

# Investigative development

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When investigating incidents of domestic abuse, officers should not only be searching for evidence to support a criminal prosecution but also looking for signs that abuse may be occurring, even where the conduct may not amount to a crime. The incident being investigated may be the latest in a series and indicate an increase in frequency or seriousness that should be considered as part of any risk assessment. Detecting the abuse early means safety measures can be put in place to prevent escalation.

Officers should investigate domestic abuse proactively from the outset with a view to building an evidence-led case that does not rely on the support of the victim. Detection of domestic abuse is more likely to result if a victim supports police action and prosecution, but there are many reasons why a victim may not do so and it is important to extend the investigation beyond the victim.

If officers explain to the victim what they are doing and why, it can help to put the person more at ease and encourage them to cooperate. Officers should, for example, explain why they are talking to the children or why they are seeking to obtain medical consent and what the consent relates to. They should also ensure that victims are kept informed of relevant developments during the investigation.

Investigation can take place in parallel to other positive action to make victims safer, for example domestic violence protection notices (DVPNs) and domestic violence protection orders (DVPOs), civil orders, safety planning measures. See [Other forms of positive action](#) and [Victim safety and support](#).

For further information see:

- [why do victims continue abusive relationships?](#)
- [why a victim might appear unwilling to engage](#)

## Building an evidence-led case

Building an evidence-led case which does not rely on the support of the victim is challenging but can be effective, as demonstrated by the following examples of successful evidence-led prosecutions.

Evidence	Result
Partial admissions, injury photos and bad character evidence of the accused	Guilty plea
Initial account given on body-worn video, denied but no account given by the defendant, and injury photos	Guilty plea
999 call, injuries captured on body-worn video and hearsay evidence from the victim recorded in the responding officer's statement	Found guilty after trial
Victim's 999 call as res gestae and officer's description of injuries	Found guilty after trial
Victim's account on body-worn video as hearsay (witness unable to give evidence through fear)	Found guilty after trial
Victim's account recorded in officer's pocket notebook entry as hearsay (witness unable to give evidence through fear) and injury photographs	Found guilty after trial
Victim's account recorded in section 9 statement as hearsay (witness cannot be found), injury photographs and independent eyewitness testimony	Found guilty after trial

Evidence	Result
Circumstantial evidence from a neighbour who hears an argument between the victim and perpetrator and notes injury to the victim in the immediate aftermath	Found guilty after trial
Victim's original written account supported by other key evidence including evidence of injury preferred by court over hostile victim contradictory live evidence at trial	Found guilty after trial

For the Crown Prosecution Service (CPS) to proceed with a prosecution without the victim, cases must still pass the Full Code Test as set out in the [\*\*Code for Crown Prosecutors \(2018\)\*\*](#), which is why other evidence is essential.

See [\*\*CPS Domestic Abuse\*\*](#) for detailed information on the prosecution decision in domestic violence cases. The aide-memoire should be read in conjunction with the [\*\*Code for Crown Prosecutors \(2018\)\*\*](#) and 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\*\*](#).

See [\*\*Statutory Guidance on Controlling or Coercive Behaviour\*\*](#) for more information about gathering evidence around CCB.

The CPS also provides examples of evidence that may be gathered in the CPS Controlling or Coercive Behaviour in an Intimate or Family Relationship Guidance (see [\*\*Gathering Evidence and Case Building\*\*](#))

There are three main types of evidence-led prosecutions — the prosecution based on hearsay evidence, the prosecution featuring a hostile victim and the prosecution featuring circumstantial evidence — each of which requires officers to adopt a different approach to investigation.

## **Prosecution based on hearsay evidence**

Statements which are not given as oral evidence in court proceedings are subject to special provisions under [\*\*the Criminal Justice Act 2003 \(CJA 2003\) Part 11, chapter 2\*\*](#), which sets out the circumstances under which hearsay statements may be deemed admissible by the court. This applies to witness statements which report what the witness heard another person say, as well as documents of which the witness does not have first-hand knowledge (although there are particular rules applying to business documents). This is because when a witness repeats something that they heard someone say, or that they read, there is no opportunity to challenge the person who actually made the statement, which is viewed as potentially unfair. There is also a risk of the information being inaccurate.

When building a case based on hearsay evidence, officers should adopt the following approach.

1. Has the victim given an account?

The best option is a formal written statement signed by the victim in accordance with [\*\*the Criminal Justice Act 1967 s 9 \(s 9 statement\)\*\*](#) but it could also be in the form of:

- a verbal account from the victim to a police officer recorded in the officer's pocket notebook, signed or unsigned
- a verbal account from the victim to another witness recorded in a statement provided by that witness
- a verbal account from the victim recorded in a 999 call
- a verbal account from the victim recorded in body-worn video footage

2. Is the victim unable to give live evidence in court for one of the reasons listed in [\*\*the CJA 2003 s 116\(2\)\*\*](#)?

Evidence must be provided of any applicable reasons.

Reason	Possible evidence
The victim has died. CJA 2003 s 116(2) (a)	Death certificate. Statement of emergency personnel who attended the body.

Reason	Possible evidence
The victim is unfit to give evidence due to their physical or mental condition CJA 2003)	Statements/reports from medical professionals with first-hand knowledge of the witness's unfitness and who are able to give a firm conclusion. Where mental state has deteriorated since giving the original statement, evidence should be sought from a mental health professional who can comment on fitness at the time the statement was taken. The investigating officer should also evidence any enquiries made into whether special measures could enable the victim to give evidence, for example video link.
The victim lives outside the United Kingdom and it is not practicable to secure their participation in a trial CJA 2003 s 116(2)(c)	Evidence of enquiries made to secure participation in a trial, for example cost of flights, cost/viability of a video link for the witness.
The victim cannot be traced by the police CJA 2003 s 116(2)(d)	Section 9 statement from the investigating officer detailing all 'reasonably practicable' steps they have taken to trace the victim and the outcome, along with any associated exhibits.

Reason	Possible evidence
The victim is in fear CJA s 116(2)(e)	<p>Fear is widely construed by the courts and can include fear of death or injury to another person and even fear of financial loss but it cannot relate to the general unpleasantness of giving evidence in court.</p> <p>Possible forms of evidence include:</p> <ul style="list-style-type: none"> <li>• a section 9 statement from the victim setting out their fears</li> <li>• attending officers recording relevant comments or behaviour at the scene in a pocket notebook</li> <li>• body-worn video footage showing victim's fearful demeanour</li> <li>• statements of third parties with direct knowledge of the victim's fears, for example friends, parents, neighbours, support workers.</li> <li>• bad character evidence which might reveal a significant background of domestic violence</li> </ul> <p>Officers should seek to provide evidence of continuing fear through updates on the existence of fear as the trial approaches.</p> <p>They should also evidence that special measures will not adequately address the victim's fears.</p>

3. Were any comments made at the scene by a child witness from whom a formal statement cannot be obtained?

Such comments could be recorded in an officer's section 9 statement or pocket notebook, the statement of the victim or another witness, or on body-worn video. They may be admissible as res gestae or as hearsay in the 'interests of justice' under the CJA s 114(1)(d).

4. The investigating officer should identify all information which may potentially have an impact on the credibility of the absent witness and forward this to the CPS.

This could include the witness's previous convictions or cautions, previous complaints made by them or intelligence reports.

5. The investigating officer should ensure all evidence capable of corroborating the victim's account is identified and forwarded to the CPS.

See also res gestae.

## Prosecution based on a hostile victim

A hostile victim is one who provides false information to the police or prosecutor with a view to making them drop the case due to a conflict of evidence. Examples could include where a victim:

- has made an initial statement alleging an assault by the suspect, but later makes a retraction statement falsely saying that it never happened
- may not have made a formal statement to the police but did call 999 to report an assault and is later adamant that they made it up, for example claiming that they were intoxicated
- turns hostile at court and informs the prosecutor on the day of trial that they are going to tell the court that none of the allegations are true

Sometimes the second account is the true one and it is appropriate to drop the case. If, however, there are grounds to believe that the initial account is the true one, and that the victim is lying through fear, intimidation or some other motive, the investigating officer should take steps to identify:

- all evidence that could corroborate the victim's initial account, for example evidence of injury, third party witness statements, body-worn video footage

- all evidence that can rebut or disprove any aspect of the false account, for example an officer's statement which clearly says that the victim was not intoxicated at the time the initial account was given

If there is a clear motive for providing the new false account, for example the victim has been threatened or pressured, this should be evidenced. It could also amount to a separate offence of witness intimidation.

Issuing a witness summons, especially one with a power of arrest, for a victim of domestic abuse and then subjecting them to cross-examination is a very significant step and should be used only as a last resort. The reviewing CPS lawyer or trial advocate will need to be satisfied that the case is serious and that it is in the interests of justice to prosecute the case in this manner. The investigating officer should ensure that they provide all information relevant to assessing the seriousness of the case, which includes:

- significant reported or unreported history of domestic abuse
- up-to-date information as to the nature and extent of any injuries caused
- whether children were present during the incident or are thought to be at risk of further harm, and of what age
- their own view of the risk to the victim or others in not continuing the prosecution, based on their knowledge of the case, history and risk assessments

For further information on victim and witness evidence handling can be found in [CPS Domestic Abuse Guidance](#).

## Prosecution based on circumstantial evidence

A circumstantial case is one where there is no victim account or account from any other direct eyewitness to an incident, but all the available evidence points towards the same inference that the suspect committed the offence.

This type of case is difficult to prosecute because there is a lack of direct eyewitness evidence to contradict any innocent explanation of events provided by the suspect in interview or during evidence at trial. The Court of Appeal, however, in *R v C* [2007] EWCA Crim 3463, encouraged the prosecution team to look at the possibility of presenting circumstantial cases where victims of domestic violence were reluctant to attend court.

A circumstantial case is most likely to succeed where the circumstantial evidence is overwhelming, namely there is no other viable explanation. In one successful prosecution, the court concluded that the evidence of the defendant and victim was unreliable and the only viable explanation for the injury in light of the neighbour's evidence was an unlawful assault. In reaching this decision, it relied on the following considerations:

- a neighbour saw the victim enter her flat without injuries
- the neighbour heard the suspect verbally abusing the victim
- the neighbour saw the victim 15 minutes later with a bleeding nose
- the suspect had a graze on his hand
- the defendant denied responsibility for the injuries and claimed he was not there and
- the victim gave evidence in court on behalf of the defence that the injury was caused in an accident

For further detail, see guidance documents prepared by Rob Allen, CPS East of England (2015) [Building a viable domestic violence prosecution featuring an absent victim](#), [Building a domestic violence prosecution featuring a hostile victim](#) and [Crib sheet for officers investigating evidence-led domestic violence cases](#) on which this section is based.

## Managing the investigation

An effective investigation requires developing the following, where appropriate, in accordance with national and local protocols:

- policy file
- disclosure plan
- surveillance plan
- victim care plan
- witness management plan
- suspect management plan

For further details of the investigative process, see [APP on investigation](#).

Where a case attracts or is likely to attract media interest, see [Domestic abuse-related media strategies](#).

## Lines of enquiry

In all domestic abuse cases, investigating officers (IOs) should explore the history of domestic abuse. Patterns of abuse are not always apparent because incidents attended in the past may have been recorded as verbal only or otherwise deemed trivial. Officers should obtain as much detailed information as possible to understand the context and identify signs of coercive, controlling or threatening behaviour.

Officers should use such information to support the prosecution file and, where relevant, to show that the offence is part of a pattern of domestic abuse. They should apply the same approach to cases where domestic abuse could be an element, for example, in a suspicious missing person enquiry.

Exploring history and completing risk assessments may lead to disclosure of non-recent abuse or of sexual offences. Any disclosures should be accurately recorded and brought to the attention of a senior officer to consider if a separate investigation is needed or if they can be used to support the current prosecution.

When sexual offences are disclosed, officers should provide victims with relevant information about local services (such as **SARCs** or the local equivalent) where they can access support and healthcare. Deployment of a specially trained officer should be considered at an early stage following the disclosure.

Similarly, disclosure of non-recent abuse may be made by previous partners out of concern for a new partner or as a result of becoming aware of proceedings being taken against the perpetrator.

Such disclosures should be investigated as a separate case. The two or more cases could potentially strengthen each other or be linked as a series, subject to statutory time limits, such as the requirement that charges for summary only offences be laid within six months of the incident. Even where this is not possible, the disclosure could be used as **bad character evidence**. See the **CPS Abuse Guidelines for Prosecutors** for further information.

For further information go to [\*\*Domestic violence disclosure scheme \(Clare's Law\)\*\*](#).

### Checklist: Lines of enquiry

Officers should consider these potential lines of enquiry:

- history of the relationship
- previous incidents of abuse, including those with prior partners, for example records of previous calls to the police
- local police intelligence systems, national and international systems, including the PNC, PND and ViSOR
- **foreign national criminal conviction checks** if the suspect, victim or witness is a foreign national
- incidents of sexual abuse not previously disclosed
- incidents that have been witnessed by children
- incidents witnessed by other family members, friends, colleagues
- witnesses to whom first disclosure may have been made
- **house-to-house enquiries**
- incidents that have occurred outside the home or in public
- previous threats made to the victim, children, family members or friends
- child contact agreements or disputes
- **civil orders**
- medical information that may constitute evidence – consent should be obtained where relevant
- asking about injuries that are not immediately visible, for example those concealed by clothing or hair, or older healed injuries that could be confirmed by further enquiry or medical investigation
- evidence held by other agencies such as housing services, children's social care departments, education, probation and medical professionals
- evidence held from any data source on previous victims
- evidence of social isolation, for example, lack of contact between the victim and their family, friends, neighbours or schools (officers might also ascertain whether medical appointments have not been made or kept, or if the suspect has accompanied the victim to medical appointments)
- bank statements which could show evidence of financial control by the perpetrator
- phone and email records
- social media

## Checklist: Spotlight on controlling or coercive behaviour

In addition to standard lines of enquiry, officers investigating a potential offence of controlling or coercive behaviour under the Serious Crime Act 2015 s 76 should focus on identifying a pattern of behaviour across different types of evidence. Much of it will be evidence of the victim's and perpetrator's day to day living and their interaction.

Types of evidence which may be useful include:

- records of communication between the victim and perpetrator, for example emails, phone records, text messages, social media
- audio or visual recordings of interaction between the victim and perpetrator, demonstrating body language and tone, for example 999 recordings, CCTV, BWV footage
- local enquiries, for example neighbours, regular deliveries, postal services, window cleaner
- witness testimony, for example from family and friends, as to observed behaviour by both parties and its effect and impact
- diaries kept by the victim and/or children
- records of lifestyle and household, including photographic evidence of the scene
- evidence of isolation, for example lack of contact with family and friends, withdrawal from social activities and clubs
- records of interaction with services which show the perpetrator adopting a dominant role, for example always accompanying the victim to banking or medical appointments
- bank records showing financial control
- medical records
- GPS tracking devices installed on mobile phones, tablets, vehicles
- care plan, where the perpetrator has caring responsibilities

These are not exhaustive and any evidence which shows a pattern of control or coercion is relevant.

See Home Office Controlling or Coercive Behaviour Statutory Guidance Framework and Crown Prosecution Service for further information.

## Physical evidence

## Forensic science

The nature of the offence should dictate the evidence likely to support the victim's allegations. In any incident of domestic abuse, the suspect has probably had legitimate access to the victim. It is also likely that the suspect may be living with, or has lived with, the victim. This presents different issues from those where the suspect is unidentified or has no legitimate access to the scene.

It is not sufficient to merely identify the suspect as being present at the scene from forensic evidence. The forensic investigation should consider the sequence of events as given by each party, and look at the scene in that context. This means testing whether the information from the scene corroborates the sequence of events supplied by the suspect as well as the victims and witnesses. This principle might also relate to scenes of previous incidents.

Areas of significant evidence which could assist the investigators and crime scene investigators to interpret the scene include the following.

## **Blood or liquid pattern distribution**

Although the presence of blood at the scene may provide corroboration of physical assault, blood or liquid pattern and distribution analysis is essential to establish the possible pattern of events. For example, if the victim states that chip fat or paint was thrown at them as part of an incident, liquid pattern distribution may help to confirm this. The presence of marks attributable to blood-soaked hair coming into contact with fixtures and fittings may corroborate stated incident details. Similarly, the size of a small blood droplet may help to establish the height at which a victim was bleeding, again assisting in restructuring events. Where cleaning up may have taken place, stained tissues, cloths and contaminated taps, plugs and other materials may provide further evidence of the assault.

## **Other biological evidence**

Hair, teeth, fingernails or skin can be knocked or pulled out, or caught on fixtures/furniture and can corroborate the incident as described. Teeth or clumps of hair can make powerful exhibits when produced in court and should always be recovered if present. A victim in fear may also lose control of their bodily functions, which may present further opportunities for corroborating their account if significant amounts of bodily fluids are present in carpet or other furnishings.

## **Fingerprints**

While finger or palm marks cannot be aged, the location of recovered material may assist in establishing the suspect's action at the scene. The situation of marks may help to compile incident details, particularly if located in uncommon areas and positions (for example around the nozzle end of a victim's hairdryer, where the cord has been used to restrain or the handle has been used to strike the victim). It is, therefore, essential that crime scene investigators (CSIs) record accurately the exact situation and position of ridge detail. Officers should inform CSIs of the relevant areas to assess for fingerprinting.

## **Clothing and bedding**

Tears and damage to clothing may help to corroborate accounts. Although fibre transference between victim and suspect may not be pertinent to the majority of incidents, seizing clothing bearing evidence of assault may assist enquiries. Blood distribution on clothing may further help to clarify the pattern of events. Clothing damaged or contaminated during an incident may be discarded or put aside for cleaning purposes. Officers should search for items in washing machines, clothes baskets, washing baskets and other areas where clothes can be hidden, if appropriate. They should also consider bedding and mattresses for examination where sexual assault and/or rape are alleged.

## **Footwear**

Although shoe prints are usually thought of in connection with the point of entry to premises, sole or upper shoe detail can also be linked to damaged property or personal effects, or to injury marks on the victim's body. Suspect footwear may contain debris emanating from victim assault.

## **DNA**

The presence of a suspect's DNA at the scene may prove significant when linked with items associated with the specific incident. For example, a bottle used in an assault may identify the drinker(s). Similarly, a recently deposited cigarette stub used to burn a victim may identify the smoker. This type of information may help to establish some factual element to conflicting circumstantial accounts. In a domestic abuse case, when the identity of the suspect is not in question, officers should not assume that collection of DNA evidence is inappropriate.

## **Signs of a disturbance**

Disturbance or damage to the scene could verify a sequence of events or, indeed, negate an account. This might include testing for traces of cosmetics and other substances on materials such

as flooring and soft furnishings.

Small details can tell a story:

- the contents of household bins can help to piece together what goes on in the household
- broken spectacles or jewellery
- signs of damage to internal walls, including recent repairs, for example fist-shaped hole or patch of different paint
- upturned furniture and damaged property
- broken room locks, for example bathroom lock hanging off
- telephone cables pulled out
- evidence of unwanted gifts, for example flowers, chocolates, cards, teddy bears
- antidepressants in medical cabinets

For information about forensic recovery in sexual assault cases, see APP on rape and sexual offences (forthcoming). Reference could also be made to the National Injuries Database, run by the [National Crime Agency's \(NCA\) Forensic Medical Advice Team](#).

## **Injuries and evidence from the forensic medical examiner**

The victim is a crime scene and should be dealt with in that way. Any interpretation of injuries should come directly from the forensic physician carrying out the medical examination. Bite marks should be swabbed for DNA, photographed and referred to a forensic odontologist.

## **Weapons**

These might not be standard weapons and could be ordinary domestic items. The configuration of marks, abrasions and bruises may offer comparison with items associated with the assault. Debris from household items used as weapons may remain in wounds and could be matched to an item at the crime scene.

## **Photographic and visually-recorded evidence**

Photographic evidence should be gathered and used proactively throughout a domestic abuse investigation and prosecution. Hospital images recorded for internal damage prognosis (X-rays) may also be required to support the investigation process. Photos can also be taken of text messages on a mobile phone or social media pages on a screen, see technology and social media.

Body-worn video can be used to collect evidence in domestic abuse cases and would normally be used when officers are first deployed. See [\*\*body-worn video\*\*](#). There is some good evidence to show that where officers responding to domestic abuse are equipped with body worn cameras the proportion of sanctioned detections resulting in a criminal charge increases. The impact of attending officers wearing BWV on the views and experiences of victims has not yet been explored however. Forces may want to consider whether officers equipped with BWV should be routinely assigned to domestic abuse incidents. See College of Policing (2015) [\*\*The Essex Body Worn Video Trial\*\*](#), Owens, Mann and McKenna.

## Photographic evidence – victim care issues

- Officers should inform the victim that photographic evidence obtained could be used as evidence in any subsequent criminal or civil proceedings, for example child contact hearings.
- IOs should ensure that, where appropriate or possible, victims are able to choose the location where they would like the photographs to be taken. Requesting that victims attend police stations might be a discouragement.
- If the victim has a preference regarding the sex of the photographer, this should be respected where possible.
- Officers should obtain the victim's consent before taking any photographs. Where possible this should be recorded, either on pre-prepared forms, in an officer's pocket book or within a victim's statement.

## Checklist: Use of photographic evidence

Officers using photographic evidence techniques should:

- photograph all non-intimate injuries (victim and suspect) – bite marks should be photographed as soon as possible
- photograph or visually record all damage and disruption at the scene (including damaged clothing and weapons) and any other evidence that might assist in corroborating victim or witness accounts or proving the offence(s)
- use CSI photographs whenever possible in domestic abuse cases, irrespective of whether initial non-intimate photographs have been taken
- visually record footage of crime scenes when appropriate, especially in serious cases
- make arrangements for the victim to be re-photographed when their injuries may be more apparent

- take particular care with lighting when photographing darker skin tones as bruising can be more difficult to see
- use photographs proactively to assist in the investigative interview, see [\*\*suspect interviews\*\*](#)
- provide custody officers with photographs to assist them with decision making, particularly in respect of police bail
- attach photographs to the file of evidence for the CPS, magistrates and judiciary

Officers should not take photographs of either sexual or non-sexual injuries in intimate areas. These should be taken by medical professionals following national guidance. See Faculty of Forensic and Legal Medicine [\*\*Guidance for best practice for the management of intimate images that may become evidence in court.\*\*](#)

## Using 999 recordings

Audio recordings of 999 calls can provide a useful source of evidence to support the prosecution of domestic abuse-related offences. In particular, IOs should examine recordings to identify the following:

- caller's demeanour
- background noise including comments from witnesses, suspects and victims
- any first description ([\*\*res gestae\*\*](#)) of the incident as provided by the witness or victim

Officers should follow local guidelines for the storage and retention of 999 recordings. They should be included as part of the prosecution file sent to the CPS, where relevant. Police forces should ensure that any guidance given to call takers in relation to operating procedures in domestic abuse cases is also made available to the judicial process.

## Res gestae

Res gestae is a Latin term meaning 'things done' and refers to all the circumstances surrounding and connected with an event. In the context of criminal evidence, res gestae is a statement which is so closely associated in time and place with an event that it may be said to form a part of it. The common law doctrine of res gestae is expressly preserved as an exception to the hearsay provisions under [\*\*the Criminal Justice Act 2003 section 118\(4\)\*\*](#).

Under res gestae, a second-hand statement may be admissible without the need for a hearsay application where it:

- is made by a person so emotionally overpowered by an event that the possibility of concoction or distortion can be disregarded
- accompanies an act which can be properly evaluated as evidence only if considered in conjunction with the statement
- relates to a physical or a mental state such as intention or emotion

Examples of the first category would be a 999 call or comments made to a police officer just after an incident by the victim of the incident indicating the identity of the abuser. Under res gestae, the police officer may be able to give admissible evidence of what was said by the victim at the time. The rationale for this type of evidence being admissible is that there is thought to be less danger in these circumstances of a witness concocting or fabricating evidence.

Proceeding on the basis of res gestae evidence alone is likely to be difficult if the witness is available but unwilling to attend court, as the court can exclude res gestae evidence that it feels is being unfairly used by the prosecution to avoid calling the victim to give evidence. The case of **Barnaby v DPP [2015] EWHC 232 (Admin)** confirms that relying on res gestae alone may be possible where there is a 'real risk that a victim of domestic abuse may suffer further harm following her cooperation with the prosecuting authorities'. Where the victim is available to be called as a witness alongside res gestae evidence, but would potentially be placed at risk if required to give evidence, the investigating officer should seek to evidence the risk of harm to the victim if compelled to attend court.

For further information see:

- [\*\*CPS Legal Guidance on Hearsay\*\*](#)
- [\*\*Prosecutions based on hearsay evidence\*\*](#)

## Victim and witness evidence

The [\*\*Ministry of Justice Code of Practice for Victims of Crime\*\*](#) governs the services provided in England and Wales by a number of organisations, including police forces, the CPS, the joint police/CPS witness care units and Her Majesty's Court's Service.

The Victim's Code describes the additional or enhanced services that can be provided to victims of crime who are vulnerable or intimidated, as defined in the **Youth Justice and Criminal Evidence Act 1999**. Victims of sexual offences or domestic abuse are eligible for enhanced service under the Code, unless the victim informs the service provider of their wish not to have this.

The police must take all reasonable steps to identify vulnerable or intimidated victims. Where such a victim is likely to be called as a witness in criminal proceedings and may be eligible for special measures, the police must explain the provisions included in special measures to the victim, and must record any views that the victim expresses about applying for them.

Officers should assess the potential for interviewing child witnesses based on the age and circumstances of the child. This should also depend on the seriousness of the offences disclosed and the characteristics of the child. Competence to give evidence in criminal proceedings depends on understanding not age and children of any age can give evidence. Assessment of competency is specific to the individual witness whatever their age. The reviewing CPS prosecutor will need to consider if the child is capable of giving understandable evidence. They will also need to consider, looking at the evidence as a whole, whether or not there is a need to call the child, or if it is in the public interest to do so.

Children can, and often want to, give an account of events. A child can give consent to be interviewed even when both of the parents refuse consent. In any such case, officers should record all requests for consent to interview and should consult and involve children's social care departments as appropriate.

Visually-recorded interviews with children should comply with **Ministry of Justice (2021) Achieving Best Evidence** (ABE). Officers should consider using a registered intermediary from the outset when conducting an ABE interview with a child or vulnerable person. An intermediary should be considered for all interviews with children, whether or not they have specific communication difficulties.

For particular considerations arising when interviewing child witnesses, see APP on child abuse, **victim and witness evidence**.

Officers should take great care to edit any sensitive details in disclosable statements or exhibits, especially phone numbers and addresses. If the victim is staying in a refuge, no indication of this

should be given to the perpetrator as in some areas the location of refuges is common knowledge. Refuge addresses should never be disclosed as it can create a risk not just to the particular victim but also to staff and other users of the refuge.

For further information on special measures see:

- [\*\*APP on investigation, working with victims and witnesses\*\*](#)
- [\*\*APP on prosecution and case management, special measures for vulnerable and intimidated witnesses\*\*](#)

## Victim interviews

For general information on interviewing, see [\*\*APP on investigation, investigative interviewing\*\*](#).

Officers should ensure that information gained from the victim and witness interviews is included in any risk assessment and safety planning processes. Before conducting the victim interview, the interviewing officer should make sure that the interview will meet the required standards as set out in legislation, and [\*\*APP on investigation, investigative interviewing\*\*](#). Officers should also ensure that any confidential details, such as the address of a place of safety, are not disclosed in a recorded interview. If these details are disclosed, officers should inform the CPS of this so that consideration can be given to editing the recording.

### Checklist: Conducting the victim interview

Interviewers should elicit the following information, depending on the individual circumstances of each case:

#### Current incident

- full details of the current incident, including evidence to support any alleged offence and points to prove
- nature and seriousness of the victim's injuries (physical and emotional)
- whether a weapon was used (how and what type) and whether any attempt at choking, suffocation, drowning or strangulation was made
- victim's view of how the incident stopped, for example victim appeased the perpetrator, the incident was interrupted by someone or something, or the perpetrator stopped of their own

accord

- whether any children were present and, if so, the effect that the incident has had on them
- details of witnesses present during the incident
- details of any threats made before or since the incident
- whether the suspect planned the incident
- whether any sexual offences have been disclosed arising from the current incident

#### **General information**

- details of relevant family members
- details of any third party to whom disclosure of abuse has been made
- details of any relevant social networking accounts (both victim and perpetrator)
- whether there is likely to be any supporting evidence on mobile phones or in email communications
- medical consent where relevant

#### **Context**

- history of the relationship and any other incidents
- whether any previous sexual offences have been disclosed
- any incidents involving previous partners of the suspect
- if they are aware of the suspect ever having lived in another force area or abroad for a significant period of time
- whether the parties are separated
- victim's view of the future of the relationship
- victim's view of the likelihood of further abuse and victim's views about their own safety and that of any children
- whether any civil action has been taken by the victim or any previous partners
- whether the perpetrator is believed to be experiencing issues relating to mental health, substance misuse or financial difficulties, or to have a propensity to harm animals
- any specialist skills the perpetrator may have, for example martial arts or other combat skills, firearms, covert investigation

#### **Controlling or coercive behaviour**

- victim's view of how they feel the suspect controls their life and, if so, how (this can be difficult to explain and describe to an outsider as the small controlling behaviours on their own can sound trivial)
- victim's views on the rules or expected behaviours set by the suspect in the relationship, for example what the victim must and must not do
- victim's account of any threats used to maintain control, for example to 'out' their sexual orientation, medical condition, immigration status, other personal information or criminal activity, or to use intimate photos on social media to cause upset and risk of exclusion or dishonour from wider family members or community
- victim's account of the use of threats relating to children, for example to limit child contact, to take the children, or to have them taken away
- whether other persons are involved in planning and/or executing the abuse

Some of these points may provide a template for witness interviews. Officers should consider obtaining a victim personal statement as part of the interview, see [\*\*victim personal statement\*\*](#). Information obtained from interviews with victims and witnesses should be processed according to local policies and procedures.

See [\*\*victim withdrawals\*\*](#) for what to do when the victim withdraws support for a prosecution.

## Sources of intelligence and evidence

The following provides information on sources of intelligence and evidence available to officers when investigating domestic abuse.

### Police National Computer

Officers should check the PNC for any relevant information, especially bail conditions, orders or markers. Checks should also be completed on vehicles registered at the home or other relevant addresses, as [\*\*automatic number plate recognition \(ANPR\)\*\*](#) may provide useful evidence as set out below.

### Police National Database

Officers should check the PND when a perpetrator is known to live or have lived in other police areas.

Where no information is available, officers should contact other relevant forces directly for warnings and any other pertinent information that might be recorded on their local systems.

## ViSOR

Officers should be aware of ViSOR, which may hold relevant information regarding perpetrators who present a high risk. Access is restricted to those with licences, usually in public protection units (PPUs).

A perpetrator with a ViSOR entry should have a corresponding VS marker on their PNC record. If this flag is present, officers should contact the PPU or other staff with ViSOR access for further information.

## Foreign intelligence checks

Officers should carry out checks on all foreign national suspects and UK national suspects who have spent a significant period of time abroad. Checks may also be carried out on foreign victims and witnesses.

Potential benefits of such checks include revealing that the suspect:

- is wanted for extradition and could be removed from the UK
- has committed previous similar offences abroad, which could be used as bad character evidence
- is liable for sex offender registration (if unregistered, the person is unmonitored, could be working in a banned occupation and presents an unmanaged risk to the public)

The results of the checks will allow a more accurate assessment to be made of the threat that a person may pose to the police and/or the public.

Most forces have an international liaison officer (ILO) or international assistance unit (IAU) acting as a single point of contact for international enquiries. They should be able to assist officers with local force procedures for such requests.

Foreign conviction checks are made through the ACRO Criminal Records Office, which acts as the relevant authority for both European and non-European conviction exchange. European Union (EU) member states should provide the information within 10 days, but non-European states have no set time. In both cases requests can be expedited if urgent, for example a suspected murderer in

custody subject to time limits under the [\*\*Police and Criminal Evidence Act 1984\*\*](#).

**INTERPOL** operates a secure network to channel requests directly between law enforcement agencies in member states. The resulting intelligence can be used to support a case. INTERPOL also operates a notice system allowing police in member countries to share crime-related information. Notices are [\*\*colour-coded\*\*](#) according to the nature of the alert and can provide essential information for risk assessment. Notices are held on a secure system (I 24/7), which is accessible to all forces.

**Europol** can provide intelligence information in relation to EU member states. This mainly relates to serious crime or crimes affecting more than one member state.

The [\*\*Schengen Information System\*\*](#) provides further valuable information across participating European states, through an alert system. In the UK these alerts and communications are managed by the NCA. Alerts are channelled through the PNC and will flag to officers the fact that a particular action is required in connection with the person.

For further information see APP on [\*\*International Investigations\*\*](#).

## **House-to-house enquiries**

General information on house-to-house enquiries can be found in APP on investigation, [\*\*house-to-house enquiries\*\*](#).

The potential for using house-to-house enquiries should be identified early in the investigation. This type of enquiry allows officers to conduct a large number of interviews in a defined area as quickly as possible. In domestic abuse investigations, house-to-house enquiries might require slightly different planning as the defined area for the operation may only include the victim's immediate neighbours. Alternatively, they might also include residents close to schools, workplaces or car parks where other domestic abuse incidents have, or might have, occurred.

Officers should consider using a standard questionnaire in domestic abuse investigation house-to-house enquiries, to take account of the following:

- the sensitivity of the enquiry might require officers to adopt appropriate questioning techniques to establish what the neighbour saw or heard, without disclosing the exact nature of the alleged

offence or incident

- in cases of domestic abuse involving same-sex partners, officers should be careful not to reveal the sexual orientation of the victim and suspect by careless use of language or questioning
- questionnaires should use open questions and be designed to allow interviewees to describe previous incidents and to provide further pieces of evidence

## Automatic number plate recognition

Automatic number plate recognition (ANPR) can be useful in verifying or disproving a victim or perpetrator's account and monitoring the movements of a perpetrator's vehicle. See APP on [ANPR](#) for detailed information on its use.

Officers should note details of all vehicles in driveways or garages or otherwise associated with the household. Use of a vehicle by the perpetrator may involve other criminality, for example if the perpetrator has driven away from the scene while under the influence of drink or drugs or is disqualified.

## Technology and social media

Mobile phones and email accounts may contain essential evidence, either about the specific incident or the general context and nature of the relationship. Officers should ask the victim if there is likely to be any evidence on their phone, for example a threat prior to the incident, a flavour of the coercive controlling nature of the relationship, or attempts to contact the victim while they are speaking to the police.

Depending on the nature and number of communications, it may be sufficient for an officer to transcribe the text messages or calls or even take photographs of the phone screen to show the content. In other cases it will be appropriate to conduct a full forensic interrogation of the phone and/or seize the suspect's phone. Officers should print off any relevant emails and accompany these with an exhibiting statement where the emails are evidential in nature.

Where it is proportionate and necessary to seize a victim's mobile phone (with consent) and this is the only source of contact with emergency services for the victim, consideration must be given to the provision of a replacement mobile phone pending completion of forensic inspection.

Social media can provide a valuable source of information. The perpetrator or their friends may make comments which support the victim's account. It may show the history and nature of contact between the victim and perpetrator. It may also reveal further offending, for example cyber-stalking. Disclosing or threatening to disclose intimate photographs and films with intent to cause distress under [\*\*section 33 of the Criminal Justice and Courts Act 2015\*\*](#) – see [\*\*College of Policing \(2021\)\*\*](#) or sharing or threatening to share photographs or videos of someone in an intimate state. Officers should ask both the victim and perpetrator for details of any relevant accounts so that the appropriate enquiries can be made.

For further information about gathering digital evidence, see:

- [\*\*APP Investigations: Digital Exhibits Management\*\*](#)
- [\*\*Home Office Code of Practice: Extraction of Information From Electronic Devices\*\*](#)

There may also be evidence of the perpetrator's use of spyware on either the victim's or perpetrator's computer. If an officer suspects that this may be the case, for example the perpetrator is aware of information they could not otherwise have known, they should consider pursuing this line of enquiry.

For further information see [\*\*CPS Guidance\*\*](#).

## Financial information

Bank statements and other financial evidence can provide evidence of financial abuse. For example, they can show where benefits and salaries are paid and who has access to the money.

## Covert surveillance

Covert surveillance is a potential investigative tool for gathering evidence in certain domestic abuse cases, particularly where harassment is an issue. Forces should contemplate covert policing techniques only when they have given due consideration to all of the circumstances of the case and conventional policing methods have failed or are likely to fail.

If covert tactics are being considered, officers should bear in mind at all times that such tactics can also escalate risk, for example if the perpetrator discovers a hidden camera.

## Covert human intelligence sources

There may be circumstances where victims or witnesses of domestic abuse seek to provide intelligence regarding other criminal activities of the suspect.

Any victim or witness of domestic abuse providing intelligence to police officers should be subject to further risk assessment and safety planning measures. Officers should ensure that established risk factors for domestic abuse are identified and monitored. The first priority for the police is to ensure the safety and protection of victims and witnesses.

In situations where the domestic abuse victim or witness provides information about offences other than domestic abuse, officers should forward the information to the intelligence unit for evaluation.

For further information [\*\*see Home Office Covert Human Intelligence Sources – Code of Practice pursuant to the Regulation of Investigatory Powers Act 2000\*\*](#) for the definition and examples of CHIS.

## Prison intelligence

Prison intelligence sources and monitoring can also provide valuable information. It can influence the direction of an investigation or provide direct evidence of breach of bail conditions, witness intimidation or harassment.

## Bad character evidence

Under [\*\*the Criminal Justice Act 2003 s 101\*\*](#), an application may be made to the court to admit evidence of a defendant's previous bad character or reprehensible behaviour. Although it cannot be used on its own, it can be used in combination with other evidence to help build a case.

Officers should identify relevant information at an early stage by consulting the [\*\*PNC\*\*](#) and, if the perpetrator is known to have lived in another area, the [\*\*PND\*\*](#) and local force systems. If there is a [\*\*ViSOR\*\*](#) flag on the PNC, that should also be checked with the force PPU. [\*\*Foreign conviction checks\*\*](#) may also provide relevant information, not only for foreign nationals but also UK nationals who have spent significant periods of time abroad.

Relevant behaviour can include not only convictions, but also acquittals and conduct which could be objectively viewed by the public as reprehensible, such as bullying or racism. This could include reports of misconduct or antisocial behaviour recorded by a housing association or local council, or

disciplinary proceedings for bullying and harassment in the workplace. If such issues come to the attention of the investigator, for example from **house-to-house enquiries**, this may require enquiries to be made with other agencies.

Incidents which form part of a pattern of controlling or coercive behaviour that took place prior to the commencement of the specific offence of controlling or coercive behaviour (29 December 2015) cannot be charged but may potentially be introduced as bad character evidence. They should be included in the information forwarded to the CPS for consideration.

All information which could be viewed as assisting a bad character application should be included as evidence of bad character in the case file (MG16) along with a copy of the PNC print and a detailed offence print (PNC2). The detailed print is required because the court needs to know the full detail when considering the admissibility of bad character evidence, not just the fact of the conviction.

See [\*\*CPS Legal Guidance on Bad Character Evidence\*\*](#) and [\*\*CPS Domestic Abuse Guidelines for Prosecutors, Previous domestic abuse incidents and serial perpetrators\*\*](#) for further information.

## Seeking evidence from other agencies

Other agencies may hold relevant evidence that could help to support a prosecution. This might be photographic evidence, body maps, witness evidence, items or samples that they are safeguarding on behalf of a victim. Body maps allow medical staff to mark the location of injuries on the patient's body. These can be particularly useful in cases when the victim declines to have photographs taken of injuries to the body. IOs should establish the procedures that are undertaken by other agencies to gather and secure domestic abuse-related evidence.

Partner agencies might, on occasions, be better placed to obtain evidence from victims. For example, victims may consent to having photographs taken of their injuries, or body maps completed, by medical staff at a time when they are not ready to disclose the abuse formally to the police.

Police forces should consider providing other agencies with equipment and guidance to enable them to gather valuable evidence which would otherwise be missed. This might include digital cameras and film, body map forms and evidence notebooks.

Other agencies may also be in possession of records which demonstrate an ongoing problem and help to better understand the context.

## Past medical records

When consent is given by victims for the police to access medical records, officers should seek information from a variety of sources, see [information sharing](#). Obstetric records can provide evidence of miscarriages and injuries sustained during and after pregnancy. Dental records might provide evidence of oral injuries and should be considered along with records from general practitioners, mental health specialists and hospital emergency departments.

Officers should explain that consent is requested for access to relevant information, not necessarily the entire record. Victims may be concerned about revealing sensitive information that they do not wish the perpetrator to know or which may increase their risk, such as having had a termination. Such information should be edited.

## Closed-circuit television

CCTV can be particularly useful in building an evidence-led prosecution. In addition to showing an offence being committed, it can corroborate a victim's account and/or disprove the perpetrator's account by:

- confirming location, for example if the perpetrator denies having been in a certain place at a particular time
- showing demeanour, for example threatening or frightened body language can help to counter a self-defence argument
- showing the lead up to an incident, for example where an assault occurs in the home, but the parties have been in public locations earlier in the evening and the perpetrator can be seen repeatedly behaving aggressively towards the victim
- showing something different from that which the perpetrator says happened – even if that part does not relate to the offence itself, it can cast doubt on the rest of the account
- showing repeated presence in a particular place, which could demonstrate harassment or intimidating behaviour, for example the perpetrator driving past or sitting in their vehicle outside the victim's house repeatedly without reason

CCTV can be found in many **locations**, including private houses and common areas of communal dwellings. Officers should ask about the possible availability of CCTV when carrying out house-to-house enquiries, as well as in locations along any routes taken, for example shops, public transport, petrol stations and car parks.

Custody CCTV may also be of evidential value if it captures the behaviour and demeanour of the suspect on arrival in custody and any comments made by them within the custody area.

See [APP on investigation for information on the full benefits of CCTV.](#)

## Contextual information from other agencies

Where the victim indicates that the domestic abuse goes beyond the current incident, officers should make enquiries with other agencies that may hold relevant information about the context of the abuse, for example:

- housing association or local authority housing department records, for example recurrent damage such as holes in walls or broken door frames/locks, or complaints from other tenants

education sector, for example school records showing referrals to [Operation Encompass](#) or noting restrictions on the collection of children from the school by one of the parents.

## Tags

Domestic abuse