

## Response ID ANON-UY5M-78GE-B

Submitted to **Intimidatory Offences and Domestic abuse guidelines consultation**  
Submitted on **2017-06-30 01:03:29**

### Introduction

#### 1 What is your name?

**Name:**

Mark Brooks

#### 2 What is your email address?

**Email:**

chairman@mankind.org.uk

#### 3 What is your organisation?

**Organisation:**

The ManKind Initiative

#### 4 Are you responding on behalf of your organisation or as an individual?

Organisation

### Overarching Principles: Domestic Abuse Guidelines

**1. Please tell us your views on the decision to provide a standalone guideline, which will be cross referenced digitally to all relevant guidelines. Do you agree? If not, please tell us why and suggest any alternative approach.**

Yes

**xx:**

### Overarching Principles: Domestic Abuse Guidelines

**2. Please tell us your views on the scope of the guideline section - is there any other information that you think should be removed or added?**

**xx:**

The ManKind Initiative is a charity that supports male victims of domestic abuse, the fact that the scope of the guidelines section explicitly states that "this section also notes that domestic abuse occurs amongst men and women" is a very important landmark statement, not just for the Sentencing Council but also for the justice system in its entirety. This is because it makes absolutely clear that domestic abuse is not a gendered crime, it is crime where both men and women are victims as individual. We would like to highly commend the Sentencing Council for this inclusive and equality based statement. It sends a very significant and strong message. Thank you.

### Overarching Principles: Domestic Abuse Guidelines

**3. Please tell us your views on the assessing seriousness section - is there any information that you think should be removed or added?**

**xx:**

No comments

### Overarching Principles: Domestic Abuse Guidelines

**4. Do you agree with the proposed list of aggravating factors? Are there any that should be removed or added?**

Yes

**xx:**

We very much support the inclusion of contact arrangements to instigate an offence.  
We believe it could also be extended in two areas.

1. Attempts at making false allegations/accusations where the perpetrator makes provable and malicious false allegations against the victim (in effect, perjury or perverting the course of justice) . This ranges from issues false allegations such as "my ex-husband sexually abused our child" to those "I stabbed by husband because he abused me." These have to be provable false statements but these should be seen as an aggravating factor and we accept they will also include example where the gender is reversed as well (false allegations can happen the other way around as well). This all includes false allegations of provocation (see

next Question)

2. In terms of "a history of disobedience", we also believe the examples should also list as an example - Child Arrangements Orders. The continual and wilful breach of these Orders (often forcing the non-resident parents to continually go back to court to enforce them) is a clear example of using children as a way of exerting control and coercion on an ex-partner.

### **Overarching Principles: Domestic Abuse Guidelines**

**5. Do you agree with the proposed list of mitigating factors? In particular, what is your view of the mitigating factor relating to provocation?**

No

**xx:**

We have found in our 15 years of supporting male victims of domestic abuse that there continues to be too much automatic acceptance and belief (without fact or investigation) by the justice system (more widely) and in sentencing of an alleged act of provocation being used as a excuse/defence by females accused of domestic abuse.

There is a myth that continues to percolate through sentencing and the justice system that a large number of women accused of domestic abuse only committed such acts in self defence.

There needs to be more questioning/fact finding by magistrates and judges of this before passing sentences rather than automatically accepting that provocation took place.

### **Overarching Principles: Domestic Abuse Guidelines**

**6. Do you have any comments on the other factors influencing sentence section?**

No

**xx:**

### **Overarching Principles: Domestic Abuse Guidelines**

**7. Do you have any comments on the factors to take into consideration section?**

Yes

**xx:**

There are no programmes in the UK that we are aware of that support female perpetrators of domestic abuse so it difficult to take into account a female perpetrator who says they can reform their character when there is so little in the way of support to help them (to be clear, this is not the fault of the perpetrator). Some female perpetrators are referred (or refer themselves) to anger management courses as a proxy which is not appropriate as this is a completely different issue (domestic abuse is led by power and control not anger).

It is therefore important that if this is used as a factor for consideration that there has to be real evidence that there is this support there, else the 'consideration' will be meaningless in a practical course of action sense .

**8. Overall, do you feel the level of information provided in this guideline is right? Is there any information not included that you think should be? Or is there any information included that you think should be removed?**

Yes

**xx:**

As stated, we are really pleased with the gender inclusive(neutral) language and descriptions. It takes the ideological perspective out of domestic abuse which is so vital for all victims of domestic abuse.

**9. Are there any equality or diversity matters that the Council should consider for this guideline? Please provide evidence of any issues where possible.**

No

**xx:**

There should be no equality or diversity matters that the Council should consider especially regarding gender. To take into these matters into account (equality is only seen as an issue for women) will mean that justice is not equally served for all.

There may be other organisation who push in this consultation for gender (of the perpetrator or victim) to be an equality issue, but we believe this is because of their ideological view of domestic abuse and equality rather than one based on accepted definitions of equality, inclusion or the British Common Law/Constitution view of equality between individuals.

The gender of the perpetrator is far too often used a mitigating factor (primarily for female perpetrators) which means that male victims do not receive equal justice and/or justice is not been seen to be served for male victims. There can be too much chivalry (the view that women are the 'weaker' sex and therefore deserve lighter sentences) in magistrates and judges in passing sentences. Equality in this area will only serve to reinforce this.

These two cases show this in reality where we believe if the genders were reversed these sentences would be far tougher (the Hollings case had to be appealed): <http://www.devonlive.com/violent-wife-ripped-husband-s-scrotum-during-argument/story-29572680-detail/story.html> and <http://www.bbc.co.uk/news/uk-england-lancashire-30851328> . We can point to other examples if needed.

### **Harassment/racially or religiously aggravated harassment (putting people in fear of violence), stalking/racially or religiously aggravated stalking (involving fear of violence)**

**10. Do you agree with the proposal that both harassment and stalking offences are included within this guideline? If not, please tell us why.**

Yes

**xx:**

We agree albeit we believe stalking should be seen as a more serious crime than harassment.

### **Harassment/racially or religiously aggravated harassment (putting people in fear of violence), stalking/racially or religiously aggravated stalking (involving fear of violence)**

**11. Do you agree with the proposed factors within the four categories of culpability? If not, please tell us why.**

No

**xx:**

We have serious concerns over Category B (High Culpability) in terms of the inclusion of gender in this line: 'Offence motivated by, or demonstrating, hostility based on any of the following characteristics or presumed characteristics of the victim: age, sex, disability, sexual orientation or transgender identity'

Domestic abuse perpetrators are not motivated by or hostile to their victim because of their victim's gender. It will not be and is not a factor. They are motivated by or hostile to their victim because they of their individual need to have power and control over them - as an individual.

A violent man is not hostile towards his wife because of her gender, or let alone her age, disability. He is hostile because of his individual need to have power and control over her. This also applies to a violent woman as well.

To include this would be a dangerous move by the Sentencing Council and again moves sentencing in this particular crime area from one based on the British Constitution/Common Law and equality of the individuals before the law to one that is ideologically based. It will be used by certain pressure groups and other organisations to turn domestic abuse into an ideological crime ( the narrative is broadly "domestic abuse is a gendered crime based on patterns of global discrimination and oppression that female victims face at the hand of men - that every time a women who is a victim of domestic abuse from a man is because men are systematically conditioned by society to oppress women") rather than crime which has both female and male victims and perpetrators (including those in same-sex relationships) and each should be judged on their equal merits/risks.

It will be the end of equal justice and equality before the law in domestic abuse if this is included with regard to gender.

It will lead to weaker sentences for female perpetrators of domestic abuse on men, than the other way round (when the crime is the same), because of this ideologically view of the world. This is not equal or blind justice.

### **Harassment/racially or religiously aggravated harassment (putting people in fear of violence), stalking/racially or religiously aggravated stalking (involving fear of violence)**

**12. Do you agree with the proposed approach and with the factors included in the assessment of harm? If not, please tell us why.**

No

**xx:**

Men as victims of domestic abuse crimes are often seen within the justice system (from DASH risk assessments to police enforcement through to prosecutions and sentencing) as being less at risk of harm than women even with the severity of the crime against them is the same. This includes both physical and psychological domestic abuse.

The wrongful view is that as men are 'stronger' mentally and physically than women and should 'man up' or more able to 'take it' than women even when the crime perpetrated is the same. The inclusion of a 'harm' assessment when these stereotypes about men and women exist within the justice system (and society more widely) will not lead to equal justice in sentencing female perpetrators when men are the victims of domestic abuse - it can in fact make them more vulnerable as it sets a tone that is not supportive and reinforces stereotypes that men cannot be victims of domestic abuse.

An example of this can be seen by the barrister's comments about this male victim: "Mr Anderson told investigators he was reluctant to report the abuse because he didn't think men suffered domestic violence."

<http://www.dailymail.co.uk/news/article-4010076/Controlling-girlfriend-subjected-boyfriend-three-year-campaign-abuse-smashed-phone-hammer-suspected-cheating-spare>

**Harassment/racially or religiously aggravated harassment (putting people in fear of violence), stalking/racially or religiously aggravated stalking (involving fear of violence)**

13. Do you agree with the proposed sentence table? If not, please tell us why.

No

**xx:**

We have concerns that Category 3 Culpability D is too low and will act as a starting point (anchor bias/lowest common denominator). We see this for female perpetrators already and feel this is not a sufficient punishment or deterrent buy starting at this low level.

**Harassment/racially or religiously aggravated harassment (putting people in fear of violence), stalking/racially or religiously aggravated stalking (involving fear of violence)**

14. Do you agree with the inclusion of this text with the guideline?

Yes

**xx:**

However, the issue is whether there is the actual practical mental health provision on the ground to support this.

**Harassment/racially or religiously aggravated harassment (putting people in fear of violence), stalking/racially or religiously aggravated stalking (involving fear of violence)**

15. Do you agree that the proposed aggravating and mitigating factors cover the most likely factors that would apply to these offences? If not, please tell us why.

No

**xx:**

We think other aggravating/mitigating factors should be included (perhaps those featured elsewhere in the consultation) - the issue is whether they are applied and that too much discretion is not allowed.

**Harassment/racially or religiously aggravated harassment (putting people in fear of violence), stalking/racially or religiously aggravated stalking (involving fear of violence)**

16. Do you agree with the proposed approach to sentencing racially and religiously aggravated stalking and harassment offences? If not, please explain why and suggest any alternative approaches, including any factors that you think should be included or removed.

Yes

**xx:**

**Harassment/racially or religiously aggravated harassment (putting people in fear of violence), stalking/racially or religiously aggravated stalking (involving fear of violence)**

17. Do you have any comments on using the guideline through case study A?

Yes

**xx:**

Can we please have a male victim case study as well in parallel , else just using (male perpetrator - female victim) continues the stereotype/gender exclusive view that men are not victims and women are not perpetrators.

**Harassment/racially or religiously aggravated harassment and stalking/racially or religiously aggravated stalking**

**Harassment/racially or religiously aggravated harassment and stalking/racially or religiously aggravated stalking**

18. Do you agree with the proposed culpability and harm factors for this offence? If not, please tell us why.

Yes

**xx:**

**Harassment/racially or religiously aggravated harassment and stalking/racially or religiously aggravated stalking**

19. Do you agree with the proposed sentence table? If not, please tell us why.

Yes

xx:

20. Do you have any views on the text regarding psychiatric reports not being included within this guideline?

No

xx:

**Harassment/racially or religiously aggravated harassment and stalking/racially or religiously aggravated stalking**

21. Do you have any further comments, in addition to your answer to Q16, on the proposed guidance for the sentencing of the racially and religiously aggravated forms of this offence?

Yes

xx:

Please ensure magistrates and judges recognise that men are victims of these crimes as well as women.

**Harassment/racially or religiously aggravated harassment and stalking/racially or religiously aggravated stalking**

22. Do you have any comments on using the guideline through case study B?

No

xx:

**Disclosing private sexual images**

23. Do you agree with the proposed culpability factors? If not, please tell us why.

Yes

xx:

**Disclosing private sexual images**

24. Do you agree with the proposed approach and factors included in the assessment of harm? If not, please tell us why.

Yes

xx:

We agree, however, it is important to include men and women in same-sex relationships where the victim has not disclosed publicly (to family and friends) that they are gay/lesbian. This threat of 'outing' someone through private sexual images on email/social media is a real threat and a commonly used tactic for victims in this situation.

**Disclosing private sexual images**

25. Do you agree with the proposed sentence table? If not, please tell us why.

Yes

xx:

**Disclosing private sexual images**

26. Do you agree that the proposed aggravating and mitigating factors cover the most likely factors that would apply to these offences? If not, please tell us why.

No

xx:

We have serious concerns over Other Mitigating Factors and is based on an issue we have raised before (answer to Question 11) in terms of the inclusion of gender in this line: 'Offence motivated by, or demonstrating, hostility based on any of the following characteristics or presumed characteristics of the victim:., age,

sex, disability, sexual orientation or transgender identity'

Those disclosing private sexual images are not motivated by or hostile to their victim because of their victim's gender. It will not be and is not a factor. They are motivated by or hostile to their victim because they of their individual need to have power and control over them - as an individual.

A man posting these images is not hostile towards the victim because of her gender, or let alone her age or disability. He is hostile because of his individual need to have power and control over her. This also applies to a woman posting these images as well.

To include this would be a dangerous move by the Sentencing Council and again moves sentencing in this particular crime area from one based on the British Constitution/Common Law and equality of the individuals before the law to one that is ideologically based. It will be used by certain pressure groups and other organisations to turn domestic abuse into an ideological crime ( the narrative is broadly "domestic abuse is a gendered crime based on patterns of global discrimination and oppression that female victims face at the hand of men - that every time a women who is a victim of domestic abuse from a man is because men are systematically conditioned by society to oppress women") rather than crime which has both female and male victims and perpetrators (including those in same-sex relationships) and each should be judged on their equal merits/risks.

It will be the end of equal justice and equality before the law in domestic abuse if this is included with regard to gender.

It will lead to weaker sentences for female perpetrators of this crime on men, than the other way round (when the crime is the same), because of this ideologically view of the world. This is not equal or blind justice.

## **Disclosing private sexual images**

### **27. Do you have any comments on using the guideline through case study C?**

Yes

**xx:**

A male victim case study in parallel would be important as well ( a point we have raised elsewhere).

## **Controlling or coercive behaviour in an intimate or family relationship**

### **28. Do you agree with the proposed culpability factors? If not, please tell us why.**

No

**xx:**

We do agree but the examples are gender specific (inclusion of her baby) - how about also using something like "she kept telling her husband he was sexually impotent" as a counter balance.

## **Controlling or coercive behaviour in an intimate or family relationship**

### **29. Do you agree with the proposed approach and factors included in the assessment of harm? If not, please tell us why.**

No

**xx:**

We do agree but as with 28, the example is gender specific and does not include an example relating to a male victim

## **Controlling or coercive behaviour in an intimate or family relationship**

### **30. Do you agree with the proposed sentence table? If not, please tell us why.**

Yes

**xx:**

## **Controlling or coercive behaviour in an intimate or family relationship**

### **31. Do you agree that the proposed aggravating and mitigating factors cover the most likely factors that would apply to these offences? If not, please tell us why.**

Yes

**xx:**

## **Controlling or coercive behaviour in an intimate or family relationship**

### **32. Do you have any comments on using the guideline through case study D?**

Yes

**xx:**

Can we also have a parallel male victim case study as well.

### **Threats to kill**

**33. Do you agree with the proposed factors within the three levels of culpability? If not, please tell us why.**

Yes

**xx:**

In category A can we have also have the example of poison as that is used a weapon. A recent case was where a man was attacked by his wife through poisoning his food with antifreeze!

On Category C - very very rarely is an incident isolated. A one-off always leads to a second, third, fourth time unless dealt with at the first opportunity.

### **Threats to kill**

**34. Do you agree with the proposed approach and factors included in the assessment of harm? If not, please tell us why.**

No

**xx:**

This is the same answer as Question 12

Men as victims of threats to kill/domestic abuse crimes are often seen within the justice system (from DASH risk assessments to police enforcement through to prosecutions and sentencing) as being less at risk of harm than women even with the severity of the crime against them is the same. This includes both physical and psychological domestic abuse.

The wrongful view is that as men are 'stronger' mentally and physically than women and should 'man up' or more able to 'take it' than women even when the crime perpetrated is the same. The inclusion of a 'harm' assessment when these stereotypes about men and women exist within the justice system (and society more widely) will not lead to equal justice in sentencing female perpetrators when men are the victims of domestic abuse - it can in fact make them more vulnerable as it sets a tone that is not supportive and reinforces stereotypes that men cannot be victims of domestic abuse.

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### **Threats to kill**

**35. Do you agree with the proposed sentence table? If not, please tell us why.**

Yes

**xx:**

### **Threats to kill**

**36. Do you agree that the proposed aggravating and mitigating factors cover the most likely factors that would apply to these offences? If not, please tell us why.**

Yes

**xx:**

### **Threats to kill**

**37. Do you have any comments on using the guideline through case study E?**

Yes

**xx:**

An other example of a case study of an aggressive male. Can we also have case studies which include aggressive female/male victims to ensure an inclusive approach to the guidelines.

### **Equality Impact**

**38. Are there any equality or diversity matters that the Council should consider for the guidelines discussed? Please provide evidence of any issues where possible.**

**xx:**

Similar to our answer for Q9:

There should be no equality or diversity matters that the Council should consider especially regarding gender. To take into these matters into account (equality is only seen as an issue for women) will mean that justice is not equally served for all.

There may be other organisation who push in this consultation for gender (of the perpetrator or victim) to be an equality issue, but we believe this is because of their ideological view of domestic abuse and equality rather than one based on accepted definitions of equality, inclusion or the British Common Law/Constitution view of equality between individuals.

The gender of the perpetrator is far too often used a mitigating factor (primarily for female perpetrators) which means that male victims do not receive equal justice and/or justice is not been seen to be served for male victims. There can be too much chivalry (the view that women are the 'weaker' sex and therefore deserve lighter sentences) in magistrates and judges in passing sentences. Equality in this area will only serve to reinforce this.

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<http://www.bbc.co.uk/news/uk-england-lancashire-30851328> . We can point to other examples if needed.