

# *A Critical Reflection on the Use and Effectiveness of*

## *DVPNs and DVPOs*

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## *A Critical Reflection on the Use and Effectiveness of DVPNs and DVPOs*

### **Abstract**

Domestic Violence Protection Notices (DVPNs) and Domestic Violence Protection Orders (DVPOs) are short-term police-initiated protection mechanisms, aimed at providing victims with time to plan longer-term strategies to escape abusive relationships. Despite being available in England and Wales since 2014, there is relatively little research regarding their use and effectiveness. This article fills this knowledge gap by providing an empirically based ‘snapshot’ of their use by London’s Metropolitan Police Service (MPS), and considers whether they can be deemed successful in their intended outcomes. It does so against the national and international legal context in which the orders were created and the practices and policies used to deploy them (including: management of risk, protection of human rights and combating violence and abuse against women). It also considers the implications of their replacement with Domestic Abuse Protection Notices (DAPNs) and Domestic Abuse Protection Orders (DAPOs), as foreseen by the new Domestic Abuse Bill.

**Key words:** domestic abuse, protection orders, risk, DVPNs, DVPOs

### **Introduction**

Domestic abuse is described by Her Majesty’s Inspectorate of Constabulary<sup>1</sup> as presenting an ‘unrelenting and increasing demand’ for the police (HMICFRS, 2017: 5). With an estimated 1.3 million women in England and Wales having experienced domestic abuse, the police receiving, on average, over 100 calls related to domestic abuse every hour, and having recorded 599,549 domestic abuse-related crimes in the year ending in March 2018, an increase of 23% from 2017 (HMIC, 2015; ONS, 2019), it is clear that, although legislation and policy have moved towards greater

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<sup>1</sup> Now, Her Majesty’s Inspectorate of Constabulary Fire and Rescue Services (HMICFRS)

prevention and the increased support of victims, physical, sexual, and psychological abuse are still widespread and a serious threat to women's health in this country.

The widespread incidence of domestic abuse is not a new phenomenon or one that is exclusive to England and Wales or the United Kingdom (UK). Indeed, the United Nations and the European Union have been developing policies and legal instruments to address violence against women and girls for a number of years. The UK's policies on this subject reveal this country's desire to be a world leader in tackling this phenomenon (Home Office, 2019).

In this context, the Crime and Security Act 2010 (CSA) introduced in England and Wales immediate police-initiated protection measures, aimed at reducing repeat victimisation and enabling victims more time to consider future options (Home Office, 2016a). This took the form of Domestic Violence Protection Notices (DVPNs) and Domestic Violence Protection Orders (DVPOs), which have been available across all 43 police areas since 2014. However, due to the relative infancy of this legislation, there is little research on the use and effectiveness of these mechanisms. Moreover, an HMIC (HMICFRS, 2017) report highlighted that in 21 police forces the use of DVPOs decreased in 2015-2016 and, more recently, the Centre for Women's Justice (2019) filed a super-complaint against the police for failing to use protective measures (including DVPNs and DVPOs). With the introduction of the Domestic Abuse Bill, discussion regarding the use of such orders to address domestic abuse remains, as it is likely that DVPNs and DVPOs will be replaced by Domestic Abuse Protection Notices (DAPNs) and Domestic Abuse Protection Orders (DAPOs), with which they share a number of similarities.

This article analyses the use of DVPNs and DVPOs by London's Metropolitan Police Service (MPS) and is based on original empirical research. Specifically, it provides a 'snapshot' of the use of DVPNs and DVPOs by the MPS between 2016 and 2017, and considers whether they can be deemed successful in their intended outcomes. It does so against the national and international legal context in which DVPNs and DVPOs were created, and the practices and policies used by the MPS to determine their use, particularly regarding the management of risk.

Although the data and legislation analysed here relate to England and Wales, the discussion of these fairly unusual provisions is of international interest, to those developing and applying policies to address domestic abuse. The considerations made here should therefore be interpreted in a wider context of policy development, human rights legislation and international provisions on domestic abuse.

For ease of understanding, and to reflect the terminology used in some of the data collected, the terms 'victim' (referring to the complainant) and 'perpetrator' (referring to the suspected offender) will be used throughout this article.

### **Legal Background and Wider Context of DVPNs and DVPOs**

There are a variety of international legal provisions dedicated to combating violence against women and girls. Among these, we can mention the Convention on the Elimination of All Forms of Discrimination against Women (1979), the Declaration on the Elimination of Violence against Women (1993), the Beijing Platform for Action

(1995) and the Istanbul Convention (2014). The success of such an approach is difficult to assess, partly due to the lack of consistency in the definition of abuse across jurisdictions and accurate data on victimisation. Some of the difficulties associated with addressing domestic abuse are related to the fact that it treads between public and private spheres and this is reflected in the development of solutions such as DVPOs. The fact that most domestic abuse occurs 'behind closed doors' and within the 'sanctity of the family' has for years led the state, in the form of the judiciary and the police, to refrain from intervening for moral and privacy reasons. For example, occupation orders, which could prevent perpetrators from accessing their homes, have been famously described as 'draconian' by courts in the UK (see *Chalmers v Johns*) and made difficult to acquire or granted sparingly (Edwards, 1989; Herring, 2007; Burton, 2009).

The traditional policing approach to domestic abuse has in the past focused on violence and physical forms of abuse, usually as isolated incidents. Situations where the abuse is less visible (controlling and coercive, for example) are more challenging to investigate and more difficult to prosecute. However, and albeit from different philosophical standpoints, frameworks and definitional perspectives, authors such as Dobash and Dobash (1992), Stark (2007, 2010, 2018; Stark and Hester, 2019), Johnson (2008) and Walby, Towers and Francis (2014, 2017) have been consistently drawing attention to the profoundly gendered nature of domestic abuse for decades, and the need to move away from an incident-by-incident reaction to one that acknowledges coercive and controlling behaviour. Indeed, severe or physical violence are both not necessary for domestic abuse to exist and also a poor predictor of harm (Myhill, 2015; Myhill and Hohl, 2016).

Similar orders to DVPNs/Os can be found in the Austrian Protection Against Violence Bill 1997 (amended in 2009) and the German Protection from Violence Act 2002, which have been in place for a considerable larger amount of time. Other types of emergency barring orders have been made available more recently in the Netherlands, Czech Republic, Denmark, Finland, Hungary, Slovenia and Slovakia (Van Der Aa, 2011). Although the introduction of this type of orders in different countries could indicate their success, research show that the usage and frequency of breach of the order is widely varied (Logar, 2005; WiBIG, 2004).

Human rights legislation provides a useful backdrop against which to analyse the intervention of the state in this field, as it is clear in demanding the protection of victims of crime, including of domestic abuse (see, Burton 2009: 286; Bessant, 2015). Examples include Articles 2 (Right to life), 3 (Right to liberty and security), 8 (Right to respect for private and family life) and 14 (Prohibition of discrimination) of the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR), applicable to all signatory states, such as those which are part of the European Union (for a detailed analysis see, Bessant, 2015). Moreover, the European Court of Human Rights stated that Articles 2 and 14 of the ECHR impose a clear duty on states to establish and enforce protection measures when authorities 'knew or ought to have known of a real and immediate risk to the life of that individual' resulting from domestic violence (*Osman v UK* and in *Puz v Turkey*).

The Istanbul convention reinforced a shared cross-national desire for states to be proactive in the prevention and prosecution of violence against women, including domestic violence. However, while some authors welcome such state intervention, as it confers protection to victims who would not otherwise seek it (for

example, for fear of retaliation from the perpetrator), others see it as a form of disempowerment, and even a secondary form of victimisation, where the state acts much in the same way as the perpetrator did by ignoring the victim's wishes (Bessant, 2015; Burton, 2015).

### *England and Wales*

The legal framework to address domestic abuse in England and Wales has been evolving, particularly since the 1970s, to reflect a change in societal and political perceptions of the seriousness of the behaviour and its endemic nature. The introduction of legislation on coercive control (s 76 of the Serious Crime Act 2015), a change in terminology from 'domestic violence' to 'domestic abuse', and the current discussion of a Domestic Abuse Bill are recent examples of this change in mind-set, which is reflected in dedicated policies on Violence Against Women and Girls by successive Governments (see, Home Office, 2011, 2012, 2016b, 2019b).

Until the introduction of coercive control legislation in 2015, domestic abuse was regulated by different sections of criminal and civil statutes, such as the Offences Against the Person Act 1861 (mainly criminalising forms of physical violence) and the Family Law Act 1996. This was a fairly basic approach, using sometimes ancient legislation, to deal with a complex problem that does not always exist as overt violence and assault. Little consideration was given in law to victim protection that was not self-initiated (civil orders) or that did not rely on the case progressing to court (for a restraining order on conviction or acquittal).

The need for a new set of tools to address a perceived gap in the short-term, immediate provision to protect and support victims of abuse and give them time to

consider longer-term courses of action then led to the creation of DVPNs and DVPOs (Home Office, 2016a). More recently, the Domestic Abuse Bill proposed to extend the remit of DVPNs and DVPOs to encompass the notion of 'abuse'. DVPNs and DVPOs would be replaced by DAPNs and DAPOs, which although retaining some of the same criteria for their applicability in a given situation, would enhance some aspects of their enforcement. These will be highlighted in more detail in the discussion below. Public consultation for this change in legislation closed in May 2018 and the plans to 'Transform Domestic Abuse' are yet to be implemented (Ministry of Justice, 2018).

#### *DVPNs and DVPOs*

DVPOs are short-term measures aimed at enhancing the police's pro-active stance regarding domestic abuse, reducing repeat victimisation and providing victims with more time to consider long-term strategies (Home Office, 2016a). Where an allegation of violence is made but there is not sufficient evidence to charge a perpetrator or utilise any other formal judicial disposal, DVPOs may be used to 'protect a victim when they are at their most vulnerable' (Home Office, 2016a). DVPOs may therefore act as emergency orders, issued by the police to a suspected perpetrator before the application for longer-term solutions.

A DVPN has to be authorised by an officer of at least superintendent rank, a mechanism that was introduced to safeguard against undue infringements of the perpetrators' human rights (Burton, 2015). There is no requirement for the DVPN to be issued in police custody or even at a police station, and the recipient does not need to have been arrested. The DVPN sets out conditions that a perpetrator must



adhere to and can preclude him or her from returning to an address where the victim resides (even if shared with the perpetrator) or contacting the victim; breach of these conditions may result in arrest (s24-26 CSA).

Once the DVPN has been issued, the police have 48 hours to apply to a Magistrates' Court for a DVPO, which can last between 14 and 28 days (s27 CSA). The order cannot be extended beyond that period, although a new DVPO can be sought if there is further violence. The DVPN triggers the notification of the suspected offender of the hearing at the Magistrates' Court (although the application can be heard, and the DVPO granted, in their absence). Providing relevant conditions are met, and the Magistrates are satisfied with the evidence, on balance of probabilities, that the order is required, the Magistrates can issue a DVPO. The order allows for various different possible prohibitions: non-molestation of the victim, preventing the perpetrator from excluding the victim from premises, restricting the perpetrator from premises, requiring the perpetrator to leave premises, and preventing the perpetrator from coming within a set distance of the victim (s28 CSA).

The use of orders preventing contact between parties and regulating or removing a perpetrator from a shared address in situations of domestic abuse is not new. Long-term provisions have been available for over 20 years and include non-molestation orders (NMO), occupation orders (OO) and restraining orders (RO). Although DVPNs and DVPOs appear, at face value, to be similar to NMOs, OOs and ROs, they have significant differences. DVPNs and DVPOs are short-term orders, lasting between 14 and 28 days; NMOs, OOs and ROs can be granted with a specific end date or until further order. Their aims are also different, as DVPNs and DVPOs

aim to provide short-term respite from violence and give victims ‘breathing space’, that is, time to decide which course of action to take for a longer-term resolution of their situations (including, applying for a NMO, OO or RO). Moreover, although all are civil orders, the breach of an NMO, OO or RO is a criminal offence, while the breach of a DVPO is not, and is treated as contempt of court under s63 of the Magistrates’ Court Act 1980.

Should DAPOs replace DVPOs, following the enactment of the Domestic Abuse Bill, some of the considerations above will cease to apply. DAPOs are intended to be the ‘go to protective order in cases of domestic abuse’, replacing the use of NMOs and ROs (Home Office, 2019a: 2). DAPOs do not have a specific time limit and, providing certain aspects are followed (such as a regular review of conditions imposed on the offender), can be in place for longer than DVPOs. DAPOs can be applied for by a wider variety of actors (including the victim and ‘relevant third parties’). They offer more bespoke options, based on the victim and the perpetrators’ circumstances. The new notices and orders may also contain positive conditions for the offender (eg, to attend alcohol or substance misuse or mental health treatment) and a notification requirement (eg, to inform police of a home address), amongst other non- contact and residence conditions. Positive conditions must be accompanied by evidence regarding the ‘suitability and enforceability from the person who will supervise compliance with that requirement’ (Home Office, 2019a: 2). There is also an option to tag suspected perpetrators via GPS. Breaches of the new order can be treated as a criminal offence or dealt with as contempt of court, with the proceedings considering the views of victims.

It is well documented that cases of domestic abuse are difficult to bring to court (see Hester and Westmarland, 2006). Judicial outcomes may not involve the imprisonment of the perpetrator and a non-contact order (such as, an RO on conviction or acquittal) may not be granted. Even if the perpetrator is arrested, effective medium and long-term risk management is often required (Kelly et al, 2013). It is therefore important to take into consideration broader implications of the management of risk in situations of domestic abuse.

### **Risk Management and Police Response**

The management of risk is a complex area for law enforcement and there is ample debate and guidance from both academic and operational perspectives in this remit, which are beyond the scope of the current article (see College of Policing, 2013, 2018).

For over 30 years, the response by the police to domestic abuse has been the subject of criticism. In 2014 and 2016, the HMIC found ‘significant weaknesses’ in this response and a need for improvement in the identification of risk and the use of positive action (HMIC, 2014, 3; HMICFRS, 2017). Police mismanagement of investigations, mistakes and corruption have drawn extensive criticism and inquiries have been transformative (see, for example, Byford, 1981; MacPherson, 1999 and Bichard, 2004). Nonetheless, the Independent Police Complaints Commission<sup>2</sup> highlighted serious police failings, predominantly around the ability to identify and manage risk (IPCC, 2007) and in 2016, the Home Office identified a total of 27

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<sup>2</sup> Now, Independent Office for Police Complaints (IPCC).

domestic homicide cases where there were significant issues concerning risk assessment (Home Office, 2016a).

The management of risk relies on the identification of the hazard and an assessment of the severity and likelihood of harm. However, risk assessment is also calculated on the basis of the experience, morals, perceptions and culture of the assessor, and is often based on incomplete and credibly questionable information (Slovic, 2010; Myhill and Hohl, 2016; Richards *et al*, 2008). To add to the often-subjective nature of risk assessment, police officers have been found to have varying degrees of training on and attitudes towards domestic abuse and risk, which may impact on how they perceive and address situations (Myhill and Johnson, 2016; Robinson *et al*, 2016). Police forces tried to tackle criticisms by introducing new policies and practices; one unwelcome outcome of trying to meet some of these recommendations, however, is decision-making and risk assessing potentially becoming a compliance exercise (Myhill and Johnson, 2016).

The MPS' Domestic Abuse Policy uses a proactive approach, incorporating different stages of risk assessment (MPS, 2017). At an initial stage, Domestic Abuse, Stalking and Harassment and Honour-Based Violence risk identification, assessment and management questionnaire (DASH) is used to determine the level of risk that the victim faces. This initial assessment is then reviewed once the report reaches the domestic abuse investigation unit, who can agree with or change the given risk level. A secondary assessment may ensue, if the risk was initially graded 'medium' or 'high' (called a DASH2 assessment). The initial and secondary risk assessment levels are recorded on a crime report. Throughout the risk assessment and investigation period, risk management tactics and options are considered, including the use of

DVPNs and DVPOs. It is therefore essential that the initial grading of risk is done correctly to avoid cases either not being reviewed or prioritised correctly, with the consequent delay or lack of appropriate support for victims.

Following identification of risk levels, strategies for its mitigation must be considered. This may be in the form of DVPNs and DVPOs. The article will therefore now turn to their use by the MPS between 2016 and 2017, and discuss whether considerations regarding its success could be drawn, particularly when compared with the findings of the pilot evaluation published by Kelly et al (2013).

## **Methods**

The data that informs this article was collected by an operational police detective within the MPS, who is also one of the authors. This officer has extensive experience in investigating and supervising domestic violence inquiries, including domestic homicides. The second author is an academic and has no affiliation with the MPS. Her stance as an 'outsider' provides a useful counterpoint to the analysis of the data contributes to the robustness of the discussion. The focus on the MPS was due to its leading position in policy-development in policing, the diverse population included in its geographical remit, the amount of data available in what is a fairly recent and unusual mechanism to address domestic abuse, and the ease of accessibility to this data by one of the authors. This data is not available externally and required a large amount of review in order to obtain the relevant information to conduct the research.

### *Data collection*

Permission to conduct the research was obtained from the Strategic Lead for Domestic Abuse in the MPS. Data was retrieved from electronic records by searching the force's Crime Reporting Information System (CRIS) to identify reports containing any or all of the flags relating to the application and issuing of DVPNs and DVPOs. Flags are added to a crime report to identify many factors of interest to crime pattern analysis. There is currently no specific categorization of a report for a DVPN/DVPO, that is, a specific crime report (or Non Crime Domestic Report) is not created in these circumstances. Crime reports were, therefore, individually reviewed and entered into a Microsoft Excel spreadsheet to enable a simple descriptive statistical analysis to be made.

A total of 437 and 419 reports were selected in the first instance, where the flags 'DVPN Served' and 'DVPO Approved' had been entered, respectively. The data was then reviewed across the 32 London boroughs to ascertain how many DVPNs had been served and how many DVPOs had been approved at Magistrates Court. This highlighted a numerical discrepancy in the records. The number of DVPNs served should, logically, always be the same or greater than the number of DVPOs, as a DVPO cannot be served without a DVPN first being issued (however, a DVPO can be rejected after a DVPN is served). All crime reports between 2016 and 2017 were, therefore, individually read to ensure that these had been correctly flagged by the officers who compiled them, thus increasing the robustness of this research. As a result, duplicated entries were deleted, which reduced the total number of reports to 323.

The following information was categorised and recorded for each offence: CRIS number, Year of applying for/issuing the orders, Offence, Reason for Not proceeding, Result (that is, whether the orders were issued or not), Victim's surname, Victim's relationship with the Perpetrator, Gender of Victim, Ethnicity of Victim, Age of Victim, Perpetrator's surname, Perpetrator's relationship with the Victim, Gender of Perpetrator, Ethnicity of Perpetrator, Age of Perpetrator, History of DV, Flags, DASH Initial risk assessment grading, DASH Secondary risk assessment grading CSU, DVPN breach, DVPO breach, Repeat DVPO, and Notes.

As the dataset was reviewed in more detail, several reports were deemed to be errors or have discrepancies with the flags entered by the investigating officer. Authority was sought from the MPS lead for Domestic Abuse to amend duplicates or if the wrong flags had been entered. This strategy often required contact with the original investigating officer to ascertain if an order had been granted or a notice served. Once the investigating officer had responded, the relevant flags were noted and the report included or excluded from the study.

## **Results**

### *DVPN/DVPO Outcome by Case*

After cleaning the data, a total of 263 cases were analysed. This includes where a DVPN was applied for and approved by the superintendent but not served (n-2), DVPN only served (n-2) (that is, cases not taken to court, for example, due to time limits having expired or being no longer required), DVPO refused at the Magistrates

Court (n-10), DVPN and DVPO served (n-245), and Breach of DVPN (n-1) and Breach of DVPO (n-3).

#### *Type of Offence DVPN/DVPO Utilised For*

The offence type used here is the final classification that appears in the reports. The offence type may have changed since the initial report was created (for example, from an assault to a 'Non Crime Domestic', if it was found that no offences had been committed). As a result, the data in this next section needs to be read with some caution.

The data shows that DVPNs and DVPOs were utilised overwhelmingly following incidents of physical violence (Actual Bodily Harm: n-86, Common Assault: n-74 and Grievous Bodily Harm: n-43). There are, however, 11 'Non crime' domestic incidents (that is, a report where there are no offences apparent or alleged by any party) and four harassment offences, which may or may not include violence or a threat of violence (Figure 1).

#### *Reason Case Not Proceeded With*

The CPS (Crown Prosecution Service) and the ERO (Evidential Review Officer) were the majority of reasons why the cases were not proceeded with, and a judicial outcome was not sought. The CPS decided not to charge a suspected perpetrator in 134 of the sample cases. There is no 'check box' within the report to record why a case is not charged. As such, the categories used in this section were identified by reading the details of the report in its entirety (Figure 2).



### *Relationship between Victim and Perpetrator*

The relationship of both parties was documented to identify same sex couples and familial relationships other than intimate partners, as per CSA. The categories used for a familial relationship are: Brother, Daughter, Daughter in law, Father, Mother, Parents, Sister, Son.

The number of cases where the relationship could be described as intimate (husband-wife, boyfriend-girlfriend, ex-partners, common law partners) totalled 236, or 90% of the sample. There was one mother-in-law (perpetrator) and daughter-in-law (victim) relationship. There were two offences, representing 1% of the total sample, where the victims are the parents (Mother and Father) of the perpetrator (Figure 3; Figure 4).

Of the total cases under analysis, only four included same sex couples (three male and one female). However, the male couples were actually the same couple, who feature on three occasions and were given three separate DVPNs and DVPOs.

### *Gender*

The gender of the victim was overwhelmingly female (n-241). The gender of the perpetrator was overwhelmingly male (n-251). The number of female perpetrators was 12; all except one mother-in-law to daughter-in-law relationship, were intimate relationships.

### *Ethnicity*

For both victim and perpetrator, the most predominant ethnicity was White North European (victim – 61%; perpetrator -55%) followed by Black (victim – 19%;

perpetrator- 20%) and Asian (victim – 12%; perpetrator- 14%). The data was not analysed to identify the shared ethnicity of the couple.

### *Age*

The most prevalent age for the victim was in the 40-49 range (n-70) followed by 20-29 (n-69) and 30-39 (n-68). There is one case of a victim in the 80-89 year age range, which relates to a mother and son relationship, with the perpetrator aged between 60-69. The suspects' age range follows a similar pattern to that of the victims', with the majority at 30-39 (n-88), and the closest other ranges being 40-49 (n-66) and 20-29 (n-56), respectively. The outlier in the perpetrator age is 70-79, in a father and son relationship, where the victim is in the 30-39 age range.

### *Domestic Abuse History*

Nearly 90% of the cases had a recorded history of domestic abuse between them when a DVPN or DVPO was issued. This could be due to either party being classed as victim or suspect in any of the reports, but still as a couple. This classification included one or more than one incident. Sixty-seven percent of the total number of cases (n-176) were categorised as 'prevalent domestic abuse couples' with repeat history of domestic abuse. 'Prevalent domestic abuse couples' were considered to be those with five or more reported incidents recorded (including Non Crime Domestic reports). This did not include previous domestic abuse history with other partners. For 2% of the data set, domestic abuse history was not recorded and is therefore unknown.

### *DASH risk assessment*

68% of victims answered the DASH risk assessment questions during the initial police response. 84 victims did not answer the questions, 40 refused to answer them and 5 were unable to do so (due to language difficulties, mental health issues and injury). 39 risk assessments were not included on the reports (this is not to say that the risk assessment was not completed, but it was not included on the report).

The majority of the cases reviewed showed that the initial risk assessment score was 66% 'standard', 25% 'medium', and 8% 'high'. For 1% of the data there was no initial DASH risk assessment. One case was shown as Medium/High.

According to the MPS's (2017) Domestic Abuse policy, once the case is referred to the Community Safety Unit (a domestic abuse investigation unit in the MPS), a secondary DASH assessment should be conducted (DASH2) if the initial grading is 'medium' or 'high'. Fifty eight percent of the cases did not have a secondary risk assessment score recorded. It was, therefore, not possible to examine if the DASH risk assessment levels changed for these cases, once reviewed by an investigator within that unit.

## **Discussion**

### *'Success' of DVPNs and DVPOs*

Measuring the success of the implementation of a new tool in a field such as domestic abuse is fraught with difficulties. While counting the number of orders applied for or granted might give an indication of how well the police are engaging

with the new mechanisms, it does not provide a sound measure of 'success' from the victim's perspective, as victims often contact the police with a desire for the violence to stop, and do not necessarily want the perpetrators' arrest for a number of reasons (see, for example, Hoyle and Sanders, 2000). Low reoffending rates may also indicate some level of success of the implementation of orders, but these rates may be due to a lack of reporting or of appropriate recording. The measures of success discussed here are, therefore, contingent to the type of information available from the MPS.

Of the data retrieved from the MPS, there were 245 cases for which DVPNs and DVPOs were served and 10 cases where DVPOs were unsuccessful at Magistrates' court. This corresponds to a 94.5% success rate in securing DVPOs for the MPS (245 out of 259). According to Kelly et al's research (2016), between March 2014 and December 2014, there was a success rate of 92% nationally in the implementation of these orders. This figure was confirmed three years later by the HMICFRS which also found a 92% success rate in the implementation of orders, based on 34 forces (HMICFRS, 2017). The MPS' success rate is therefore (marginally) above the national rate, indicating that the force is engaging well with the orders from a procedural point of view. However, securing DVPOs alone does not allow us to consider whether the use of the orders has been successful in their intended outcomes and a more refined analysis is needed.

#### *Breaches and Police Call-Outs*

One indicator of the success of the DVPN/DVPO process is its enforcement, which can be measured in a variety of ways, including the number of breaches and the actions taken by victims following their implementation. Kelly et al (2013) suggest that, overall, DVPNs and DVPOs were effective in reducing domestic abuse and re-victimisation, as measured by reduced police 'call outs', compared to a sample of cases that had no further action or intervention taken after arrest (Kelly et al, 2013).

Assessing effectiveness based on the number of police call-outs is misleading, as this may be due to a number of reasons that determine victims' (un)willingness to report breaches to the police. Research suggests that from a victim's perspective, safety is key in their decisions regarding 'staying in' or 'dropping out' of the judicial system (Hester, 2006). If a victim only seeks temporary relief for a situation or does not think that reporting a breach of an order will either enhance their safety (or may even decrease it), then it is unlikely that they will report these breaches. If a victim does not want the relationship to end and the perpetrator to leave the family home, it is also unlikely that they will report any breaches, therefore severely impacting the orders' intent (Burton, 2015).

The data set retrieved from the MPS shows that there were 19 DVPO and 8 DVPN breaches (that is, 8% of the number of DVPOs granted during the research period), while Kelly et al (2015) found an 18% DVPO breach in their national follow up on DVPO data. It may be, however, that some breaches were not reported and are not reflected in the data retrieved. The reluctance of victims to answer the DASH questions and support a prosecution also indicates the unlikelihood of reporting breaches. Furthermore, the difficulties with the accuracy of the data from the MPS

may also be reflected in the number of breaches recorded. The discrepancy in numbers between Kelly et al (2003) and the data set analysed here is, however, noteworthy and indicates that further research in this area is warranted.

### *Police Responses to Breaches*

Even when breaches are reported, their enforcement is not straightforward. The HMICFRS (2017) highlighted that domestic abuse practitioners and victims were disappointed at the lack of action taken by the police when breaches of civil orders or perpetrator bail conditions were reported. Practitioners and victims relayed long delays in acting as problematic, with officers sometimes waiting for perpetrators to return on bail before the breach was dealt with. This situation further compounds the risk to the victim and enhances the necessity for effective enforcement of these orders (HMICFRS, 2017). This is something that DAPOs may be able to address by imposing conditions such as a need for perpetrators to notify the police of their address and the possibility of GPS tagging.

The MPS data set shows that DVPNs and DVPOs were overwhelmingly used following incidents of physical violence (Actual Bodily Harm: n-86, Common Assault n-74 and Grievous Bodily Harm n-43). This is partly in line with DVPN/DVPO policy and legislation, where the index offence for applying and issuing an order is the use or threat of use of violence. According to MPS' (2017) Domestic Abuse policy, all cases where there is a named perpetrator who is either arrested or interviewed under caution need to be reviewed by an ERO before submitting the case to the

Crown Prosecution Service (CPS), which will then decide whether to charge or not. Of the data retrieved from the MPS, the overwhelming majority of cases not taken to court were not proceeded with either by the ERO or the CPS. The discontinuance could have been for a number of reasons, including lack of evidence, victim or witness retraction, or lack of corroborating evidence. The reason offences were not taken to a judicial outcome is significant, as it supports the argument already alluded to here that if the police were more effective in pursuing domestic abuse cases independently of victims, then removal and no contact orders such as the DVPN and DVPO would not be required (Burton, 2015; Crompton, 2013).

#### *Victim and Perpetrator Gender and Relationship*

The gender of the majority of victims was female (n=241, or 92%). This is not unexpected, as it is well documented in literature that women are disproportionately victims of domestic abuse. Women experience higher rates of repeated victimisation and are much more likely to be seriously hurt (Walby & Towers, 2017). Women are also more likely to experience fear and are more likely to be the subject of coercive and controlling behaviour (Dobash & Dobash, 2004; Hester, 2013; Myhill, 2017). Kelly et al (2013) also found that the majority of the victims were female (77%) and the majority of perpetrators were male (97%). Although there is a recognition that victimisation and offending include both men and women, the findings here do not deviate from the literature in this respect.

When looking at victim and perpetrator relationship, girlfriend, ex-girlfriend and wife were the clear majority (112, 51 and 49 respectively – totalling 80% of the data set). Perpetrators issued with a DVPO were boyfriend (113), ex-boyfriend (52)

and husband (51), with 21 cases (8% total cases) where the son was the perpetrator. This correlates to 14 cases where the mother was the victim, four where the father was the victim and two where both parents were named as victims. Interestingly, there were no daughters shown as perpetrators across the whole of the data set. Kelly et al (2015) in their review of the DVPO pilot did not break the data into relationship categories but did comment that the majority (66%) were cohabiting intimate partners. There is some scope to look at the implications of a narrow application of legislation that does not take into consideration various intra-familial relationships. Parent-son relationships seem to be particularly worthy of more attention in this respect. However, the numbers confirm that an overwhelming number of cases relate to intimate partner relationships, especially those between boyfriend-girlfriend.

#### *Domestic Abuse History and Risk Assessment*

Perhaps the most interesting and significant aspect of the MPS data is the relationship between victim and perpetrator, and the issuance of the DVPN/DVPO. By the very nature of the process, it was expected that a large proportion of victims and perpetrators would have previous domestic abuse history, as it is unlikely that an order would be sought for a first offence, unless this was a serious one. Of the incidents included in the research, 89% of couples had previous domestic abuse history with that partner (as either victim or suspect). It was also expected that if they did not have any history of abuse that the risk assessment would be 'high' or the index offence would be 'severe'. However, on review, the 19 cases where the initial risk assessment level was 'standard', only four cases were for a Grievous Bodily



Harm offence (although two were subsequently raised to 'high' on review by the Community Safety Unit); 27 percent related to common assault allegations, with one for harassment and one being a Non Crime Domestic (with no offences); one case was for threats to kill.

Out of the total dataset analysed here, 84 cases did not contain the responses for the DASH risk assessment undertaken and 40 victims refused to answer the questions. This refusal may reflect reluctance to support police action and may indicate a reduced likelihood in reporting any breaches of the DVPN/DVPO. It is perhaps also an example of the non-actuarial way risk is assessed in the MPS, and the impact of professional judgement on officers' decision-making process (ie, on the decision to pursue a DVPN/O with very little background to support it). Although there is debate regarding using professional judgement as an accurate way to assess risk, when the MPS homicide data shows that 62% of the victims did not have any previous history of domestic abuse, and with Thornton's (2017) research showing 55% without previous history, it would be highly dangerous, un-ethical and potentially negligent for officers to wait for further incidents to provide a more actuarial statistical basis of outcomes.

Kelly et al found that 23% of their pilot cases were classified as 'standard' risk, 56% as 'medium' and 19% as 'high'; 1.7% were classed as 'unknown' risk. In the MPS data set, 66% of reports were initially classed as 'standard', 25% as 'medium' and 8% as 'high'; the remainder 1% were classed as 'unknown' or 'medium/high'. Over half of the cases (58%) did not have the mandatory secondary risk assessment noted on the report. This may be due to incorrect recording or grading of risk or lack of understanding of policy. However, the DASH risk assessment levels denote the

likelihood of serious harm occurring to the victim. This level of harm is at odds with the DVPN/DVPO process. DVPNs and DVPOs are applicable to situations that include a wider concept of risk of violence, and the mere threat can lead to their enforcement. It is therefore not a good indication to compare the use of DASH with the application and enforcement of DVPNs and DVPOs.

### *Repeat Offending and Orders*

A likely outcome following the arrival of the police is that the alleged perpetrator will be arrested. This results from a policy of 'positive action' that is in place across many police forces, including the MPS (MPS, 2017). Research has increasingly evidenced that, although arrest for an incident of domestic abuse may deter a number of perpetrators, chronic offenders do not appear to be affected in such way (Hester 2006; Hanmer et al 1999; Maxwell *et al*, 2001). Chronic offenders, however, were found by Kelly et al. (2013) to be most impacted by DVPOs.

The research presented here also considered where couples may have had more than one DVPN or DVPO. Ten couples had one, two or three previous DVPOs. Of the total number of cases, 176 were determined to be repeat abuse cases (with five or more incidents), or falling into the chronic category used by Kelly et al (2013). As mentioned previously, the only male same sex couple had been issued three DVPOs within the research period and this had no effect on recidivism or re-victimisation. This indicates that the orders are not effective in the long-term disruption of domestic abuse; however, it also demonstrates that police officers are embracing the use of DVPNs and DVPOs, and supports the introduction of a longer standing order, as proposed by the Domestic Abuse Bill. While the aim of DVPNs and

DVPOs is not to end domestic abuse in themselves, should they be replaced by DAPOs, because these can be in place for longer, they may further benefit victims in affording them more time to engage with the best possible ways to extricate themselves from an abusive situation.

### *Limitations*

There are some limitations with the data. This is due mainly to two factors: the nearly 20% inaccuracy rate found in the MPS data recording and the data set being a selected sample of the MPS data. This is not a problem found only with the MPS and, indeed, Kelly et al. (2013) and the HMIC (2017) are vocal about concerns with the inability of police forces to provide accurate DVPN/DVPO data. This research was not intended to be a compliance exercise regarding MPS data standards, nor does it seek to assess the correct use of the MPS CRIS flag system. However, in compiling the data for this research, it is apparent that the data held by the MPS in relation to the service of DVPN and DVPOs would benefit from being more accurate.

### **Conclusion**

Assessing the use and effectiveness of DVPNs and DVPOs is not straightforward. This article not only contributes to enhance the current body of knowledge, but also provides a unique insight into their use by the largest police force in England and Wales; its findings have significant impact, nationally and internationally, despite the limitations with the data.

Measuring the success of DVPNs and DVPOs can be done in different ways. An indicator of 'success' is whether victims used the time that the orders provide them with to seek longer-term strategies to escape abusive relationships. Of Kelly et al's (2013) sample group, very few victims actually did this. Burton (2015) speculates that this could be because of the cost of doing so, particularly, if the victim exceeds the threshold for Legal Aid. The victim's dependence from perpetrators who may be the main carers, financial supporters or sharers of childcare may explain this. Furthermore, victims with uncertain or insecure immigration status, or those with disabilities, may find it more difficult to access help regarding housing and refuge accommodation, due to language difficulties and cultural and structural factors (Thorpe, 2008; Graca, 2017).

Replacing DVPNs and DVPOs with DAPNs and DAPOs would seem to address some of the concerns highlighted here. Formally including the notion of 'abuse' in the remit of the orders may lead to their wider use, more accurately reflecting the repetitive and insidious nature of domestic abuse and steering officers beyond their use primarily for situations of physical harm, as the data analysed here still confirms.

The possibility of applying for DAPOs by victims and other authorities (rather than only by the police) could also be useful in empowering victims and providing them with a larger network of support from a multi-agency perspective. However, considering the data on the lack of cooperation with the DASH process and in reporting breaches, this may be of limited use. This approach also raises concerns regarding offenders' rights, which was why a high-ranking police officer had to supporting the application for DVPOs in the first place. GPS tagging and

criminalisation of a breach (with a potential of 5 years imprisonment) based on what is still a civil order, where an allegation is not strong enough to take to a judicial outcome, will raise significant human rights concerns. Great care needs therefore to be placed not only in the identification and management of risk but also in evidence-gathering and preparation for prosecution.

Despite concerns that DVPOs could be seen as an example of 'policing on the cheap' that officers would use in place of criminal charges (Crompton, 2013), from a practitioner's perspective, DVPOs are time consuming and expensive options (see, Joint Committee on the Draft Domestic Abuse Bill, 2019: 30). The police act as prosecutor at court, and the paperwork is time consuming, with only 48 hours to complete this process. Furthermore, the police have to pay the court for each hearing and more for a contested order. If cases were suitable for a charging decision, then this would be the most likely route taken.

DVPOs should give victims the time and space to extricate themselves from abusive situations. However, the effectiveness of the orders in doing so may be impaired by a number of factors, such as the victim's economic dependence on the abuser or lack of access to funds to seek longer-term solutions via the courts. More work is therefore required in developing medium- and long-term solutions. This can be done by adopting a more joined up approach with the justice system, support services and other community partners that does not focus solely on the management of risk. This is foreseen in the Domestic Abuse Bill; however, lack of funding and not addressing specific Black and Minority Ethnic concerns are weaknesses that remain in place for both types of orders.

These considerations are likely to be transversal to numerous jurisdictions and should, therefore, be taken into account when developing or assessing policies to address domestic abuse of a similar nature to that currently used in England and Wales.

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