing with domestic abuse incidents. Often this means making an arrest, provided the grounds exist and it is a necessary and proportionate response. Officers must be able to justify the decision not to arrest in those circumstances. In some situations other positive approaches may be more appropriate. Domestic abuse can occur where the conduct does not amount to a criminal offence and a criminal justice outcome is not possible.

Positive action

See [**duty of positive action**](#) for a detailed discussion of positive obligations and what these mean for the police response to domestic abuse. This should not be confused with the concept of positive action under the Equality Act 2010.

The first priority of the police is to make people safe. At domestic abuse incidents it is particularly important that officers take positive action to make the victim and any children safe. This may mean arresting a person suspected of an offence, where the power to arrest exists, or taking other positive steps to ensure safety, such as organising refuge accommodation or organising the fitting of a panic alarm.

Officers must be able to justify the decision not to arrest where the grounds exist and it would be a necessary and proportionate response. In some situations, other positive approaches may be more appropriate, for example when the behaviour does not amount to criminal conduct.

The basic principles of safeguarding apply in relation to both adults and children. Officers must always consider risk in accordance with the [**national decision model \(NDM\)**](#). If the assessment identifies a risk of harm, it is never appropriate to do nothing. Arrest may not be possible because the grounds for arrest are not met or arrest would be a disproportionate response to the incident.

Where there is domestic abuse and the victim is at risk of harm, however, the duty of positive action requires officers to consider and implement proportionate alternative measures to protect the victim and their children.

The forms of positive action considered in this section relate to the perpetrator. For positive actions relating to the safety of the victim, see [**Victim safety and support**](#).

Arrest

Where an offence has been committed in a domestic abuse case, arrest will normally be 'necessary' within the terms of the [**Police and Criminal Evidence Act 1984 \(PACE\)**](#) to protect a child or vulnerable person, prevent the suspect causing injury or criminal damage and/or allow for the prompt and effective investigation of the offence.

Proactive investigation is always required in cases of domestic abuse as the victims, children, neighbours and other witnesses may be reluctant to interfere with what they perceive as personal matters. They may also fear threats, emotional pressure and violent reprisals.

[**Code G of the PACE Codes of Practice**](#) states that, among other grounds, an officer may carry out an arrest to allow prompt and effective investigation of the offence or the person's conduct where there are grounds to believe that a person may intimidate, threaten or make contact with witnesses or destroy evidence.

The decision whether or not to arrest a suspect rests with the police officer, and officers should not ask victims whether they require an arrest to be made.

It is important to understand that the incident being dealt with is likely to be the latest in a series. It may form part of a pattern of controlling or coercive behaviour. Officers must base their decision to arrest or not to arrest on their professional judgement, which itself must be based on the best information available. Officers should record the reasons for not making an arrest in a domestic incident where a power of arrest exists.

Police officers should not base a decision to arrest or not to arrest on the willingness of a victim or witness to testify or otherwise participate in judicial proceedings. Officers should focus efforts on gathering evidence in order to charge and build an [**evidence-led prosecution**](#) case that does not rely entirely on the victim's statement. Officers should ensure that they read and use the [**Joint**](#)

NPCC and CPS Evidence Gathering Checklist for use by Police Forces and CPS in Cases of Domestic Abuse.

The decision to prosecute in domestic abuse cases must be made by the CPS, in accordance with the [Director's Guidance on Charging, 6th Edition](#). The [Joint NPCC and CPS Evidence Gathering Checklist for use by Police Forces and CPS in Cases of Domestic Abuse](#) has been prepared for police officers and prosecutors to further clarify the existing requirements around police referral of domestic abuse cases to the CPS in accordance with the [Director's Guidance on Charging, 6th Edition](#).

Only cases which are capable of meeting the [Full Code Test](#) should be referred to the CPS, but that is a matter for the police decision maker, not the first responder. Initial police action should not prejudge those decisions. The role of the first responder is to pursue all reasonable lines of enquiry and collect sufficient evidence to enable the decision to be made. The better the evidence, the greater the likelihood of the arrest resulting in a criminal justice outcome.

Some benefits of arrest include:

- giving the victim some time to feel safer and improve the likelihood of them engaging with the police and other services, namely create space for action
- disrupting an established pattern of controlling or coercive behaviour
- allowing time to pursue other lines of enquiry, for example neighbours, police crime recording systems, information from social services or medical practitioners, researching potential bad character evidence from other force systems
- providing an opportunity to put in place services to support the family or relationship
- generating a PNC ID and obtaining DNA and fingerprints if the offence is recordable – this may assist with resolving outstanding or future offending
- being able to impose bail conditions to protect the victim
- sending a message to the perpetrator that their behaviour is not acceptable and will not be tolerated, and that the victim is not alone
- giving an indication to the victim that they are being taken seriously

Arresting the right person

It can be difficult for officers attending a domestic abuse incident to establish what has happened. A primary perpetrator of abuse may claim to have been assaulted by the other party and have injuries apparently supporting their account. They may in fact have been caused in self-defence by the primary victim. A manipulative perpetrator may be trying to draw the police into colluding with their coercive control of the victim. Police officers must avoid playing into the primary perpetrator's hands and take account of all available evidence when making the decision to arrest.

Identifying the primary perpetrator can mean:

- looking beyond the current incident to the wider context, for example is this a case where a long-term victim's self-restraint has snapped as a result of protracted abuse?
- remembering that it is often the perpetrator who shouts loudest
- not assuming the victim is the person who made the emergency call
- being wary of malicious reports being made as a coercive control tactic

The guidelines on **determining the primary perpetrator and dealing with counter-allegations** should be followed.

When an arrest is made, the victim should be asked for contact details so that they can be notified if and when the suspect is being released from police custody or court. Victims should also be asked for any information that might help to inform appropriate bail conditions at the police station or at court, for example details of their workplace or the children's school.

Dual arrests

Officers should avoid dual arrests, especially if there are children present, but this is not always possible.

Officers should investigate domestic abuse incidents fully so that they understand the nature of any potential offences and the history and context within which they have occurred. There will sometimes be occasions when both parties to an incident have committed offences. Officers must take effective action to deal with offending, whoever is responsible. Domestic abuse incidents, however, can present complex issues that need to be taken into account when deciding the best course of action, for example where one party has acted in self defence.

Where counter-allegations are made at the scene, officers should evaluate each party's complaint separately to determine whether there was a primary perpetrator. See [determining the primary perpetrator and dealing with counter-allegations](#).

The arrest of the primary perpetrator does not prohibit the officer from arresting both parties if there is evidence that both parties have committed offences but it should be an exceptional measure, for example if both are causing a public order situation in the street and refusing to engage with attending officers.

Dual arrests complicate the prosecution process and may make it difficult to proceed against either party. For example:

- if one person is charged, the fact that the victim was also arrested at the scene would be disclosable and undermining
- the victim is much less likely to engage if they have also been arrested
- an interview cannot be used in evidence against another person – a witness statement would subsequently need to be taken from the victim
- if both parties decide to give no comment interviews, neither would have given an account – both would have to be released unless they agreed to give witness statements, which is unlikely

Where both parties appear to have committed offences, therefore, it is better to investigate thoroughly to identify who is the primary perpetrator and to avoid arresting the other person. This makes a successful prosecution more likely.

Risk assessment and signposting to support agencies can and should still be carried out for both parties.

If more than one arrest is made, a separate domestic abuse incident report should be completed for each victim and each report should be cross-referenced with the other. When counter-allegations have been made or a dual arrest has occurred, this should be recorded and the information included in the prosecution file because of the likely impact on the prospect of conviction.

Should a counter-allegation relating to the same incident be made at a later time, officers should investigate it according to the guidelines outlined in [determining the primary perpetrator and dealing with counter-allegations](#) and make any decision relating to arrest in a manner consistent with this guidance and local force policy.

For more information, see [**CPS Guidance on Domestic Abuse**](#).

Use of bail conditions

Bail conditions are an important means of supporting the positive action of arrest. They offer protection for the victim and others while a potential offence is investigated or during criminal proceedings. If an arrested perpetrator is not charged and remanded in custody for court, the custody officer should consider making them subject to appropriate bail conditions, either pre- or post-charge. See [**post-arrest management of suspect and casefile, making bail decisions**](#) for further information on appropriate bail conditions.

Officers must tell the victim as soon as possible if the perpetrator is to be released from custody. The obligation towards domestic abuse victims under the [**Victims' Code**](#) is to tell them within one working day, but it should be done without delay and if possible before release.

Bail conditions should be accompanied by an action plan to ensure the conditions are effectively enforced to make the victim safe and that breaches are detected and acted upon. The action plan may involve local policing teams and it is important that they are informed of domestic abuse incidents, [**DVPNs/DVPOs**](#) and bail conditions that affect their area.

Other forms of positive action

While [**arrest**](#) must be considered in every case, there are occasions when there are insufficient grounds or when it would not be a necessary or proportionate response. In these circumstances officers should focus on protecting the victim and preventing further incidents by considering other forms of positive action. Such measures may also be taken alongside arrest to continue or increase protection for the victim once the perpetrator is no longer in police custody.

Removal to prevent breach of the peace

In cases where there are no apparent grounds for arrest, sometimes the victim just wants the perpetrator to leave the premises temporarily or the situation can be defused by removing the perpetrator from the location.

Where a breach of the peace is likely to occur or reoccur, officers should remove the perpetrator on this ground. They should take the perpetrator to an alternative location, preferably some distance

away, and advise them to stay away for a period of time. Where a person has been arrested and de-arrested due to there no longer being a likelihood of breach of the peace, without being taken to a police station, the officers must record this as soon as possible after the release **(PACE ss 30(7)-(9)).**

It is common for the perpetrator to return to the address shortly afterwards, particularly if they are not taken a sufficient distance away, are intoxicated, have nowhere else to stay or are not cooperative. It is good practice to follow up with a call or visit later in the shift or in the morning to ensure victim safety.

Officers should not choose this option because it appears the easiest and least time-consuming. A police call-out to a breach of the peace which is domestic in nature, even if it appears low level, may be an indicator of underlying issues. It is an opportunity for officers to spot underlying problems, for example controlling or coercive behaviour, and prevent escalation, and may require follow-up investigation. Prior to leaving the address, officers should provide the victim with a point of contact and details of support agencies. They should carry out a **risk assessment** and discuss other follow-up options, such as issuing a **domestic violence protection notice (DVPN)** or applying for a **non-molestation order** to give the victim a longer breathing space.

For conduct to constitute a breach of the peace, the conduct must involve violence or the threat of violence. The violence need not be perpetrated by the defendant, provided that the natural consequence of his conduct was that others would be provoked to violence (Percy v DPP [1995] Crim LR 714). However, lawful behaviour even if provocative may not be sufficient to constitute a breach of the peace (Redmond-Bate v DPP (1999) 163 JP 789).

Domestic violence protection notices and domestic violence protection orders

Domestic violence protection notices and domestic violence protection orders (DVPN/DVPO) can provide short-term protection for a victim following a domestic incident involving a perpetrator over the age of 18. A DVPN issued by the police prohibits the perpetrator from molesting the victim, as a minimum. It gives the victim a respite from their abuser and an opportunity to engage with services without the perpetrator being on the scene. The DVPN is followed up with an application for a DVPO in the magistrates' court within 48 hours of service (not including Sundays, bank holidays, Christmas Day or Good Friday). The resulting DVPO, if granted, lasts for between 14 and

28 days.

In order for it to be an option, the officer should conclude that there are reasonable grounds to believe that:

- the suspect has used or threatened violence against the victim, and
- the DVPN is necessary to protect the victim from violence or threat of violence by the suspect

It is appropriate to consider issuing a DVPN at incidents when an arrest has not been made and positive action is required, a charge is not possible, an investigation is continuing or results in a caution or no further action (NFA), or a suspect is bailed without conditions restricting their contact with the victim.

Arrangements for obtaining authorisation will depend on the force, and may be pursued while the suspect is in custody, but it is the responsibility of the first responder to identify and flag the need for a DVPN in cases where the perpetrator is not arrested. Referral to support agencies should be made as soon as possible to maximise the opportunity to engage with the victim within the initial 48-hour period.

See [DVPN/DVPO](#) for detailed information on the process.

Civil orders

A number of different emergency injunctions can be obtained in the civil courts to protect victims for a period of time. The victim may apply for them even if the perpetrator is subject to bail conditions or a [DVPO](#), as those offer only short-term protection.

Officers should make victims aware of these options. They cannot give detailed advice on the process but they should:

- emphasise the need to act promptly if the victim wishes to take this step, as the court is likely to give more weight to evidence of abuse if it is recent
- refer the victim as soon as possible if they wish to pursue this course of action

In the case of non-molestation and occupation orders, the applicant and abuser must be associated persons within the meaning of [the Family Law Act 1996 s 62\(3\)](#),

Non-molestation order

A non-molestation order protects a named person from specific behaviour by an abuser, which can include prohibiting the abuser from:

- using or threatening physical violence
- intimidating, harassing or pestering
- communicating with the named person
- instructing or encouraging others to do the above on their behalf

The order is usually granted for between six and twelve months. Although it is a civil order, a breach of the order is a criminal offence under **the Domestic Violence, Crime and Victims Act 2004 s 1** of and therefore arrestable. A breach of the order can still be dealt with as a civil contempt of court matter if the applicant chooses to do so, or does not support criminal proceedings, but the breach can only be dealt with once, in either the criminal or civil court.

Emergency applications are often made in the abuser's absence, (ex-parte) with no need to give notice of the hearing. Proof that the suspect is aware of the order and its terms can, therefore, be a key issue in criminal proceedings for breach of the order. A police officer attending the suspect's address to verbally make them aware of the order and its terms, recorded on an MG11, can avoid argument in subsequent proceedings that the suspect was unaware of either the order or its terms.

Occupation order

An occupation order can manage the abuser's attendance at the family home by:

- suspending their rights to occupy or visit
- evicting the abuser from the home
- preventing them from returning home
- preventing them from coming within a specified distance of the home

The order is usually granted for between six and twelve months. A power of arrest can be attached to any non-compliance, but it remains a civil contempt of court matter.

Prohibited steps order

A prohibited steps order provides a response to a threat by someone to remove a child by prohibiting that person from taking the child away from the applicant's care and control.

This does not necessarily mean that all contact with the child is prohibited but will depend on the terms of the particular order.

This type of order can only be applied for by someone who has parental responsibility for the child under [**the Children Act 1989 Part 1.**](#)

There is no power of arrest attached, but breach of the order is a civil contempt of court.

This type of order is especially relevant where the person making the threat ordinarily has care and control of the child, which is often the case in a domestic abuse context.

For further information see:

- Charitable organisations like [**Women's Aid**](#). They can also support victims in their applications for civil orders, as can local solicitors' firms specialising in family law.
- CPS Domestic Abuse Guidelines for Prosecutors [**Annex E**](#) – a full list of national support organisations

Violent offender order

A violent offender order (VOO) can be applied for under [**the Criminal Justice and Immigration Act 2008 \(CJIA\) Part 7**](#) where a person is believed to pose a risk of serious violent harm to the public or any particular member of the public. This is defined as a current risk of serious physical or psychological harm, caused by the offender committing any one or more of the offences specified in [**the CJIA s 98\(3\)**](#). The specified offences are:

- manslaughter
- an offence under the Offences against the Person Act 1861 s 4 (soliciting murder)
- an offence under s 18 of that Act (wounding with intent to cause grievous bodily harm)
- an offence under s 20 of that Act (malicious wounding)
- attempting to commit murder or conspiracy to commit murder
- a relevant service offence as set out in [**s 98\(4\)**](#)

The offender must be over 18 and have a previous history of such offending, as listed in [**CJIA s 99**](#),

A VOO is a civil order and can only be applied for by a chief officer of police by complaint to a magistrates' court. The application must relate to an offender who is resident in the relevant police

area or believed by the chief officer to be in or intending to come to that area.

A VOO may contain prohibitions, restrictions, or conditions which prevent access to places, premises, events and people, if the court deems these necessary for the purpose of protecting the public from the risk of serious violent harm caused by the offender. The order also makes the offender subject to notification requirements and can last for between two and five years.

Breach of a VOO is a criminal offence.

If an officer considers that applying for a VOO may be an appropriate course of action for a domestic abuse offender, they should seek advice from a supervisor.

Alternatives to prosecution

Amendments to the out of court disposal framework are currently being piloted. This APP will be updated to reflect future changes.

Cautions

Cautions are rarely appropriate in domestic abuse cases. By nature, they involve the aggravating factor of breach of trust and abuse is not often reported on the first occasion. Controlling or coercive behaviour may also influence the victim's views on a caution. Charge is, therefore, always the preferred option where the case passes the evidential and public interest tests. In principle, if there is sufficient evidence to caution, there is sufficient evidence to charge. There may be public interest or other reasons for not proceeding with a prosecution in a particular case – it is in those cases that a caution may be considered as an alternative to NFA.

Cautions can be deemed an appropriate disposal only when the evidential test is passed and the following have been considered:

- some evidence that it is a first domestic abuse offence – check that there are no other reports or intelligence of previous abuse of the victim, previous partners or family members
- the seriousness of the offence and the range of appropriate penalties
- the totality of current offending and history of previous convictions and out-of-court disposals (OOCD), especially if recent or similar
- the defendant should have no relevant previous police record for violence

- the investigation has been reviewed and the officer in charge (OIC) is satisfied that there is no further potential for investigation development
- any other possible criminal justice sanctions have been examined and progressed
- the victim's views have been sought – it is a requirement under the **Victims' Code** that the police ask the victim for their views and take them into account when making the decision, where practicable.

Cautions should not be used because they seem an easier option than building a prosecution file. Supervisors should closely monitor any cautions that are administered in domestic abuse cases.

For further information see:

- **CPS legal guidance on cautioning and diversion**
- **CPS Guidance on Domestic Abuse**
- APP on prosecution and case management, **justice outcomes**

Simple caution

Simple cautions can be offered subject to the provisions set out above. If the evidential stage of the Full Code Test is passed, it will rarely be appropriate to deal with a domestic abuse case by way of a simple caution. However, where a positive action policy has been adhered to, the complainant does not support a prosecution, and the available evidence (including any additional evidence adduced) would only disclose a very minor offence, the police should consider a simple caution in preference to a decision to take no further action.

See:

- **CPS Domestic Abuse Guidelines for Prosecutors**
- **Ministry of Justice (2013) Simple Cautions for Adult Offenders**

Conditional caution

It is unlikely that domestic abuse in intimate (whether current or previous) partner cases would ever be appropriate for a **conditional caution**, because of the repetitive pattern of domestic abuse and the risk experienced by victims. However, where there are no elements of controlling and coercive behaviour, and where there is no pattern of abuse or repetitive behaviour, there may be rare occasions in domestic abuse cases where, because of the nature of the crime or the circumstances

of the offender, exceptionally a conditional caution could be considered.

Any such case considered by the police as suitable for a conditional caution must be referred to a prosecutor, unless the police force area has obtained a specific exemption from the Director of Public Prosecutions. Prosecutors will ensure that they have fully considered the risk assessment provided by the police, the history of the relationship and the circumstances of the offence, and that they have sought additional advice from the HQ Violence Against Women Strategy Manager, before a conditional caution is authorised in a case of domestic abuse.

See:

- [**CPS Legal Guidance on Cautioning and Diversion**](#)
- [**Ministry of Justice \(2013\) Code of Practice for Adult Conditional Cautions.**](#)

Youth caution

Subject to the considerations above, a **youth caution** can be offered without consulting the CPS, unless the offence is one that would be indictable only in the case of an adult.

See [**Ministry of Justice How to Use Out of Court Disposals.**](#)

Youth conditional caution

Subject to the considerations above, **youth conditional cautions** can be offered without consulting the CPS for offences scoring no more than 3 on the gravity matrix. They cannot be given for domestic abuse offences scoring 4 or more on the gravity matrix. Officers should consult the youth offending service before making a decision.

In addition to the general considerations outlined above for cautioning, the officer should consider:

- whether the public interest would be served by suitable conditions aimed at reparation, rehabilitation or punishment, taking into account appropriate outcomes for the victim, community and offender
- if a youth conditional caution is likely to be effective – the person must accept responsibility and be willing to comply with the agreed conditions

See:

- [**CPS Director's Guidance on Youth Conditional Cautions**](#)
- [**Ministry of Justice How to Use Out of Court Disposals**](#)

Restorative justice and community resolution

Restorative justice (RJ) is rarely appropriate in domestic abuse cases and not recommended in cases involving intimate partner abuse. Domestic abuse incidents are among the most hazardous of cases because of the risk to victims of re-victimisation or serious violence and the potential effects of controlling or coercive behaviour. Any officer considering the use of restorative justice in a domestic abuse case must take advice from supervisors and other agency experts. Forces should establish a policy for any use of RJ in domestic abuse cases.

The [**Victims' Code**](#) sets out in section 3.4 and 3.5 that victims have the right to be provided with information about Restorative Justice (RJ) services by the police when they report a crime. However, RJ may not be suitable in all cases and police and/or service providers will assess whether it would be safe and appropriate in each case.

Focus must at all times be on victim safety. A request by them for RJ must be treated with care to ensure that they are not under the influence of controlling or coercive behaviour and making the request to please or appease the perpetrator. If the officer suspects that they are, RJ would never be appropriate.

Standard guidelines on the use of RJ require contact with the victim to discuss completion of the agreed outcomes. This should be used as an opportunity to further risk assess the victim following any RJ outcome.

Penalty notice for disorder

Penalty notices for disorder are never appropriate in domestic abuse cases. This applies not only to the domestic abuse offences themselves but also to any associated offences. See [**Ministry of Justice \(2014\) Penalty Notices for Disorder**](#).

Tags

Domestic abuse