**The Domestic Abuse Commissioner believes that Out of Court Disposals should be used only by exception in cases of domestic abuse, and this response sets out:**

* **Why out of court disposals are largely inappropriate in cases of domestic abuse;**
* **What conditions must be in place for OOCD to be used in cases of domestic abuse.**

**The Domestic Abuse Commissioner for England and Wales is concerned about the use of out of court disposals for cases involving domestic abuse and considers that domestic abuse-related offences should be excluded from the Out of Court Disposal Framework, for the reasons set out below. Where there is sufficient evidence to support a prosecution, this course of action should be pursued to ensure that perpetrators are effectively held to account for their actions and brought to justice. The Domestic Abuse Commissioner considers that domestic abuse-related offences should be excluded from the Out of Court Disposal Framework for the following reasons:**

* ***Impact on domestic abuse outcomes***

We are concerned that the use of out of court disposals will exacerbate the sustained fall in domestic abuse-related prosecutions which we have seen over the past six years. According to the Crime Survey for England and Wales, 2.3 million adults experienced domestic abuse in England and Wales experienced domestic abuse last year.[[1]](#footnote-2) Domestic abuse is a widely under-reported crime. In the year ending March 2021, a fifth of all recorded crime was domestic abuse-related, with the police recording a total of 845,734 domestic abuse-related crimes.[[2]](#footnote-3) This is almost double what it was in 2015, where the police recorded 421,185 domestic abuse-related crimes.[[3]](#footnote-4) 77,812 of the incidents in the year ending March 2021 were referred to the CPS.[[4]](#footnote-5) Despite this increase in recorded crime, the number of referrals to the CPS by the police has fallen by 38% since March 2015, with the number of prosecutions for domestic abuse-related offences almost halving – falling by 41% in the same period. Similarly, the number of convictions has also fallen by 38% in this period.[[5]](#footnote-6) Despite the fall in criminal justice outcomes, the prevalence of domestic abuse has not shown a corresponding reduction during this period, demonstrating that the criminal justice system is no longer adequately responding to these types of crimes.

The use of out of court disposals acts contrary to the strategic approaches being taken by the Government and criminal justice agencies to increase prosecution rates for these offences following concerns raised in the Home Office’s *‘Violence Against Women and Girls Strategy’* (the “VAWG Strategy”) about the insufficient response to these crimes by the criminal justice system.[[6]](#footnote-7) The VAWG Strategy further noted that many victims and survivors believed that the response to these crimes was unduly lenient, with there being a “*perception that the system favours perpetrators”.[[7]](#footnote-8)* Similarly, in Her Majesty’s Inspectorate of Constabulary and Fire & Rescue Services’ (“HMICFRS”) report on the ‘*police response to violence against women and girls’*,[[8]](#footnote-9) it was held that far too few perpetrators of VAWG offences (including domestic abuse) were being held to account. The report recommended that policing needed to work more closely with agencies such as the CPS to improve prosecutions in this area, noting that this needed to be a priority for criminal justice agencies.[[9]](#footnote-10) The use of out of court disposals for domestic abuse-related cases would also act contrary to the strategic aims set out by the Government’s *End to End Rape Review* which seeks to improve criminal justice outcomes for victims of rape. *[[10]](#footnote-11)* Almost half (44%) of victims of sexual assault by rape or penetration were most likely to have been victimised by their current or former partner, thereby being a form of domestic abuse.[[11]](#footnote-12) As noted in the *End to End Rape Review*, many victims are unlikely to disclose instances of rape immediately, meaning that a police officer could attend a separate domestic abuse incident and advise that an out of court disposal be issued before the victim feels comfortable disclosing more serious crimes, particularly where a perpetrator immediately admits guilt. Consequently, the use of out of court disposals could prevent the investigation of further domestic abuse-related crimes. The use of out of court disposals for domestic abuse would further divert resources from criminal justice agencies away from prosecutions, despite this being an area which the Home Office, criminal justice agencies and victims and survivors are recommending there be significant improvement.

* ***Experiences of black and minoritized survivors and survivors with protected characteristics***

We are concerned that the current proposals for out of court disposals will disproportionately impact black and minoritized survivors and survivors with protected characteristics, due to the higher incident rates of domestic abuse amongst this cohort of survivors, combined with the additional barriers they face accessing the criminal justice system.

Survivors with protected characters are disproportionately affected by domestic abuse. The Crime Survey for England and Wales for the year ending March 2020 showed that individuals of mixed or minoritised ethnic groups were significantly more likely to experience domestic abuse, with 12.9% of individuals who reported experiencing domestic abuse being from Black, Asian and other ethnic groups and 7.5% being from mixed ethnic grounds, whilst 5.7% of respondents were White.[[12]](#footnote-13) Both men and women with disabilities were more likely to have experienced domestic abuse than those without, with 22% of survivors reporting having a disability, compared with 8.2 of non-disabled survivors.[[13]](#footnote-14) Victims with protected characteristics are also more likely to experience intersecting harm from discrimination and hate crime on the basis of their protected characteristic. [[14]](#footnote-15)

This cohort of survivors usually also face additional structural barriers to justice and support from statutory organisations due to a lack of understanding of the differentiated needs and intersectional discrimination faced by these survivors, leading to a failure of ensuring equal outcomes.[[15]](#footnote-16) Issues which have been raised by these survivors with regard to reporting include not being believed, language barriers, accessibility issues and prejudice or stereotypical beliefs because of a protected characteristic.[[16]](#footnote-17) We are concerned that the use of out of court disposals will disproportionately affect survivors with protected characteristics who are already less likely to obtain desired criminal justice outcomes when they report domestic abuse-related offences due to their allegations not being taken seriously by criminal justice agencies. This may in turn sustain apprehensions by this cohort of survivors around reporting abuse and interacting with statutory agencies.

***Lack of understanding of domestic abuse***

 Including domestic abuse-related offences within the scope of ‘low-level offending’, for which out of court disposals were designed,[[17]](#footnote-18) acts contrary to the inclusion of domestic abuse within the definition of serious violence for the purposes of the Serious Violence Prevention Duty, which the Government recently announced would be implemented within the Police, Crime and Sentencing Bill.[[18]](#footnote-19) The purpose of the inclusion of domestic abuse within the definition of serious violence is to ensure that public sector bodies and government agencies recognise the severity of these types of crimes and to require these organisations to work together to prevent and tackle serious violence. The Domestic Abuse Commissioner’s Office supports the duty as the reduction in domestic abuse cases going through the criminal justice system should be upstream and focused around carrying out work to prevent offending taking place, rather than diverting frontline criminal justice responses once a domestic abuse incident has occurred. Whilst there has been a significant improvement in the training mandated for police officers since the publication of HMICFRS’ ‘*Everyone’s business: improving the police response to domestic abuse’[[19]](#footnote-20)* report, there continue to be challenges around the understanding of domestic abuse-related offences within the police, with there being a disparity in the forms and types of training undertaken between police forces. Although all police forces provide introductory training on domestic abuse to their officers, training and development on specific forms of abuse or how to respond to these offences is often provided on an ad-hoc basis, with individual forces deciding the extensiveness of the training which officers and staff must attend.[[20]](#footnote-21) Further, many ‘specialist’ investigators have not received any additional training to carry out their role.[[21]](#footnote-22) Anecdotally, we have been told that there are also high turnover rates amongst these specialist roles. Consequently, we are concerned that domestic abuse cases which should be regarded as being serious enough for prosecution to be pursued may be wrongly siloed for an out of court disposal due to a lack of understanding of the nuances surrounding the offence.

We are concerned that the use of out of court disposals will divert investigations and prosecutions away from more serious offences as it provides the opportunity to resolve “lower level” offences, which are easier to evidence, in a more expedient manner. There continue to be challenges for the police in recognising and recording offences such as coercive and controlling behaviour, due to its nature as a course of conduct and pattern of behaviour, rather than an isolated incident or a physical assault.[[22]](#footnote-23) This can sometimes lead to the misidentification of harmful behaviour as trivial and not worthy of prosecution when viewed in isolation, or the undercharging of incidents of abuse as common assaults, which do not adequately reflect the gravity and sustained nature of the abuse being experienced by the victim. As noted by Cassandra Weiner, the most significant negative consequence of the trivialisation of abuse in this way in the impact on the risk assessment process carried out by police to keep victims safe from future harm.[[23]](#footnote-24) Added to this is the difficulty in evidencing aspects of coercive and controlling behaviour such as isolation and degradation, which can lead to police officers focusing on incidents of physical abuse, rather than investigating evidence of coercive and controlling behaviour disclosed by victims on the basis that they are less likely to obtain a conviction.[[24]](#footnote-25) Allowing the use of out of court disposals for domestic abuse could therefore lead to even fewer prosecutions for more serious offences such as coercive and controlling behaviour, thus preserving the issue of inadequate criminal justice outcomes for perpetrators of domestic abuse.

In addition to this, many victims of coercive and controlling behaviour may not identify as such due to believing that they are partly to blame for the abuse or may not recognise that the behaviour which they have been subjected to is domestic abuse.[[25]](#footnote-26) Consequently, this cohort of survivors are often less likely to seek a criminal justice response, with victim withdrawal being higher due to fear or due to their ongoing relationship with the perpetrator.[[26]](#footnote-27) This means that in some cases, officers may settle for an out of court disposal rather than a prosecution on the basis that they do not require a victim’s support to carry out this course of action. Whilst we understand that there has been a strategic response to this by way of a focus on evidence-led prosecutions, the recognition that police officers should strive to secure prosecutions must be carried through to any work and training on out of court disposals.

* ***Spent cautions***

We are concerned that as diversionary cautions will be spent after three months, there is little scope for the risk management of offenders following completion of any rehabilitative conditions which are imposed on them. Where a perpetrator has successfully completed a programme they have been ordered to attend as part of a diversionary caution, there should be recourse to monitor their behaviour and risk levels on a longer-term basis. Mere completion of a perpetrator programme is not sufficient to show that an individual will not carry out further abuse and there must be further consideration as to the course of action which will take place where, following attendance on the programme, an individual is deemed to not have participated in a meaningful way or not displayed significant improvement in their behaviour and whether this will be sufficient grounds for them to be remanded. Where a perpetrator goes on to commit a further domestic abuse-related offence which is subject to prosecution, the prosecution should be able to adduce evidence relating to any diversionary cautions received by the offender for domestic abuse offences for use as Bad Character Evidence.

* ***Patchwork provision of proposed diversionary measures***

There is currently a postcode lottery around the availability of perpetrator programmes across England and Wales, with only a small proportion of perpetrators receiving specialist interventions for their behaviour.[[27]](#footnote-28) The provision of services is left to local authorities or police forces, who must decide whether they should commission specialist services or create internal mechanisms for managing perpetrators based on local priorities. This means that whilst an individual could be mandated to attend a perpetrator programme as a condition of their diversionary caution, they may not be able to comply with this within a given timeframe due to lack of availability of programmes in their local area or long waiting lists on the ones which are available. Capacity on these programmes will likely be further strained when positive requirements surrounding Domestic Abuse Protection Orders are introduced.

We understand that there is currently also a lack of specialist interventions available for LGBT+ and female perpetrators, with most programmes being designed for delivery for men who are in heterosexual relationships. Our report, ‘*LGBT+ Domestic Abuse Service Provision’* revealed that there are no LGBT+ specific services for perpetrators or perpetrator programmes, despite this cohort requiring different forms of interventions.[[28]](#footnote-29) There are also very few specialist programmes for women, which is accompanied by a lack of data surrounding the levels of demand for these programmes and any shortfall in their provision. This is problematic as it would mean that this cohort of perpetrators would not be eligible for a diversionary caution by nature of the lack of provision rather than because such a measure would be inappropriate. It is therefore recommended that in the first instance, a study be carried out to provide a data-rich evidence base for demand for demand for these programmes in order to target areas where capacity needs to be built to ensure that diversionary measures with specialist provision can be commissioned.

Our office is in the process of mapping the provision of all domestic abuse services across England and Wales. This includes both accommodation and community-based services, with a specific piece of mapping carried out to identify perpetrator programmes which are available across England and Wales and the type of provision they offer. This work can help to identify some of the gaps in provision and highlight the areas where additional funding is needed for the provision of services. It will be crucial for the patchwork provision of such services to be addressed in order to avoid the continued regional disparities in the use of out of court disposals.

**As noted above, the Domestic Abuse Commissioner considers that the pursuit of a prosecution for domestic abuse-related offences should be a priority for criminal justice agencies. However, where out of court disposals are to be used, it is important to take the following points into consideration:**

**Questions 7 and 9 - Vulnerabilities**

* ***Young perpetrators, female perpetrators and perpetrators with complex needs***

We recognise that in some exceptional circumstances the pursuit of a prosecution may not be a desirable outcome, such as in cases involving female perpetrators who may also be victims of violence and abuse, cases where the perpetrator is a young person or where the perpetrator has complex needs and requires mental health support or substance misuse services. Where this is the case, the following must be considered:

* Female perpetrators - Criminal justice agencies must take a gender-informed approach of domestic abuse where allegations are made against women as perpetrators. It is widely accepted that women are more likely to be victims of domestic abuse, with studies also showing that the majority of female perpetrators have experienced violence from their male partners and commit domestic abuse as a form of violent resistance. [[29]](#footnote-30) In England and Wales, at least 57% of women in prison and under community supervision are victims of domestic abuse.[[30]](#footnote-31) The prevalence of this victimisation amongst female perpetrators means that police officers and prosecutors should be trained and have clear assessment frameworks to distinguish between where an incident is one where the woman is the primary and sole aggressor, one of mutual partner violence or one of violent resistance.

Violent resistance refers to violence perpetrated by women against their partners in an attempt to stop the violence or to stand up for themselves or protect their children.[[31]](#footnote-32) This is to be distinguished from situational couple violence, whereby both parties display violence which is not rooted in power, control and coercion, but rather it arises from arguments and conflicts which escalate into physical violence, and mutual violent control violence, where both partners are violent and controlling towards each other.[[32]](#footnote-33) Within the context of mutually violent relationships, it is important to consider that women are more likely to be injured and injured more severely than men.[[33]](#footnote-34) In a study by *Swan* and *Snow,* it was found that although women who committed abuse committed equivalent levels of emotional abuse and more moderate physical abuse, they reported that their male partners committed significantly more sexual coercion, coercive control, injury and severe physical violence.[[34]](#footnote-35) Consequently, police officers and prosecutors will need to have a clear understanding of the use of retaliative violence in response to trauma.

With that in mind, where further investigation into an incident reveals that there was mutual partner violence, diversionary caution requiring attendance at a behaviour change programme combined with mental health support may be a more effective response to female perpetrators. Conversely, where following further investigation a woman is held to have displayed violent resistance and found to be a victim, no charge should be brought forward and a safeguarding referral to a specialist domestic abuse service should be offered to the victim.

* Young people –It is important to ensure that young people are not criminalised as perpetrators from an early age and where possible, police officers and prosecutors should adopt diversionary interventions which focus on relationship education, mental health support, safeguarding and risk management rather than prosecutions. Young people who demonstrate harmful behaviour in relationships will often lack an understanding of healthy relationships, or need help controlling behaviour which they know is wrong.[[35]](#footnote-36) The ‘*In Plain Sight’* report by SafeLives highlighted that a quarter of the children in their research who displayed aggressive of abusive behaviour had been victims of more severe direct harm, such as neglect, physical abuse and emotional abuse,[[36]](#footnote-37) with this causing multiple physical and mental health consequences. Where this is the case, it is recognised multifaceted interventions and wrap-around support to help change their behaviour are preferable as they are likely to be more effective than a criminal justice outcome.

Similarly, children and young people using violence and abuse towards parents can also be victims of adverse childhood experiences, such as domestic abuse, child maltreatment or have suffered severe childhood trauma. Children exposed to multiple forms of family abuse have been identified as being at greatest risk of using violence towards their parents, with an estimated 50 – 80% of young people using violence and abuse towards their parents also having experienced direct or indirect family violence and abuse.[[37]](#footnote-38) Whilst it is important to hold them accountable for their behaviour, it is also crucial to change the attitude and response of these young people to prevent them from offending in the future. There is some evidence to suggest that education and intervention programmes may help to improve knowledge, attitudes towards domestic abuse and gender roles and interpersonal outcomes.[[38]](#footnote-39) As the research and evaluation base on this is limited, it is recommended that funding be made available to assess the impact of such approaches in place of a criminal justice response in terms of preventing future domestic abuse-related offences.

* Complex needs and multiple disadvantage – Where perpetrators have complex needs and face multiple disadvantages, such as mental health conditions or substance misuse problems, it is accepted that addressing these factors via diversionary cautions may be more useful in helping to prevent future offending than prosecutions and custodial sentences. Where this is the case, it will be important to also hold perpetrators to account for their actions and help them understand the impact of their abuse and violence on their partners and the requirement to attend perpetrator programmes must form part of the conditions of the caution, as well as any rehabilitation requirements.
* ***Victim support and active risk management***

Any victim who reports a domestic abuse-related offence should be offered a referral to a domestic abuse support service, and where appropriate, this referral should be to a specialist by-and-for domestic abuse service.[[39]](#footnote-40) As noted above, current referral pathways vary between areas; the risk assessments for referrals are different for each police force, with some police forces having IDVAs integrated into their police stations and strong relationships with local services, whilst others only offer referrals to the most high-risk victims. As a result of this, there is no consistent provision of support advocacy for victims.

Victims and survivors must be promptly informed when an agency is considering issuing an out of court disposal and provided with key information as to the impact of this measure and why in their case it is preferable to pursing a prosecution. As part of this, victims and survivors should also be asked whether they believe this will be a desirable and effective outcome of their reporting and offered information as to their ‘Right to Review’ where they do not believe this to be the right course of action.

Where an out of court disposal is ordered, it will be crucial to ensure the safety of survivors whilst the perpetrator is in the community. In order to do this, a dynamic risk assessment process should be undertaken, whereby the perpetrator’s behaviour is being regularly assessed and monitored by police for the duration of their caution. This includes the imposition of concurrent restrictions such as exclusion zones and contact prevention orders to ensure the safety of victims and survivors. Victims and survivors should be given a direct contact within their local police force to whom they can report breaches of the perpetrator’s caution conditions directly.

* ***Suitability assessments for diversionary cautions***

Where an agency is considering issuing a diversionary caution involving attendance at a perpetrator programme, a suitability assessment should be carried out to ascertain whether the individual is suitable for a perpetrator programme and type of programme which they should attend. Any professional who undertakes this role must be specially trained to identify and assess more sophisticated perpetrators who can be highly manipulative when interacting with services. Anyone carrying out an assessment on an individual must also gather wider information on the perpetrator’s past behaviour from the victim, former partners and wider professionals to give a more credible picture of their offending and whether a diversionary caution is suitable.

Victims and survivors should be central to this assessment and their views should be sought on any risks which they envisage may arise as a result of this approach. A study into risk factors surrounding domestic homicides titled *‘If Only We’d Known’: An Exploratory Study of Seven Intimate Partner Homicides in Engleshire, London*’[[40]](#footnote-41) found that core risk factors included separation combined with coercive control and jealous surveillance, threats of suicide and physical violence in prior relationships. Coercive control was a key high-risk factor even where there had not been physical violence. The study emphasised the importance of professionals finding out extensive information about the perpetrator’s behaviour within a relationship through talking to individuals who they had previously been in relationships with. Wider research has also indicated that victims and survivors’ own estimations of future risk are often more accurate than structured assessments taken by professionals. According to Lynne Harne, whilst some victims underestimate risks, they rarely overestimate them, therefore structured risk assessments used by professionals should always be informed by the survivors’ own fear for their safety and how they perceive future risks.[[41]](#footnote-42)

* ***Accreditation and Quality Assurance***

Any perpetrator programmes which individuals are referred to as part of a diversionary caution should be accredited and be subject to rigorous quality assurance to ensure that they will be effective and safe. This currently exists as part of the Respect and CSAAP accreditation. We note that Respect implement the highest standards on their accredited organisations and regularly update the quality assurance frameworks which the organisations must adhere to in order to maintain their accreditation. This ensures that their accredited organisations are continually improving their practices, making them safer and more effective. These programmes should run concurrent support programmes for victims of domestic abuse as part of their work. The standards which are set must be transparent and easily accessible by survivors, perpetrators and services to ensure that they are able to check whether the programmes are delivering the level of service to which they ascribe – whether this be to survivors or perpetrators.

* ***Training for police officers and prosecutors***

If domestic abuse-related offences are to be eligible for out of court disposal, it is crucial that all police forces and prosecutors undergo extensive, trauma-informed training on all forms of domestic abuse, perpetrators and the behaviours they may present and the relevant offences, such as coercive and controlling behaviour, economic abuse and post-separation abuse. The *‘Domestic Abuse Matters’* training which has been rolled out across police forces in England and Wales has been effective in improving understanding of coercive control and how the behaviours associated with this offence[[42]](#footnote-43) and should be mandatory for any officers and prosecutors able to issue a diversionary caution. There should be greater investment in joint training for the police and prosecutors on how to build evidentially robust training to secure better prosecutions, with there currently being a clear lack of provision in this area.[[43]](#footnote-44)

All training on domestic abuse should be consistent across all police forces and updated regularly to ensure consistency in responses to domestic abuse offences and whether they are escalated to a full prosecution. This should also include training on the various options available to police officers and how they interact – in particular considering new Domestic Abuse Protection Orders. Clear guidance must be provided for police officers and prosecutors about when a DAPO is appropriate and when an OOCD may be an option, and which is a more robust way to manage the risk posed by perpetrators. This training should be combined with better working between agencies and specialist domestic abuse services to provide a better understanding of what is required from victims in terms of evidence gathering to support prosecutions.

* ***Data Collection***

If out of court disposals are implemented for domestic abuse-related cases, it will be important to collect a wide range of data to help understand how they are being used and identify any disparities which need to be addressed. All of this data should be disaggregated by both Police Force Areas and CPS Areas. Key data which needs to be collected on both victims and perpetrators includes:

* Age
* Race
* Sex/Gender
* Sexual orientation
* Disability or neurodivergence
* Specific type of diversion programme ordered (perpetrator programme, substance misuse, etc)
* Additional conditions ordered (exclusion zones, no contact orders)
* Breaches of caution conditions and outcomes of breaches
* Re-offending rates
* Victim satisfaction with outcome

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37. [Baker, V. and Bonnick, H. (2021) *Understanding CAPVA: A rapid literature review on child and adolescent to parent violence and abuse for the Domestic Abuse Commissioner’s Office,* Office of the Domestic Abuse Commissioner,](https://domesticabusecommissioner.uk/wp-content/uploads/2021/11/CAPVA-Rapid-Literature-Review-Full-November-2021-Baker-and-Bonnick.pdf) 32 [↑](#footnote-ref-38)
38. [Guy, J (2015) *Early Intervention in Domestic Violence and Abuse*](../%29%20Early%20Intervention%20In%20Domestic%20Violence%20and%20Abuse) [↑](#footnote-ref-39)
39. Specialist “by and for” organisations are specialist domestic abuse or VAWG services “run by and for the users and communities they aim to serve,” such as ethnic minority survivors, disabled survivors, LGBT and migrant survivors. [↑](#footnote-ref-40)
40. [Regan, L., Kelly, L., Morris, A. and Dibb, R. (2007) ‘*If Only We’d Known’: An Exploratory Study of Seven Intimate Partner Homicides in Engleshire, London* Child and Woman Abuse Studies Unit, London Metropolitan University](https://cwasu.org/wp-content/uploads/2016/07/if.pdf) [↑](#footnote-ref-41)
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