

Sentencing Domestic Abuse Offences

Scottish Sentencing Council Consultation 2026

Victim Support Scotland is a national organisation dedicated to supporting victims and witnesses of crime. As Scotland's largest victims' organisation, people impacted by crime have access to our services right across the country. We are a listening ear when people need to talk to someone about the impact of crime, we provide practical support such as when people need a safety plan to feel secure in their home and we give access to critical crime-related emergency funds in their time of need.

We play a crucial role in delivering victim-centred support, and this in turn drives our forceful and successful lobbying and campaigning for change within the criminal justice system. As an organisation rooted in the experiences of victims and witnesses, we aim to ensure that their voices are central to the development of policy and practice.

Background to the consultation:

[Public consultation - draft domestic abuse guideline - Scottish Sentencing Council - Citizen Space](#)

Domestic abuse accounts for a significant, and growing, number of cases heard in Scottish courts. There can be particular challenges in sentencing these offences, including the exceptionally broad variety of their circumstances, and the need to consider the protection of the victim in a domestic context. The guideline makes clear that these offences can cause particularly damaging harm to those impacted by the abuse, including children, and can inflict lasting trauma.

The guideline will assist judges in reaching sentencing decisions and thereby enhance consistency. It will also aid public awareness by helping people to better understand what domestic abuse can involve, and what is taken into account by the courts in determining a sentence. This guideline is intended to be read alongside our three foundational guidelines on the principles and purposes of sentencing, the sentencing process, and sentencing young people, as well as any relevant offence guidelines, such as our guidelines on rape offences which came into force on 3 March 2026.

The guidelines are about sentencing, and are not about any of the steps before or after sentencing, including: reporting cases to the police, the police investigation, any decision about whether to take the case to court and exactly what charge(s) an accused person might face, the prosecution of the case including any trial or plea of guilty, the treatment or support of victims and witnesses in the case, the training of judges, the participation in any prison programmes where the offender is sentenced to imprisonment, the management of community orders, release from prison, parole decisions, or victim notification schemes.

Question 1: Is the structure of the guideline appropriate?

Answer:

Overall, Victim Support Scotland is content that the structure of the guideline is appropriate.

Whilst the consultation paper helpfully provides an explanation as to why certain steps in the sentencing process are not addressed by the guideline, this is not covered in the draft guideline. It may be beneficial for this explanation to be provided in the sentencing guideline to avoid ambiguity for people reading the guideline.

Question 2: Are the four behaviours listed in paragraph 4 of the guideline appropriate?

Answer:

The behaviours listed in paragraph 4 (physical abuse, sexual abuse, psychological abuse and economic abuse) are appropriate. Victim Support Scotland sees firsthand the multifaceted nature of domestic abuse and the complexities it can come with and cause. It is crucial that this is acknowledged in order for the true extent of the abuse to be realised and considered.

Question 3: Should any behaviours be added?

Answer:

Victim Support Scotland feels that no further behaviours need to be added, but that additional explanatory footnotes for each behaviour should be included.

VSS questions why economic abuse is the only behaviour that has received an explanatory footnote. From our experience in supporting victims of all crimes, but especially domestic abuse, we know that crime itself, and the effects it causes, can be complex. Whilst on the surface, the three other behaviours (physical, psychological and sexual) may seem obvious, they may include additional considerations that require further explanation. Explanatory footnotes may therefore remove some of the ambiguity or some additional examples for each of the three remaining behaviours.

Below we offer some examples of where additional explanation via a footnote could prove useful for the guidelines.

Distinction between psychological and emotional abuse

VSS expresses that an emotional aspect of abuse must also be taken into consideration. We understand that the expectation may be that emotional abuse falls

under psychological abuse, but we contend that there is a distinction between the two.

We suggest that emotional abuse centres around affecting a person's feelings, self-worth and emotional wellbeing. Examples may include belittling a person, rejection or withholding affection and verbal insults or name-calling. Whereas psychological abuse centres on controlling or altering someone's thoughts, perceptions, sense of reality or autonomy.

If the intention is to group emotional abuse into psychological abuse, a footnote would be useful in order to make the distinction between the two and acknowledge the difference between them.

Honour-based abuse

One concern that VSS raises is that it is not overtly clear where honour-based abuse fits into these four behaviours. Whilst we understand that 'cultural violation' is covered later in the sentencing guidelines, we feel that it does not adequately cover honour-based abuse and that there should be, at the least, a footnote to these four behaviours which addresses honour-based abuse. In VSS's experience in providing support to all victims of crime, we wish to make it clear that honour-based abuse occurs in a wider set of communities than is often assumed or acknowledged.

Technology-facilitated abuse

We know that technology facilitated abuse has become more common in recent years. VSS raises concern that abuse such as sharing of intimate images does not on the surface, fit into the four behaviours. VSS support staff and volunteers feel that it would be useful for an explanation to be provided to show how this type of abuse fits into any of the four behaviours – likely psychological or sexual abuse.

Harming of pets

VSS suggests that it may be useful to include reference to the harming of pets, perhaps within a footnote describing psychological harm. We know that harming, threatening, or killing pets can be an indicator of domestic abuse and can have significant impacts on victims or children within the home.

Question 4: Should any behaviours be removed?

Answer:

Victim Support Scotland does not believe that any behaviours should be removed from this list.

All crime types and their effects are complex and multifaceted, but we know this can be especially true in cases of domestic abuse. VSS believes that an integral part of sentencing cases of domestic abuse, is building a holistic picture of the circumstances and experiences involved in what can be a prolonged and sustained period of abuse. It would be amiss for any of the behaviours to be removed as this would risk leaving gaps in the consideration of the trauma experienced by victims of domestic abuse. Removing any of these behaviours could affect the understanding of how a circumstance of domestic abuse has manifested, developed and consequently concluded at the point of arrest and trial.

Context for Question 5 -

Footnote from the draft guidance -

The items on this list (physical abuse, sexual abuse, psychological abuse and economic abuse) may be aspects of, or form part of, a course of coercive control. This might take the form of, for example, behaviour which has the effect of: making the victim dependent on, or subordinate to, the offender; isolating the victim from friends, relatives or other sources of support; controlling, regulating, or monitoring the victim's day-to day activities; depriving the victim of, or restricting, their freedom of action; or frightening, humiliating, degrading, or punishing the victim.

Question 5: Is the footnote discussing coercive control appropriate?

Answer:

Victim Support Scotland is content that the footnote discussing coercive control is largely appropriate but could be expanded upon.

VSS has heard of situations in which survivors of domestic abuse have been denied basic health and hygiene needs such as being denied access to a shower or to menstrual products. This denial of basic health and hygiene not only causes humiliation of victims, but it can also lead to health problems. As such, our support staff and volunteers believe that this should be more explicitly mentioned in this footnote relating to coercive control.

Context for Question 6 -

Footnote from the draft guidance -

Economic abuse may form part of a course of coercive control and might take the form of, for example, the offender controlling the victim's finances by restricting access to money and/or concealing money; denial of access to debit or credit cards; forcing the

victim to give up, or preventing the victim from pursuing, work, education or training; or coercing the victim into debt, for example by running up debts in the victim's name.

Question 6: Is the footnote providing examples of economic abuse appropriate?

Answer:

Yes, but with the following suggestion for expansion.

Victim Support Scotland's support staff have noted instances in which a victim has been denied access to bills or resources and where they have been denied their name being included in contracts companies (e.g. billing companies), which means that they have no claim to access accounts. A potential addition to this footnote may read:

'The offender controlling the victim's finances by restricting access to money assets, or accounts, and/or concealing funds.'

Context for Question 7 -

Paragraph 5 of draft guideline -

This guideline should be read alongside the Council's guidelines 'Principles and purposes of sentencing' and 'The sentencing process'. It should also be read along with any other guidelines which apply to the case, or to the offender. Details of guidelines in force can be found on the Council's website.

Question 7: Is it clear from paragraph 5 how the domestic abuse guideline is meant to interact with other sentencing guidelines?

Answer:

Victim Support Scotland is content that it is clear from paragraph 5 how the domestic abuse guideline is meant to interact with other sentencing guidelines.

We would raise concern that for a victim who is distressed, confused and/or angry, it may be challenging to have work between and compare each of the documents. This may mean that they are not reading the sentencing guideline alongside the Council's guidelines 'Principles and purposes of sentencing' and 'The sentencing process' as is intended.

Context for Question 8 -

Paragraph 9 [of the draft guideline] makes clear that the sentence imposed should not be informed by any expressed wishes of the victim as to what that sentence should be. This is for a number of reasons. The court sentences on behalf of the wider public, and no victim is responsible for the sentence imposed on an offender. If it were generally

believed that the severity of the sentence may be affected by the wishes of the victim, an offender may be more likely to attempt to threaten the victim to make a plea for a more lenient sentence as part of a course of coercive control. The Council feels that this statement is important in order to help deter an offender from such behaviour, and to ensure victims do not feel responsible for any sentence imposed.

Paragraph 9 of the draft guideline -

A sentence imposed in respect of a domestic abuse offence should not be informed by any expressed wishes of the victim as to what the sentence should be. This is because:

- *no victim is responsible for the sentence imposed on an offender;*
- *a plea for more lenient treatment for an offender made by a victim may, as part of a course of coercive control, be induced by threats made by the offender, or by fear of the offender. This risk may be increased if it is generally believed that the severity of the sentence may be affected by the wishes of the victim; and*
- *the court is sentencing on behalf of the wider public.*

Question 8: Do you agree or disagree that the premise set out in paragraph 9 of the guideline is appropriate: ‘A sentence imposed in respect of a domestic abuse offence should not be informed by any expressed wishes of the victim as to what the sentence should be’?

Answer:

Victim Support Scotland agrees that the premise set out in paragraph 9 of the guideline is appropriate but raises some concerns.

VSS has extensive experience of supporting victims of all crimes at varying stages of their journey with the criminal justice system, including when a case reaches court. We know that following a crime, victims can be in a heightened state of distress. It is pertinent that any communications given to them are written in a trauma-informed manner, particularly as we know, victims often share that they feel the criminal justice system places greater emphasis on the offender, with less focus on their own needs and experiences.

We raise concerns that this section of the guideline may be upsetting or confusing for victims to read and may lead to confusion about where their voice will be heard, especially in a process where it is common for them to feel they have a limited role. We worry that the way in which this guidance is worded and presented could suggest to victims that they will not have the opportunity to provide a statement. Moreover, it is fine to say that the sentencing process guidelines (to be read alongside the sentencing

guideline) states that a victim impact statement will still be taken, but this relies on the victim reading the sentencing process document.

We offer the following potential amendments to this section which we feel are more trauma informed for the victim:

1. Placing more emphasis on the point that it is the responsibility of the Judge/Sheriff rather than emphasis not being on the victim.
2. Explicit mention of the victim statement and where this comes into a trial.

Context for Question 9 -

Domestic abuse offences represent a significant violation of the trust and security that normally exists between individuals who are, or who have been, in a relationship as partners. Such offences can cause particularly damaging harm to the victim and to children affected by the abuse, and can inflict lasting trauma.

When sentencing for an offence under section 1(1) of the Domestic Abuse (Scotland) Act 2018, or an offence that is aggravated under section 1(1)(a) of the Abusive Behaviour and Sexual Harm (Scotland) Act 2016, the court must have particular regard to the aim of ensuring that the victim is not the subject of a further such offence committed by the offender.

Question 9: Is the rest of the guidance provided in relation to 'sentencing a domestic abuse offence' appropriate?

Answer:

Yes, the rest of the guidance provided in relation to 'sentencing a domestic abuse offence' is appropriate.

We welcome recognition that domestic abuse can have particularly severe and damaging effects on victims. In line with the victim centred approach to justice, Victim Support Scotland advocates that victims should be central to the criminal justice process, and this recognition complements this belief.

Additionally, we are supportive of the mention of the impact domestic abuse may have on children. As children are still developing, exposure to instances of domestic abuse can lead to long lasting effects. Witnessing abusive behaviours within the home can affect a child's emotional, psychological, and social development. It is therefore important that the effects on them are accounted for when considering an appropriate sentence.

Context for Question 10 -

Seriousness

The court should assess the seriousness of the offence by evaluating the level of culpability of the offender, and the level of harm caused to the victim and others affected by the case. As either or both culpability and harm increase, so may the seriousness of the offence.

Harm includes the impact on any victim or victims. It can be the result of the cumulative effect of abusive or violent behaviour, and is likely to increase in line with any increase in the severity or frequency of the abuse or violence over a prolonged period.

Where children are the victims of, or adversely affected by, a domestic abuse offence, the court should ensure prior to sentencing that it has, insofar as reasonably practicable, sufficient and reliable information to assess the harm caused to them.

When assessing the level of seriousness, reluctance on the part of the victim to engage with the criminal justice process should not be regarded as indicative of a lower level of seriousness.

Question 10: Is the guidance provided in relation to assessing seriousness appropriate?

Answer:

Victim Support Scotland feels that the guidance provided on assessing seriousness is appropriate. We add the following comments:

We welcome mention that where a victim chooses to not engage with the criminal justice process, this will not impact the assessment of the seriousness of the domestic abuse that has occurred. Crime affects people in different ways, and in our experience, we know that some victims wish to be fully involved with the process and some wish to step back due to the traumatic impact on them. Where a victim chooses the latter, we express that this does not make them any less of a victim or suggest that their experience of abuse was anything less than serious. We feel that the inclusion of this recognition will help victims who choose to not engage to still feel recognised and secure in knowing that they will receive justice.

The inclusion of the impact on children when assessing the seriousness of a case of domestic abuse is vital. We refer to our comments made in our answer to question nine, which show that developmentally, being exposed to domestic abuse can have a long-lasting effect.

Question 11: Should any guidance be added?

Answer:

VSS suggests the following addition.

It may be useful to include a note within the guidelines which explains why the guideline does not provide a further list of features of culpability or harm. The consultation document helpfully explains that this is because the Council considers that the range of offending behaviours involved in domestic abuse offences is wide and that a list of relevant features would be too long and unwieldy to be of practical use to the court, however the absence of this explanation within the guideline may lead to confusion for a victim reading them, leaving them wondering if the abuse they experienced is serious enough. Therefore, we suggest that the guidelines provide this explanation along with the explanation that a fuller list of aggravating factors is provided further in the document.

In line with our colleagues at ASSIST, we raise concerns that non-fatal strangulation (NFS) is not specifically mentioned in the guideline. Whilst NFS is often used as part of coercive control in a domestic abuse environment, it is potentially lethal. Where lethality is not the result, it leaves long lasting, traumatic consequences for victims who often site it as the worst part of the abuse they have endured. As a result of this, we would ask that NFS is given specific recognition for consideration by sentencers.

Question 12: Should any guidance be removed?

Answer:

No.

Context for Question 13 -

Statutory aggravations listed -

- The aggravation under section 1 of the Abusive Behaviour and Sexual Harm (Scotland) Act 2016
 - o Section 1 of the 2016 legislation makes domestic abuse (involving a partner or ex-partner) an aggravation to any offence, for example an offence of assault

- where the offence is a contravention of section 1(1) of the Domestic Abuse (Scotland) Act 2018
 - o *This is 'abusive behaviour towards a partner or ex-partner'*
 - *The offender engages in abusive behaviour to a partner or ex-partner, and it is considered that this behaviour would cause physical or psychological harm that either*
- Any of the aggravations in relation to a child under section 5 of that Act
 - o *Section 5 of the DASA legislation makes the involvement of a child in a domestic abuse offence prosecuted under section 1(1) of DASA an aggravation.*
 - o *This means that if the behaviour is directed at a child, or if the offender uses the child to direct that behaviour towards their partner/ex-partner, or if the child sees, hears or is present during the behaviour, that is an aggravating factor which makes the offence more serious for sentencing purposes*
- Breach of a condition of bail, under section 27(1)(b) of the Criminal Procedure (Scotland) Act 1995

Question 13: Are the statutory aggravations appropriate?

Answer:

Victim Support Scotland is content that the statutory aggravations are appropriate.

Question 14: Should any statutory aggravations be added to the guideline?

Answer:

Victim Support Scotland is content with the statutory aggravations listed. We raise an additional point we would like to be taken into consideration.

As crime and the ways in which it is perpetrated continue to evolve. We know that new legislation will be enacted and that new legislation is currently being consulted on, which will likely impact on domestic abuse sentencing such as non-fatal strangulation and technology facilitated abuse. It is therefore pertinent that these guidelines remain up to date with new legislation. We ask that these guidelines are routinely reviewed and updated in line with any additional legislation that is brought in.

Question 15: Should any statutory aggravations be removed from the guideline?

Answer:

No. Victim Support Scotland does not feel any statutory aggravations should be removed.

In parallel to our answer to question four of this consultation, we believe that removing any statutory aggravation would risk creating gaps for certain victims who may fall into this statutory aggravation. Additionally, it would impact the ability to create a fuller picture of the course of behaviour.

Context for Question 16 -

Aggravating factors (non-statutory)

- Victim is particularly vulnerable. All victims of domestic abuse are potentially vulnerable, but some may be more vulnerable than others, for example if they experience physical or mental health issues, are pregnant, or are particularly dependent upon the offender. This includes where the actions of the offender are intended to increase the vulnerability of the victim. This could be, for example, by causing or intending to cause restriction, limitation or control of, or interference with, the victim's rights to or needs for freedom of movement (including travel or transport), food, medication, healthcare, finances, or access to personal documents
- Steps taken to prevent the victim reporting an incident
- Steps taken to prevent the victim obtaining assistance
- Victim forced to leave home, or steps having to be taken to exclude the offender from the home to ensure the victim's safety
- A history of violence or threats by the offender in a domestic context
- A history of failing to comply with court orders (such as, but not limited to, bail conditions and Non-Harassment Orders)
- Cultural violation

Question 16: Are the non-statutory aggravating factors, including in relation to children, appropriate?

Answer:

Yes, the non-statutory aggravating factors, including in relation to children are appropriate. VSS makes the following additional comments.

The following point does not ask for an additional aggravator to be added, rather it asks for clarity on the aggravator - *'steps taken to prevent the victim reporting the offence, obtaining assistance, or from assisting the prosecution.'*

VSS support staff and volunteers felt that the 'obtaining assistance' part of this aggravator is somewhat unclear and ambiguous. We raise concern that it may be

unclear to some whether this means law enforcement or support agencies or personal support networks or both, for example a victim being cut off from family/friend support. VSS suggests that it could be made clearer as to what assistance this refers to.

Question 17: In particular, is the aggravating factor 'cultural violation' appropriate?

Answer:

Yes, the aggravating factor 'cultural violation' is appropriate. Victim Support Scotland believes that the inclusion of this factor adds a further dimension to the consideration of cases of domestic abuse that otherwise would not have been covered by the other aggravating factors.

A cultural violation within an intimate relationship can amount to domestic abuse, but not all domestic abuse amounts to cultural violation. Domestic abuse occurs across all groups within society, however, certain forms of domestic abuse may affect certain groups more than others, particularly in minority ethnic communities where perpetrators may exploit cultural or community specific pressures as part of the abuse. As such, VSS believes that the inclusion of 'cultural violation' as an aggravating factor will enable Judges and Sheriffs to account for cases where culture or religion is used against the victim in the course of abuse.

Context for Question 18 -

Footnote on Cultural Violation -

For example, where the victim is being prevented from following cultural or religious practices they wish to follow; being forced to follow cultural or religious practices they do not wish to follow; or other behaviour which is intended, or likely, to have a particular impact on the victim due to religious or cultural beliefs or practices.

Question 18: Is the footnote discussing 'cultural violation' appropriate?

Answer:

Overall, Victim Support Scotland is content that the footnote discussing 'cultural violation' is appropriate. We make some additional comments.

Victim Support Scotland feels that there could be more explicit mention of honour-based abuse within this footnote, or alternatively an additional footnote made which discusses this. Whilst honour-based abuse may fall into this category of cultural violation more generally, it often has unique aspects that should be accounted for.

Recognising honour-based abuse is important as it helps to highlight that whilst honour-based abuse within a relationship can be domestic abuse, not all domestic abuse will be honour-based abuse. This demonstrates the importance of recognising the key differences that may occur so that no case of cultural violation is missed.

Context for Questions 19 and 20 -

Aggravating factors in relation to children (non-statutory):

These should only be considered as aggravating factors when they are not being considered as a statutory aggravation under section 5 of the 2018 Act.

- the offending behaviour is directed at a child, or there is harm or a risk of harm to a child as a result of the offending behaviour
- using contact arrangements with a child to facilitate offending behaviour
- making use of a child in directing offending behaviour at the victim

Mitigating factors

- Mitigating factors may also be present. Some examples of mitigating factors can be found in annex C to the Council's guideline 'The sentencing process'.

Question 19: Should any non-statutory aggravating factors, including in relation to children, be added to the guideline?

Answer:

Victim Support Scotland believes that additional non-statutory aggravating factors may be added to this guideline.

When responding to this question, VSS support staff and volunteers felt that '*are pregnant*' should be expanded upon to read -

'are pregnant or have recently given birth'

We know that the period following giving birth is also a time of heightened vulnerability, where a new mother may be impacted physically and emotionally or be more reliant on their partner. The addition of 'have recently given birth' would help to recognise this as a key time of risk.

Additionally, consideration should also be given where a woman does not know they are pregnant or later discovers that they are pregnant.

Aggravators related to children

VSS believes that the aggravators listed in the guidelines in relation to children are useful. We feel that the following aggravations could be added:

1. Where a child has been put on the child protection register as a result of abuse
2. Where offending behaviour has been witnessed by a child

These additions would aid in the recognition of the impact of abusive behaviour on children themselves as a result of an abusive relationship.

Pets

VSS feels that an additional aggravation could be added which concerns pets in the home. Harming, threatening or killing animals in the home is often an indicator of domestic abuse. The abuse of a pet can have a significant impact on victims. Some victims may not leave an abusive relationship for fear of what may happen if they have to leave the pet and for a child to witness harm to their pet. This can cause fear, trauma and emotional distress.

Question 20: Should any non-statutory aggravating factors, including in relation to children, be removed from the guideline?

Answer:

Victim Support Scotland does not believe any non-statutory aggravating factors, including in relation to children, should be removed from this guideline.

Context for Question 21 -

Mitigating factors

Mitigating factors may also be present. Some examples of mitigating factors can be found in annex C to the Council's guideline 'The sentencing process'. Examples from this document include:

- Mental illness or disability, especially where linked to the commission of the offence
- Physical disability or infirmity
- The likely effect of the sentence on the offender or their family: for example, the offender is the primary or sole carer of any dependants, and a sentence of imprisonment would result in the offender's children being looked after away from home
- Cooperation with authorities: for example, voluntary surrender or assistance to the police or prosecution
- The offender is remorseful, and/or has been or will be affected significantly by the offence

- The offender has demonstrated a willingness to address their personal problems and to change their offending behaviour, including addressing any drug, alcohol, or mental health issues
- Previous otherwise good character; no previous, or recent, relevant convictions; otherwise, exemplary conduct
- The offender had been provoked at the time of committing the offence

Question 21: Should any mitigating factors be added to the guideline?

Answer:

Victim Support Scotland cautions the use of mitigating factors during sentencing, particularly for domestic abuse. Domestic abuse most often involves deliberate and sustained patterns of behaviour, rather than isolated or impulsive incidents and so, it is difficult to apply many of the listed mitigating factors to this type of behaviour.

Moreover, VSS believes that the list of mitigating factors provided in the 'Sentencing Process' document is overtly generic and are particularly difficult to apply in cases of domestic abuse. We raise concerns that for a victim reading this list, they may feel fear or upset that one or more of these factors could be taken into account. This is particularly true for the mitigating factor which states 'the offender is remorseful' as we know that a key component of domestic abuse is manipulation and as such, offenders may seek to pretend to be remorseful.

We offer the following considerations in relation to the listed mitigating factors:

- 'The offender had been provoked at the time of committing the offence' is of concern to VSS. The use of the word 'provoked' may be perceived as victim blaming. We would be concerned that this may lead victims to believe that it is their fault they have been abused.
- 'Previous otherwise good character; no previous, or recent, relevant convictions; otherwise, exemplary conduct' raised some concerns amongst VSS support staff and volunteers. It may be more beneficial for this to be amended to read no 'known' conduct for cases of domestic abuse. We know that domestic abuse often has hidden aspects where the conduct or character of the offender presents differently in public.
 - What must also be considered in this mitigating factor when sentencing domestic abuse is in cases where a victim has been abused by a long-term partner, perhaps for decades. The lack of previous relationships where this abuse is present should not be a mitigating factor.

- ‘The likely effect of the sentence on the offender or their family’ - VSS believes that the potential for the use of this mitigating factor in cases of domestic abuse is concerning. We question why this consideration should be given to a perpetrator when they may have caused trauma to their victim for the rest of their life. The consideration of this mitigating factor may be perceived by the victim as dismissive of the harm they have experienced.
- ‘The offender is remorseful, and/or has been or will be affected significantly by the offence’ - VSS cautions against using remorse as a mitigating factor, especially in cases of domestic abuse. It is often the case that perpetrators of domestic abuse can be particularly manipulative, and so, it is reasonable to suggest that they may deploy this manipulation in a false display of remorse.
- VSS also bring attention to the Young Person Sentencing guidelines which have introduced age as a mitigating factor. In line with the definition of domestic abuse in this guideline, domestic abuse can occur in relationships where the perpetrator is under 25. We raise concern that this sentencing process for under 25s may affect sentencing in cases of domestic abuse. We therefore seek clarity on the interaction between the two guidelines and ask that clarification may be given in this domestic abuse sentencing guideline.

Context for Question 22 -

The Council agrees that NHOs can be an important part of a disposal intended to protect a victim, and any children affected by the offence, from future harm. ***Therefore, the final section of the guideline explains the law as to when the court must impose, or should consider imposing, an NHO, as well as how such orders operate. This acts as a prompt to the court to consider an order, and provides information to assist understanding for victims and the public. This includes that the court may have regard to the expressed views of the victim.*** However, it is also made clear that the final decision remains entirely one for the court. As already set out in paragraph 43 of this document, this is for a number of reasons. The court sentences on behalf of the wider public, and no victim should feel responsible for any disposal imposed on an offender. If it were otherwise, an offender may be more likely to attempt to threaten the victim into making a plea not to impose an NHO, as part of a course of coercive control.

However, the detail of the order will entirely depend upon the unique facts of the case before the court, including the degree of protection required, and any ongoing

interaction between the victim and the offender, particularly in relation to children. The Council considers that the terms of such an order must be a matter for the court to determine based on the particular circumstances of the case before it. The Council's statistical analysis indicates that the use of NHOs by the courts in relation to domestic abuse offences has increased substantially in recent years.

From the sentencing process document - Non-Harassment Orders

The court must make a Non-Harassment Order (NHO) in cases where there is a conviction under section 1(1) of the 2018 Act, and in cases to which the aggravation in section 1(1)(a) of the 2016 Act applies, unless it concludes that there is no need for any of the following people to be protected from harassment or further harassment by such an order:

- the victim
- in addition to the victim:
 - o a child usually residing with the offender, or the victim, or both the offender and the victim
 - o where the offence is one under section 1(1) of the 2018 Act, and aggravated as described in section 5(1)(a) of that Act, a child to whom the aggravation refers

In other cases involving domestic abuse, on the application of the prosecutor the court may make an NHO if it is satisfied on a balance of probabilities that it is appropriate to do so in order to protect the victim from harassment or further harassment by such an order

An NHO may have effect for a specified or indeterminate period and will require the offender to refrain from such conduct in relation to the victim, or any child named in the order, as is specified in the order.

An NHO can be made in addition to, or instead of, any other disposal.

In reaching a conclusion in respect of the matters in paragraphs 19 or 20 and 21-22 the court may have regard to the expressed views of the victim, but the final decision remains entirely one for the court.

Question 22: Is the section of the guideline addressing Non-Harassment Orders at paragraphs 19 – 23 appropriate?

Answer:

Yes. Victim Support Scotland believes that the section of the guideline addressing Non-Harassment Orders is appropriate. In our experience of supporting victims who have

requested and received Non-Harassment Orders, the importance of these orders for victims must not be underestimated.

For many victims of domestic abuse, Non-Harassment Orders provide a sense of security and safety by protecting them against further unwanted contact, intimidation, threats, or abusive behaviour. Knowing that clear conditions are in place and that breaches can result in legal consequences may give victims greater confidence to go about their daily lives without constant fear of harassment. Whilst Non-Harassment Orders cannot remove all risk, it can act as an important safeguard that gives a victim a sense of control over a situation. VSS believes that Non-Harassment Orders should be standardised within court meaning that in every case of domestic abuse, a Non-Harassment Order should also be imposed. We do not feel that it is appropriate that a victim should have to apply for a Non-Harassment Order.

VSS support workers and volunteers have raised concerns that currently, NHOs are not being used and monitored as they should. This has left victims vulnerable and exposed to further harm. VSS has encountered cases where victims are not informed of the conditions attached to an NHO when one is granted, leaving them uncertain about the protections put in place for their safety. In addition, we have been made aware from colleagues at other victim support organisations that between July and October 2025 in Glasgow, 79 NHOs were sought at summary level, yet only 60 were granted. At solemn level, 11 requests resulted in just 7 orders being imposed. Victim support organisations have raised concerns that there is no apparent reason for these figures not being higher, and that outcomes should be closer to 100% where an NHO has been requested. Notably, during the same period, 100% of NHOs requested at Glasgow High Court level were granted, likely reflecting the clearer recognition of perpetrator risk in more serious cases. Ultimately, this has resulted in only 70% of requested NHOs being granted. It is our hope that including this section on Non-Harassment Orders, will support Judges and Sheriff to impose NHOs where they are requested.

Question 23: Do you think the guideline will influence sentencing practice in Scotland?

Answer:

Victim Support Scotland support staff and volunteers feel that these guidelines have the potential to influence sentencing practice in Scotland, but they are still just a guideline. It is our belief that effective influence on sentencing practice will rely on a

sustained institutional wide culture change alongside the effective training of Judges and Sheriffs.

We are steadfast in our belief that that every case of domestic abuse is severe and that every victim of domestic abuse deserves justice following reporting of this behaviour. We raise concerns that Scottish Sentencing Council data shows that 8 out of 10 perpetrators of domestic abuse avoid a jail sentence. Arguably, this does not reflect the severity of domestic abuse and trauma experienced by victims. It is VSS's hope that implementing these guidelines will support consistent sentencing for domestic abuse and will support a presumption in favour of prosecution for these cases.

For these guidelines to have an impact on sentencing practice in Scotland, they should be accompanied by training for sentencers to address domestic abuse myths. We have seen this already begin to take place in regard to addressing myths around rape and feel strongly this should be continued with domestic abuse sentencing.

- In addition to this, we seek clarity on whether juries are or will be notified of being conscious of rape myths, and in this case, domestic abuse myths such as avoiding thoughts of 'why didn't she just leave' or similar. If juries are not made aware of the potential for domestic abuse myths to arise and the importance of mitigating their influence in decision making, we ask that they are.

Finally, these guidelines must operate alongside and eventually evolve to work seamlessly with new developments such as specialist sexual offences courts which will be introduced as a result of the Victims, Witnesses, and Justice Reform Act.

Question 24: Do you think the guideline will lead to an increase or decrease in public understanding of how sentencing decisions are made?

Answer:

Victim Support Scotland believes that these guidelines will lead to an increase in public understanding of how sentencing decisions are made. We have some additional comments to make.

We worry that if a victim were to read these guidelines it may inadvertently serve as a checklist for victims of domestic abuse case and give them a higher burden of proof to be taken seriously. Additionally, we raise concerns that it may deter people from reporting domestic abuse if they believe that their case does not sufficiently meet the criteria outlined in the guidelines.

VSS does believe that these guidelines should be public as a matter of transparency and with the knowledge that some victims and families will wish to access the

information. As such, we ask that these guidelines are made available in an accessible manner which should include in different languages, with visual guides and audio options.

Offering support at every available opportunity is integral to ensuring that victims and their families are given the best opportunity of accessing support. As such, we suggest a useful step in supporting this may be to include a note or link next to the guidelines on the website which shows 'if you need support.' This section could outline the support options available from victim support organisations such as Victim Support Scotland and the links to their websites and telephone numbers. Providing the opportunity to seek support next to the guidelines may help to support some victims and their families in their understanding of the guidelines or the court process more generally. This could help support better outcomes for victims as they may be less likely to infer meaning, generate hypothetical situations or believe that their situation is anything less than serious.

Question 25: Do you see any benefits or negative effects arising from the introduction of this guideline?

Answer:

Victim Support Scotland believe this is an opportunity to ensure more consistent sentencing for domestic abuse cases. It is our hope that these guidelines will prove a helpful resource for judges to use when assessing comparable cases.

In line with our answer to question 24, VSS has some concern that the guidelines may inadvertently serve as a checklist for victims going through the sentencing process for a domestic abuse case and give them a higher burden of proof to be taken seriously.

Additionally, we raise concerns that it may deter people from reporting domestic abuse if they believe that their case does not sufficiently meet the criteria outlined in the guidelines.

Question 26: Do you feel that the introduction of the guideline might impact some groups of people more than others in a disproportionate way?

Answer:

No.

Question 27: What costs (financial or other) do you see arising from the introduction of this guideline, if any?

Answer:

Victim Support Scotland would not foresee that the introduction of these guidelines will create additional financial costs. It would be our expectation that corresponding training is provided to Judges and other relevant parties to ensure effective implementation and compliance.

Question 28: Please provide details about anything else you feel is of importance regarding sentencing for domestic abuse offences.

Answer:

N/A