



Science & Technology in Policing

STAR Fund 22/23 Final Report

***Examining the use of Evidence Led
Prosecutions in Domestic Violence and
Abuse cases***

Merseyside Police

Open University

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Executive Summary

Overview:

Merseyside are considered the national police force lead on Evidence Led Prosecutions (ELPs) in prosecuting Domestic Violence and Abuse (DVA) cases. ELPs are where the victim/survivor either does not support a prosecution from the offset or where the victim/survivor disengages from the prosecution by means of providing a retraction statement and the case continues to court without the victim/survivor present. Violence Against Women and Girls (VAWG) remains a national priority for the Criminal Justice System as evidenced in policing by the setting up of the national VAWG Taskforce in 2021 amongst many other processes and VAWG issues frequently discussed in national media outlets. Victim/survivor attrition in DVA cases remains a key area of concern and focus for CJS professionals and academics alike. It is surprising given this, that despite having been advocated as an available tool in policing DVA, ELPs have to date not been examined to understand how they are used and importantly what effect their use has upon victims/survivors.

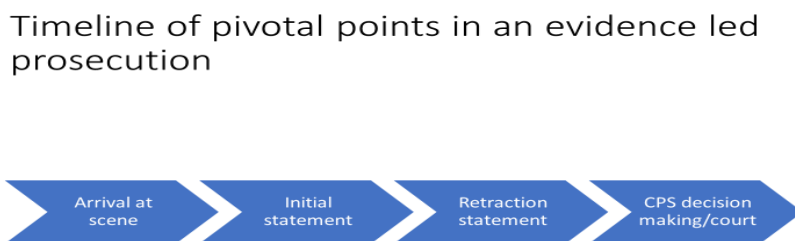
This project addresses this gap in our understanding of the use of ELPs in DVA cases and represents the first project to examining these prosecutions in the UK. The project received funding from the National Police Chief's Council who recognised the importance of exploring this gap in our understanding of ELPs. By increasing the understanding and evidence base of ELPs this will enable police to employ ELPs in a more cognisant manner with insight into how these prosecutions impact upon victim/survivors and in turn, how to improve victim/survivors' experiences during these types of investigations. These topics were explored during the victim/survivors' interviews. In addition, the project also sought to further the understanding of case characteristics that were selected for CPS charging as an ELP and which were subsequently successfully convicted as a result of an ELP. The characteristics of 52 ELPs cases to 41 non-ELP cases were compared. Chi square tests were run to explore the association between ELP/non-ELP status and case characteristics of interest (e.g. demographic characteristics of victim/survivor and perpetrator, incident details, criminal justice outcomes). Views of CPS solicitors were obtained to further understand the barriers and difficulties in engaging an ELP approach to prosecuting DVA.

Findings highlights case characteristics:

- ELPs appear to be used more commonly for lower risk DA (bronze and silver) and for lower level assaults (common assault).
- Police decision makers were significantly more likely to refer ELP cases to the CPS for a charging decision than non-ELP cases ($p < 0.001$)
- ELP cases were less likely to be charged by CPS than non-ELP cases.
- Police attendance was faster in more ELP cases which may have increased the chances of the attending officers witnessing some or all of the incident.
- The rate of conviction between ELP and non-ELP was virtually identical.

- ELPs were significantly more likely when the victim/survivor and suspect were in a current relationship, compared to non-ELP cases which were more common with ex-partners ($p < 0.001$)
- A substantial proportion of victim/survivors and suspects disclosed vulnerabilities or disabilities during the course of the investigation.
- Certain types of evidence were statistically more prevalent in ELP cases, including a third party calling police, CCTV, independent witnesses, and a negative PNB ($p < 0.001$).
- In contrast, the victim/survivor engaging at initial report, the victim/survivor calling police themselves and the victim/survivor making a statement were statistically more prevalent in non-ELP cases ($p < 0.001$).
- Other forms of evidence statistically more prevalent in ELP cases included, suspect admissions and statements from officers as witnesses ($p < 0.001$).

The following timeline identifies the pivotal points at which the findings of this project are centred around:



Arrival at scene

- In ELP cases, police arrival was faster (although not statistically significant) than in non-ELP cases indicating an opportunity for officers to gather more evidence given the incident would be more likely to be still ongoing or having recently finished. Accurately capturing evidence of complex emotions such as fear, an important aspect of the hearsay rule, at the scene is one of the key areas of focus for the second funded STAR ELP project.
- ELP cases were significantly more likely to be between couples currently in a relationship which points towards the likelihood of the incident occurring in their shared home and both parties being present, thereby creating a further heightened need for officers to be able to document the interaction between the couple noting any signs of fear from the victim/survivor.
- CPS referred to officers' evidence gathering at scenes where an incident had just occurred stressing the importance of officers being effective evidence

gatherers and to focus on being as descriptive as possible, inviting officers to write as much as they could about the emotional state of the victim/survivor, what exactly they witnessed, how they themselves felt witnessing the scene and how they sensed the victim/survivor was feeling.

- Not surprisingly, there was a statistically significant effect of third party reporting, CCTV being available, independent witnesses and a negative Pocket Notebook Entry (where victim/survivor confirms they are not willing to support a prosecution).

Initial statement

- Victim/survivors engaging at the initial report and making a statement was statistically more prevalent for non-ELP cases.
- CPS prosecutors revealed ELP cases with an initial and a retraction statement were more complicated to prosecute compared to those cases that relied solely on independent witnesses and other forms of circumstantial evidence forms such as BWV and CCTV.
- Yet victim/survivors spoke about being encouraged to provide their initial statement on the premise of getting mental health support for their son and not understanding that the provision of the initial statement entailed the case going to CPS and subsequently court.
- Victim/survivors also referred to having to give statements when they were physically and mentally not in good states as a result of the incident having just occurred.

Retraction statements:

- There was a statistically significantly higher number of retraction statements in ELP cases compared to non ELP cases.
- CPS prosecutors further spoke of the need to have a more informed and detailed retraction statement taking process where ideally the officer of the case with knowledge of the case would also take the retraction statement. Evidencing fear, if possible, was crucial for the purposes of a hearsay application.
- Victim/survivors spoke negatively about the processes of providing a retraction statement where they were left waiting and eventually someone took the statement seemingly without any knowledge of their case making the experience very impersonal.
- Victim/survivors also spoke of feeling compelled to make the retraction statement due to their vulnerable mental health state where it was a relief not to be involved in the case. For others, the retraction statement not resulting in

the case being dropped came as an intense shock and caused the feeling of secondary victimisation.

Court/ CPS decision making

- In terms of conviction rates, there was barely any difference between ELP and non-ELP cases despite a much higher percentage of ELP cases being sent forward for consideration of a charging decision.
- Victim/survivors reflected on feeling invisible to the CPS and wanting to be able to have a more prominent position in their decision making and communication between CPS and victim/survivors.
- Victim/survivors also reported feeling disappointed with the CPS decision making regarding the offender being allowed police bail, not receiving a custodial sentence and the case being dropped at court.
- From a CPS perspective, the decision making around res gestae/hearsay evidence was deemed problematic and there were some contradictory opinions on the ease of getting these types of prosecutions successfully convicted where some said it was difficult to prove the required element of fear and had not been successful yet others explained they had been successful a number of times.

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1 Introduction

Introduce your project – this should include providing context on the challenge your project is addressing, motivation for pursuing the project, background on how the concept was generated, and how the project aligns with Policing S&T priorities.

Background

Dr Anna Hopkins advises on Merseyside Police's Domestic Abuse Multi-Agency Tactical Group bi-monthly meetings. A discussion took place during one of these meetings that Merseyside Police is a national lead on Evidence Led Prosecutions (ELP) in Domestic Violence and Abuse (DVA) cases which is due to their ability to flag ELP cases on their police recording system. Merseyside were keen to establish how ELPs impacted upon victim/survivors who were assigned to such types of prosecutions. As a result of this conversation, Merseyside Police and Dr Anna Hopkins and Dr Holly-Taylor-Dunn set out to explore ELPs in more detail.

ELPs are prosecutions that take place without the victim/survivor being present due to their decisions to not support a prosecution and relying on evidence gathered on the case without the victim/survivor's support.

Motivation for pursuit of project

Whilst DVA does not pose a new threat or area of concern, the recently increased focus on this area and the considerable lack of police responses being aligned to victim/survivor's wishes results in a warranted examination into understanding better what responses there are available to police.

The unwavering rate of domestic homicides and suicides and detriment to general health demonstrate this is a situation that warrants the best and most efficient type of policing response yet as the figures show, there is still a prominent disconnect between victim/survivors and police and the general CJS more widely.

The Crime Survey for England and Wales (ONS, 2022) estimated that 5.0% of adults (6.9% women and 3.0% men) aged 16 years and over experienced DVA in the year ending March 2022, which equates to around 2.4 million adults (1.7 million women and 699,000 men). In terms of domestic homicides, across the two-year period 1 April 2020 to 31 March 2022 there were 470 deaths classed as taking place in a domestic setting or after domestic abuse had occurred which included 43% intimate partner homicide, 24% suspected victim/survivor suicide, 22% adult family homicide, 8% child death, and 3% 'other. Recognising the effect DVA has upon mental health, research indicates that women experiencing DVA are more likely to experience mental health problems. Conversely, women with mental health problems are more likely to be domestically abused, with 30-60% of women with mental health issues having experienced domestic violence (Howard et al, 2010).

The prosecutions of DVA remains problematic, with research suggesting 64% of cases are dropped at the point of arrest, with outcome 16 (victim does not support further action) accounting for 52.6% of all cases (McPhee et al, 2020). The

increasing rate of attrition in DVA cases is a key challenge for police forces throughout England and Wales (HMICFRS, 2021). The number of domestic abuse-related CPS prosecutions in England and Wales has steadily declined each year since the year ending March 2017, from 93,593 to 53,207 in the year ending March 2022, which represents a 43.2% decrease (CPS, 2023).

Those prosecutions that led to a conviction decreased for the first time since March 2015, dropping to 76.4% in the year ending March 2022 which represents a decrease of 1.7% compared with 2021. In third quarter 2022/2023, the rate of domestic abuse conviction rates did increase slightly, however, from 75.7% to 76.2%. (CPS, 2023).

The potential for ELPs to narrow the gap between reported offences and cases prosecuted is therefore of direct benefit to the police, CJS widely and arguably for the good of society if the social change approach to dealing with DVA is applied (see below for more on this). Regardless of what stance is taken on how DVA should be dealt with, at the time of commencing this project, it was unknown what impact an ELP had on victim/survivors, what the success rate was of prosecuting DVA by means of an ELP in addition to knowing what the decision making looked like for prosecutors and police alike.

This is further demonstrated by the lack of the national picture in capturing the number of ELPs prosecuted by police and the number of ELPs put forward and considered for charge by CPS. In the context of Merseyside Police, the number of ELPs in Merseyside remain low (252) despite the force being the national lead on ELPs. Since November 2019 to 5th March 2021, 252 DVA Evidence Led Prosecution cases have been referred to the Crown Prosecution Service, 124 (49%) of which were charged, 116 (46%) were resulted as No Further Action, 7 (3%) resulted in a caution and 5 cases (2%) are awaiting a response. Of the 124 charged, 76 have resulted in successful convictions (61%), 21 (17%) have not yet been heard and 27 (22%) have been dismissed with no evidence offered.

Academic Research

There is a dearth of published research exploring how ELPs work in practice and what impact they have on victim/survivors, despite the fact ELPs have been advocated for many years in the UK. In the US, there is debate regarding the appropriateness of ELPs in the context of DVA (Davis et al., 2008). Some argue they are simply replacing the control of the abuser with control by the state (Ford, 2003), but others suggest that placing the decision to prosecute with victim/survivors puts them at greater risk of intimidation and pressure from the perpetrator (Nichols, 2014). Some studies with victim/survivors in the US suggest they are largely supportive of ELPs as a policy approach (Davis et al., 2008), however research suggests victim/survivors are not necessarily safer. (Davis et al., 2008, Finn, 2013).

Most of the extant literature on ELPs is US based in terms of “no drop prosecutions” and there exists a dearth in studies that address ELPs from a victim/survivor informed perspective. There are three main approaches to prosecuting DVA evidenced in the literature: 1) ‘automatic drop’ 2) no-drop/social change 3) victim/survivor informed/centred.

1) The automatic-drop approach (Nichols, 2014: 2120) supports the victim/survivor’s wishes and is seen to instil confidence in the victim/survivor in utilising the CJS in that they are responsive to their needs and wants. Winick (2000:64) suggests such a response is paramount in providing that sense of control and emotional wellbeing to the victim/survivors. Their decision-making is regarded as having a sense of agency and if deciding to withdraw, it is due to factors such as the arrest achieving sufficient results or that she has weighed up the costs of prosecution and these outweigh any benefits obtained from outcomes achieved by means of following a criminal justice route. Respecting the victim/survivor’s wishes in such a manner is seen to signal a CJS that is sensitive and respectful of the victim as opposed to a CJS that is coercive and taking over the control from her abuser. Importantly, this is seen as positively impacting upon a victim/survivor’s subsequent decision to re-engage with the CJS should she suffer any further abuse (Buzawa et al., 2000: 17). This appears to have been the CPS approach prior to 2008 (Cretney and Davis, 1996), when complainant retraction in the context of prosecuting DVA appeared to have ‘an almost singular effect; namely, discontinuance’ (Ellison, 2002: 834).

2) No- drop prosecutions prevent the transfer of power from the courts to the perpetrator and are seen to take the decision of prosecution out of the victim/survivor’s hands. The no drop prosecution process ensures the discretion of the prosecutor (or potentially police prior to this stage) to discontinue the case is removed and the effect of victim/survivor’s decisions to withdraw does not bare any influence on a case continuing or not. In this sense, it is seen as a system that enables victim/survivors to benefit from criminal intervention and seek protection from this process by means of a social change approach which challenges the social structures responsible for allowing violence against women to take place. Those in support of no-drop prosecutions (e.g. Sacuzzo, 1998; Stark, 1993; Wills, 1997) emphasise the shift of power from CJS to the abuser if CJS professionals continually act upon victim/survivor’s wishes to withdraw. Concerns are focused upon the controlling behaviours of the abuser in encouraging a victim/survivor to withdraw their support (Nichols, 2014: 2117).

3) Victim/survivor-informed’ (Catteneo et al., 2009), ‘survivor-defined’ (Goodman et al., 2016) or ‘victim/survivor empowerment’ (Hoyle and Sanders, 2000) describe a case- by- case approach which advocates for the consideration of victim/survivors’ wishes as to why they want to withdraw their support for a case to continue. This is the current direction the CPS follows in their policy and guidelines. This approach

requires police officers to take a retraction statement detailing and evidencing their reasons for withdrawal and to confirm no pressure has been placed on the victim/survivor to do so. Having a victim/survivor-focused approach is not seen to be without risk however. It is clear, for example, that a victim/survivor who is being coerced to drop the charges by her abuser will likely not disclose this in her retraction statement due to being motivated to have the charges dropped against her abuser.

Whilst research continues to be conducted in victim/survivor engagement and disengagement, the matter of what factors determines whether a victim/survivor of DVA would subsequently re-engage with the CJS based on their experience of an ELP is an area that has not received much, if any, attention.

How the project aligns with Policing S&T priorities

“Science and Technology sits at the heart of the NPCC's strategy as Strategic Objective 4: Collaborate with partners to deliver transformative innovation and new technologies that improve all aspects of policing. The NPCC ensures science, technology, analysis, and research underpin delivery in all areas of policing.”

This project is aligned to this objective by achieving the following:

- Prior to this project, despite ELPs having been advocated for since 2008, there was no extant evidence base in the UK to understand decision making and importantly the impact these prosecutions have upon victim/survivors and their subsequent decision making. This project represents the beginning of Merseyside Police and other police forces understanding the decision making around ELPs and importantly the impact these have upon victim/survivors.
- As alluded to, the policing of DVA remains a problematic area for policing given the high rates of victim/survivor disengagement and crimes finalised with outcome 16. By increasing the understanding and evidence base of ELPs this will enable police to employ ELPs in a more targeted way with insight into how these prosecutions impact upon victims and how to improve victims/survivors' experiences during these types of investigations.
- A greater understanding between CPS and police in terms of what the evidential requirements are for successfully prosecuting DA by means of an ELP.

1.1 Aims of the project

State what you hoped to achieve at the end of the project.

This study sought to address the current gap in UK research by understanding how and when ELPs were used, and importantly, how this was experienced by victim/survivors.

This project sought to address the current gap in UK research by examining:

- What effect an EPL had upon victim/survivors generally and their intention to re-engage by means of victim/survivor interviews.
- To further the understanding of which cases were selected for CPS charging as an ELP and which were subsequently successfully convicted as a result of an ELP.
- To examine the views of CPS solicitors to further understand the barriers and difficulties in engaging an ELP approach to prosecuting DVA.
- To examine the decision making by police officers by analysing and comparing ELP and non ELP police case files.
- To analyse the relationship between customer satisfaction surveys and being subjected to an ELP investigation.

1.2 Objectives of the project

Outline the actions you will take in order to achieve your aims. These should be specific statements that define measurable outcomes.

The project sought to address the following questions:

- 1) Are there particular characteristics involved in cases that are prosecuted through the use of an ELP? How do these compare to DVA cases prosecuted without the use of an ELP?
- 2) How do ELPs affect DVA victim/survivor satisfaction levels compared to those DVA victims not assigned to an ELP?
- 3) What are the benefits and challenges of using ELPs?
- 4) What are victim/survivors' lived experiences of ELPs?

In order to address these questions, the research followed a sequential mixed methods design with two stages and four component parts.

Stage 1 analysed police casefile data. Stage 2 analysed qualitatively generated data including interviews with CPS prosecutors and victim/survivors with experience of ELPs. Stage 1 data informed the interview framework for Stage 2.

Stage 1: Part A

Stage 1, Part A used Merseyside Police's (MP) system to access those cases put forward for an ELP. MP has a unique system of flagging those cases selected for an ELP entitled "management information". Due to this flagging system it was straightforward identifying those cases selected for ELPs. The project aimed to access a matched sample of 50 ELP investigations as registered in MP's "management information" system. A further matched sample of 50 DA cases not prosecuted by means of an ELP was also sought. We were provided with a sample of just over 50 cases from each category for incidents reported between June 2021-June 2022. The investigation files were analysed with key variables being extracted, anonymized, and coded. The key variables included: victim/survivor characteristics, offender characteristics, offence characteristics (type of offence, risk level, time taken to report), available evidence, victim/survivor interaction (how police officers kept the victim/survivors updated, any narratives from victim/survivors regarding being assigned to an ELP and any other relevant interaction captured on non ELP case files) and what the final outcome was for the ELP and the non ELP case files. After removing non-DA cases and those which were not finalised, we were left with a sample of 52 ELP cases and 41 non-ELP cases. Descriptive statistics of case characteristics were completed followed by Chi Square tests to determine which of the characteristics between ELP and non-ELP had significant differences.

Part B

Part B was intended to analyse available police data on customer satisfaction for those victim/survivors assigned to ELPs. The data on customer satisfaction is outsourced to Leicestershire Police. They obtain an indication of customer satisfaction by means of a telephone survey which asks open and closed questions. We were provided with an anonymised sample of ELP victim/survivor customer satisfaction surveys in order to determine if the analysis would be possible. When looking at the data it became clear that the vast majority of victim/survivors who had been surveyed had not had their cases prosecuted as an ELP. According to the police system, their cases had been considered as ELP but not necessarily charged or prosecuted. It was impossible to know if victim/survivors were even aware that an ELP was being considered so it was impossible to take anything meaningful from the data regarding victim satisfaction of ELPs. We therefore decided to focus on victim/survivor interviews to understand this issue.

Stage 2: Part A

Part A reviewed decision-making processes by interviewing 8 CPS prosecutors with experience ELPs. Originally, the objective was to interview 10 CPS prosecutors, however due to work commitments we were only able to interview 8. Semi-structured interviews were conducted and thematically analysed (Clarke & Braun, 2017) using NVIVO. The interviews focussed on the decisions made by CPS solicitors when selecting cases for ELPs as opposed to them sharing information about individual cases.

Interview questions explored how prosecutors decide which cases to take forward, how decisions are communicated to victim/survivor, how victim/survivors' views are taken into consideration, the evidence needed to pursue an ELP, how the cases are received in court (including any difficulties faced by prosecutors), whether victim/survivors are summonsed to court, and prosecutors' views on the overarching benefits and challenges of ELPs.

Part B

Part B involved semi-structured interviews with victim/survivors who had experience of an ELP to explore their views of the process and outcome. The interviews were thematically analysed (Clarke & Braun, 2017) using NVIVO. Victim/survivors were recruited via social media and Third sector organisations in line with the Open University's guidelines on research ethics.

We sought to interview up to 10 victim/survivors whose cases were prosecuted as an ELP to enable us to explore what their experiences were and whether this was an overall positive or negative experience. Our initial approach to recruitment was through Third sector organisations in the study area. Despite some organisations advertising the research, only one participant was recruited in this way. Due to low uptake, we recruited via social media and this resulted in a further 6 interviews. One of the key challenges here related to many victim/survivors not necessarily knowing their cases were considered as an ELP (unless it was charged/prosecuted). This means the potential sample of victim/survivors with experience of an ELP is very small. This is further compounded by the fact victim/survivors are not consulted on the potential use of an ELP (a finding from our research). Furthermore, some victim/survivors were interviewed but they had not experienced an ELP but a non-ELP indicating some confusion from victim/survivors as to the focus of the interviews. These were not included in the analysis.

Interview questions explored how they were informed about the ELP, whether they were asked for their views, the impact of the decision on the victim/survivor (including any safety concerns), the impact of the decision on future reporting to the police, any unintended consequences of the ELP, any

benefits for the victim/survivor of the ELP, what the outcome was of the ELP and their overall views on the use of ELPs in DA case

2. Project Findings

2.1 Outcomes and benefits of the project

The project findings will be discussed according to the key research questions. It is important to note that we were unable to answer research question 2 due to issues with the available data (please see section 1.2 for more detail).

What was the outcome of your project- what did you produce?

What did you find out – good and bad (i.e. if you tried something and it didn't work out we'd really like to know – facing a problem is not a failure)

RQ 1 - Are there particular characteristics involved in cases that are prosecuted through the use of an ELP? How do these compare to DVA cases prosecuted without the use of an ELP?

The below analysis compares the characteristics of 52 ELPs cases to 41 non-ELP cases. Chi square tests were run to explore the association between ELP/non-ELP status and case characteristics of interest (e.g. demographic characteristics of victim/survivor and perpetrator, incident details, criminal justice outcomes). A summary of victim/survivor, perpetrator and case characteristics for each cohort (ELP/non-ELP) is presented in Table 1. There were significant differences found between some characteristics and ELP/non-ELP status and these are discussed further below and are indicated with a * symbol

Table 1 – ELP and Non-ELP case characteristics

Characteristic	ELP % (n)	Non-ELP % (n)
ELP or Non-ELP	44% (41)	56% (52)
Victim/ survivor gender		
Male	50% (7)	50% (7)
Female	57% (45)	43% (34)
Perp gender		
Male	56% (48)	44% (37)
Female	50% (4)	50% (4)
Does victim/survivor have children?		
No	45% (17)	55% (21)
Yes	63% (34)	37% (20)
Does perp. have children?		
No	47% (18)	53% (20)
Yes	59% (30)	41% (21)
Victim/survivor disability or vulnerability?		
No	67% (33)	33% (16)
Yes	53% (19)	47% (17)
Perp. Disability or vulnerability?		
No	60% (28)	40% (19)
Yes	53% (24)	47% (21)
Victim/survivor ethnicity		
White	58% (50)	42% (37)
Non-white	20% (1)	80% (4)
Perp. ethnicity		
White	57% (50)	43% (38)
Non-white	40% (2)	60% (3)

Victim/survivor age-group		
<24yrs	44% (7)	56% (9)
25-34yrs	70% (23)	30% (10)
35-44yrs	67% (14)	33% (7)
>45yrs	35% (8)	65% (15)
Perp. age-group		
<24yrs	54% (7)	46% (6)
25-34yrs	66% (19)*	34% (10)*
35-44yrs	57% (16)	43% (12)
>45yrs	46% (10)*	54% (12)*
Previous DA between victim/survivor and perp.		
No	59% (16)	41% (11)
Yes	56% (35)	44% (28)
Perp. convictions		
No	50% (16)	50% (16)
Yes	59% (36)	41% (25)
Crime type		
Violence	57% (42)	43% (32)
Property crime/damage	44% (4)	56% (5)
Threats/malicious comms.	100% (2)	0% (0)
Breach order	60% (3)	40% (2)
Sexual crime	0% (0)	100% (1)
CC/stalking	50% (1)	50% (1)
Risk level		
Bronze	70% (14)	30% (6)
Silver	60% (18)	40% (12)
Gold	46% (17)	54% (20)
Time btw report and attendance		
<10mins	62% (23)	38% (14)
11-20mins	46% (6)	54% (7)
21-30mins	43% (3)	57% (4)
31mins-1hr	0% (0)	100% (1)
>1hr	50% (4)	50% (4)
Arrest made?		
No	100% (3)	0% (0)
Yes	56% (49)	44% (38)
Voluntary interview	0% (0)	100% (3)
Relationship between Victim/survivor and perp.		
Family	39% (7)	61% (11)
Current intimate partners	66% (37)*	34% (19)*
Ex-Intimate partners	42% (8)	58% (11)
Who reported?		
Victim	47% (27)*	53% (30)*
Other	71% (52)*	29% (40)*
Victim/survivor engagement at report?		
No	79% (38)*	21% (10)*
Yes	33% (14)*	67% (29)*
Negative PNB?		
No	43% (23)*	57% (31)*
Yes	66% (42)*	34% (41)*
Victim/survivor gave statement?		
No	74% (38)*	26% (13)*

Yes	34% (14)*	66% (27)*
Alcohol/drugs		
No	58% (15)	42% (11)
Yes	56% (35)	44% (28)
Children present?		
No	53% (31)	47% (27)
Yes	62% (21)	38% (13)
Victim/survivor retraction statement?		
No	8% (3)*	92% (34)*
Yes	68% (13)*	32% (6)*
Witnesses?		
No	40% (15)*	60% (23)*
Yes	67% (37)*	33% (18)*
Witness statement		
No	41% (21)	59% (30)
Yes	62% (18)	37% (11)
Body Worn Video		
No	48% (11)	52% (12)
Yes	59% (41)	41% (29)
Injuries?		
No	47% (23)	53% (26)
Yes	62% (25)	38% (15)
999 call?		
No	62% (33)	37% (20)
Yes	42% (15)	58% (41)
CCTV?		
No	52% (40)*	48% (37)*
Yes	80% (52)*	20% (3)*
Other evidence?		
No	19% (5)*	81% (21)*
Admission	89% (16)*	11% (2)*
Visual (photos, BWV, texts etc)	50% (9)*	50% (9)*
Police statement	90% (9)*	10% (1)*
Other (forensics, medical, statements)	38% (42)*	62% (5)*
PDM decision?		
NFA	6% (1)*	94% (17)*
Refer to CPS	68% (49)**	32% (23)
CPS decision sought?		
No	0% (0)*	100% (16)*
Yes	69% (51)*	31% (23)*
Outcome of CPS decision?		
NFA	75% (24)	25% (8)
Caution	100% (1)	0% (0)
Charge	63% (26)	37% (15)
Court outcome, if known?		
Withdrawn/dismissed	83% (5)	17% (1)
Conditional discharge/order	67% (6)	22% (3)
Fine	50% (4)	50% (4)
Suspended sentence (often plus additional fine or conditions)	100% (4)	0% (0)
Imprisonment	67% (2)	33% (1)

Conviction but sentence unknown	50% (1)	50% (1)
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Demographic characteristics

Gender

With regard to the gender of the victim/survivor, no significant differences were found between ELP and non-ELP cases. As can be seen in Table 1 above, amongst the ELP sample, most victim/survivors were female (87%) and most perpetrators were male (92%). A similar pattern was found in the non-ELP sample (83% and 90%). In the ELP sample. These figures align with prevalence data on domestic abuse which suggest the majority of victim/survivors are female and perpetrators male (ONS, 2022).

Interestingly, when compared to Merseyside police data for all DA crimes in 2021 and 2022, the percentage of female victim/survivors was 70% while the percentage of male perpetrators was 71%, suggesting a more gendered split in the samples provided to the research team.

Age

In terms of age, this was again consistent between the samples. The average age of victim/survivors in the ELP sample was 36, ranging from 20 through to 77 and the average age of the perpetrator was also 36, ranging from 20 through to 69. In the non-ELP sample, the average age of victim/survivors was 40 with the range from 18 through to 79 and the average age of the perpetrator was 38 with the range from 17 to 75. However, when the age data were categorised into the following, under 24, 25-34, 35-44 and 45 or over, there were some statistically significant differences between ELP and non-ELP cases. In the ELP sample, there were significantly more victim/survivors aged 25-34 (44% vs. 37%, $p < 0.05$) and significantly less aged 45 or over (37% vs. 15%, $p < 0.05$). It is difficult to know why this might be the case but it could be that victim/survivors in the 25-34 category have other vulnerabilities such as children being present, or that the police are less likely to take control from the hands of older victim/survivors. When compared to Merseyside Police demographic data for DA crimes in 2021 and 2022, most victim/survivors of DA fall within the age band of 26-35 which may explain why more ELP cases are found in this category.

Ethnicity

The ethnicity of victim/survivors and suspects was reasonably consistent between ELP and non-ELP cases, but there was slightly more variation in the non-ELP sample. In the ELP sample, 98% of victim/survivors were described as White North European, with 2% described as Asian Other. In the non-ELP sample, 90% were described as White North European, with the remaining 10% split equally between Black Caribbean, Asian, Asian Other and Any other mixed background. These figures align with Merseyside Police data for DA crimes where in 2021 and 2022, 95% of victim/survivors and 93% of suspects were described as White North European.

Although the majority of victim/survivors and suspects in both the ELP and non-ELP samples were white northern Europeans, the non-ELP sample showed more diversity, although none of these findings were significant.

Children

The Domestic Abuse Act 2021 gave more recognition to child victim/survivors of domestic abuse, identifying them as victim/survivors in their own right (CPS, 2022). It was evident in the case files we examined that the 'voice of the child' was being routinely recorded. In terms of the proportion of victim/survivors who had children, this was 63% in the ELP sample, compared to 37% in the non-ELP sample. Compared to suspects with children, this was 59% in the ELP sample and 41% in the non-ELP sample. An important point here is the percentage of cases where a child was present during the incident – this was 62% in the ELP sample, compared to 38% in the non-ELP sample. While not statistically significant, this may suggest that the presence of children is an important factor in the decision to pursue ELP cases. It could also be suggested that the children were considered witnesses, but there were no examples of children providing ABE interviews in the ELP sample (despite some giving the officers an initial account).

Victim/survivor vulnerabilities

It is well-documented that domestic abuse can affect anyone, regardless of their identity or background, but it is also the case that people with disabilities are disproportionately more likely to be a victim/survivor of abuse (ONS, 2022). Research also point to the crossover between domestic abuse and mental health (Humphreys and Thiara, 2003) and domestic abuse during pregnancy (Leneghan et al, 2015). We therefore looked for details within the case files to indicate if victim/survivors had disclosed any of these issues to the police. Our analysis identified just over a third of victim/survivors in both ELP and non-ELP cases had disclosed some form of vulnerability/disability.

In the ELP sample, 19 (53%) victim/survivors had a vulnerability and/or disability noted on the file (this of course relies on the issue being identified and recorded and so this is unlikely to be an accurate figure). These vulnerabilities/disabilities included: cancer (2), fibromyalgia, bi-polar, feeling suicidal (3), drugs, self-harm (3), recently giving birth, pregnancy, a learning difficulty, depression (5), autism and cerebral palsy. In the non-ELP sample, 14 (34%) victim/survivors had a vulnerability/disability recorded, including; bi-polar, personality disorder, being paralysed, non-verbal, MH/depression (2), PTSD, heart problems, not speaking English, autism, pregnancy, deaf, epileptic and ADHD. This suggests vulnerable victim/survivors have a slightly increased chance of the case being prosecuted as an ELP possibly due to an increased sense of severity given the added vulnerability of the victim/survivor.

Perpetrator vulnerabilities

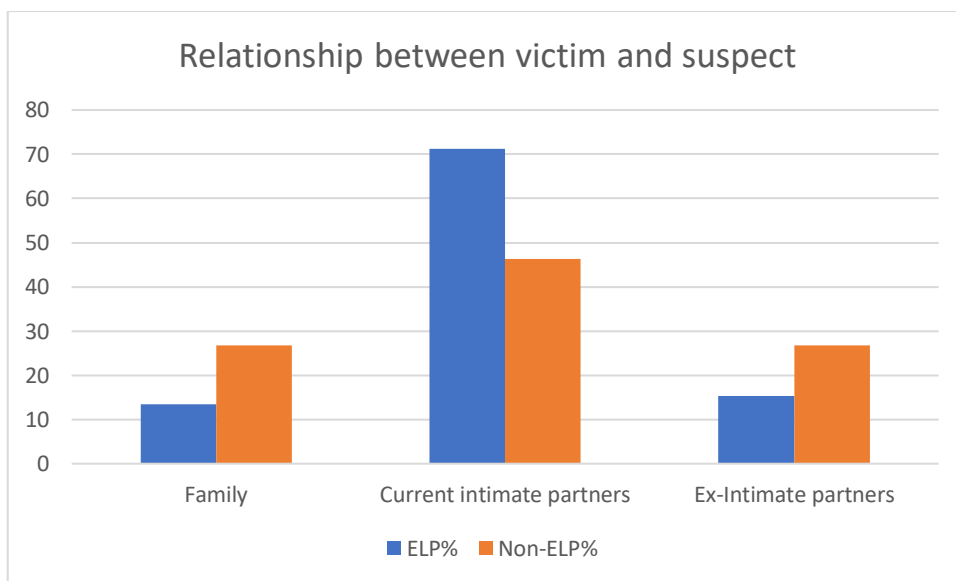
We also looked for similar data about suspects in the case files and found a higher proportion of suspects with a recorded vulnerability/disability in the ELP sample. This possibly reflects the requirement for custody inspectors to complete a risk assessment

when detaining suspects which includes information about their health, mental health and substance use.

In the ELP sample, 24 suspects (53%) had a vulnerability/disability recorded on file, including: self-harm (5), feeling suicidal (7), psychosis, MH/depression (10), and dyslexia. In the non-ELP sample, 21 (51%) suspects had vulnerabilities/disabilities disclosed, including: bipolar, feeling suicidal (5), self-harm (5), PTSD (2), schizophrenic (2), psychotic, MH/depression (7), alcohol addiction (4), cerebral palsy, drug addiction, ADHD (2) and Asperger's.

Nature of relationship

Graph 1 –Relationship between victim/survivor and suspect



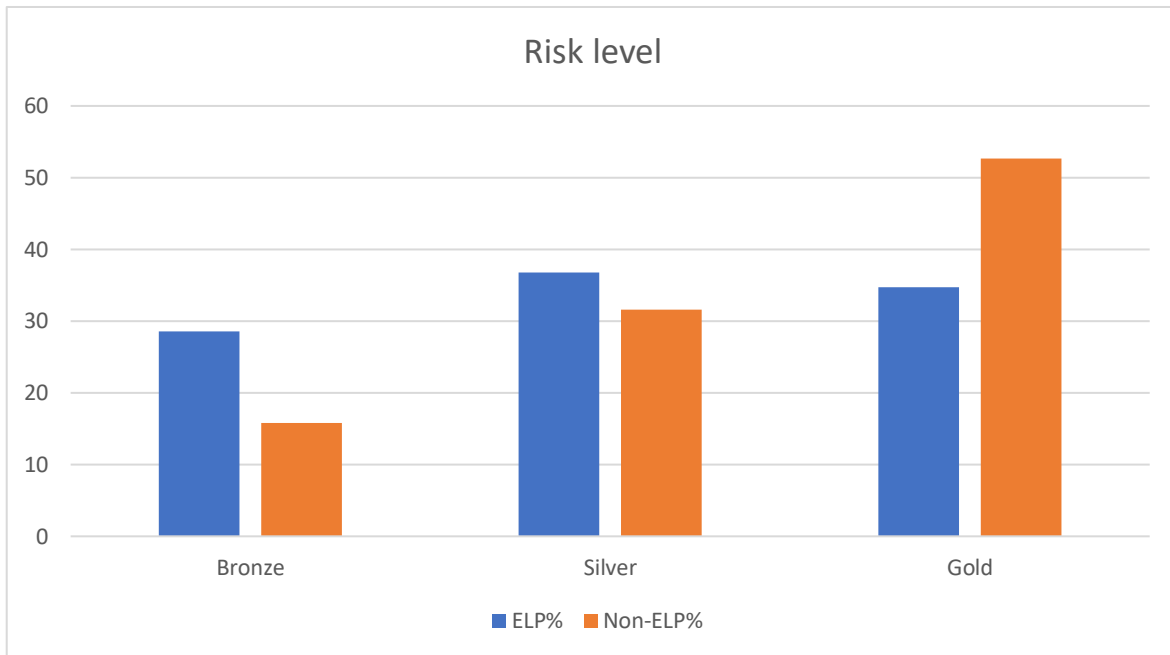
As can be seen in Graph 1, the percentage of cases involving current intimate partners was considerably higher in the ELP sample compared to non-ELP (73% vs. 46%, $p < 0.05$), whereas the percentage of ex-intimate partners and family members was higher in the non-ELP sample although neither of these was statistically significant. This is to be expected as previous research suggests that victim/survivor who are currently in an abusive relationship are less likely to support a criminal justice outcome (Fugate et al, 2005).

Risk

Interestingly, in terms of the risk level, the percentage of cases assessed as bronze or silver was higher in the ELP sample (64% compared to 47%) while the percentage of

those assessed as gold or ‘high’ risk was greater in the non-ELP sample (34% compared to 52%). Interestingly, 6 of those initially graded as silver in the ELP sample were later re-graded as gold (Graph 2 below depicts the final risk rating).

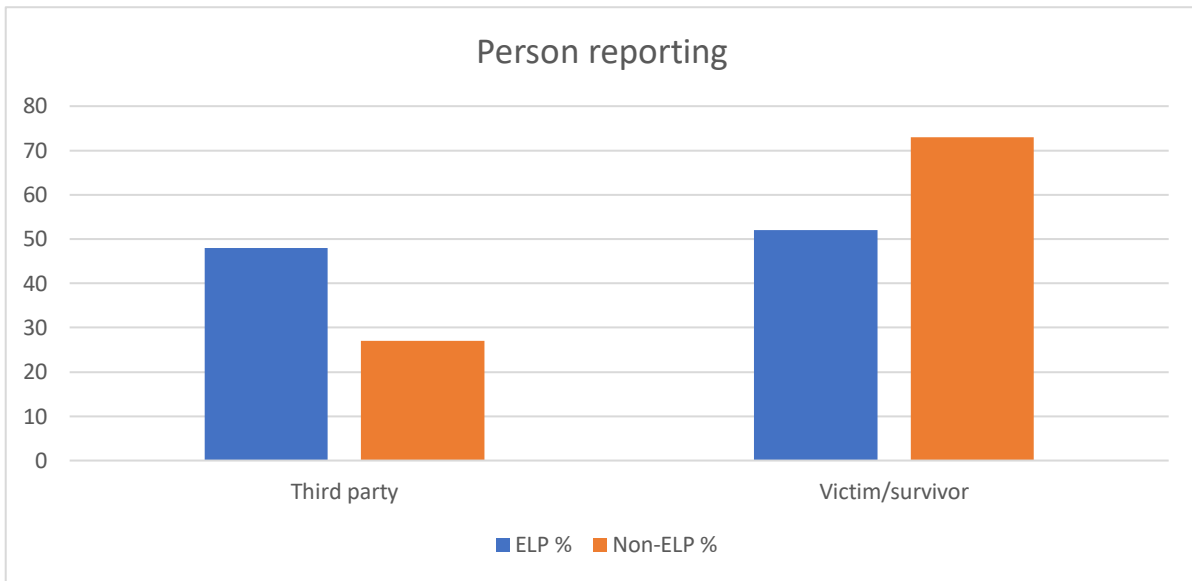
Graph 2 – Initial risk rating of ELP and non-ELP cases



Person reporting

Who reported to the police was significantly associated with likelihood of the cases being classified ELP or non-ELP. Third party reporting increased the likelihood of the case being pursued as an ELP (48% vs. 25%, $p < 0.05$) whereas victim/survivor reporting increased the likelihood of non-ELP (52% vs 75%, $p < 0.05$).

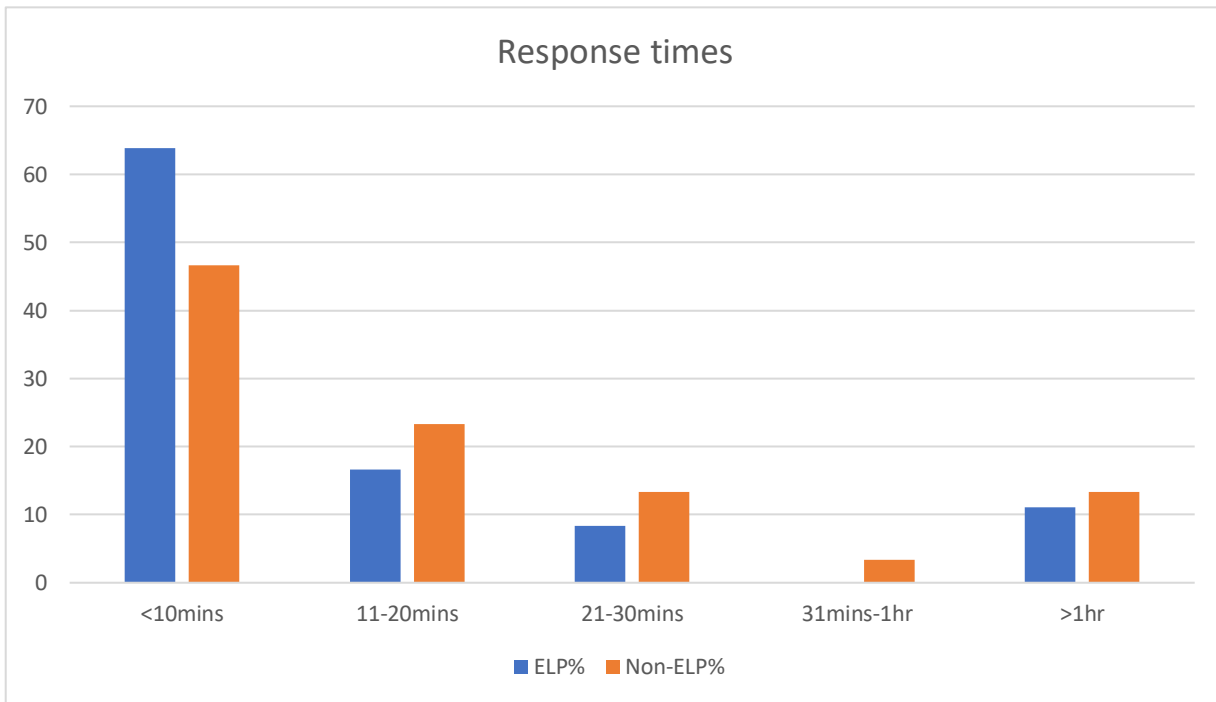
Graph 3 – Person reporting to the police



Response times

We were keen to explore whether the response time had any bearing on whether the case was considered/pursued as an ELP. As can be seen from Graph 4, a greater percentage of ELP cases involved a police response within 10 minutes, although this finding was not statistically significant. The relevance of this may be demonstrated by the number of ELP cases (10) where the attending officer was able to provide a statement as a witness to some or all of the incident. This underlines the importance of police forces having the resources to prioritise calls and attend promptly.

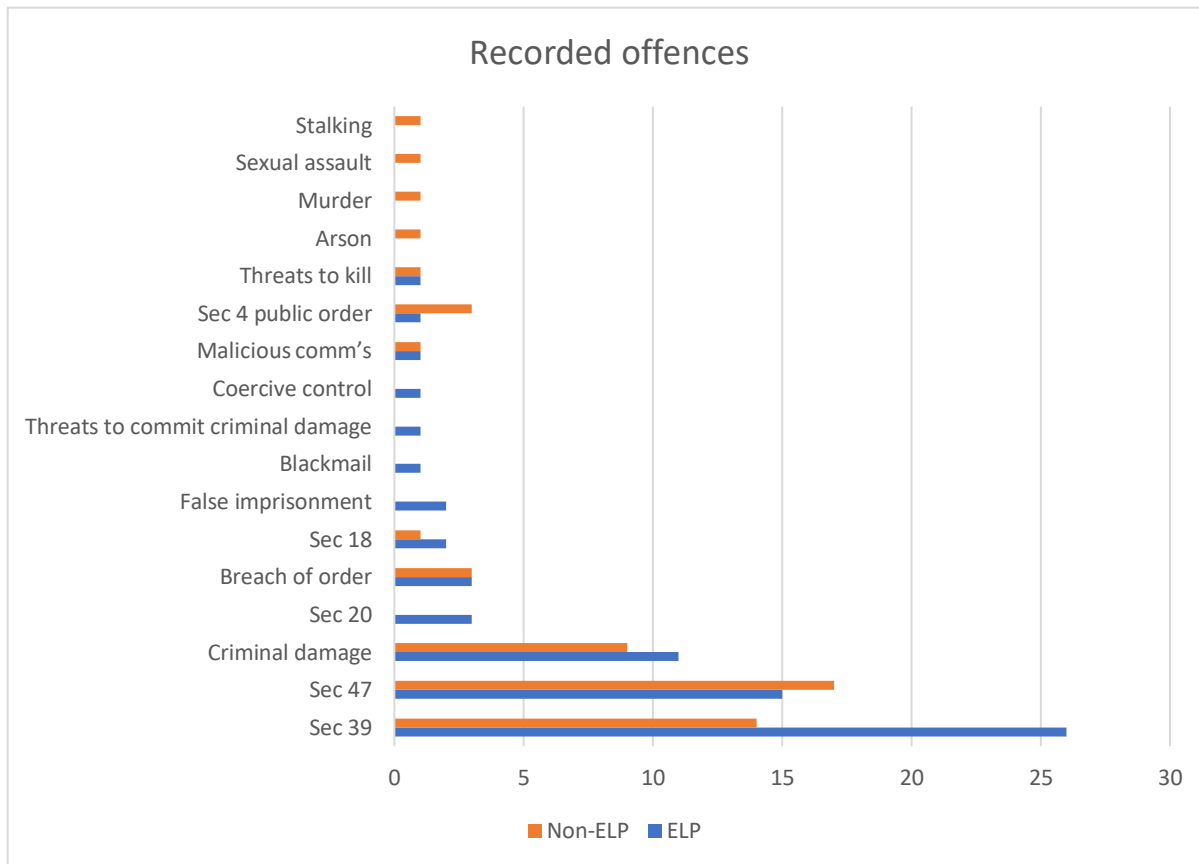
Graph 4 – Police response times (where relevant)



Recorded offences

Graph 5 below shows the crimes recorded in the ELP and non-ELP cases. It is important to note that these are the recorded crimes as opposed to the offence charged by CPS (which may be different). It would appear that ELPs are most often considered/pursued for common assaults, assault occasioning ABH and criminal damage. This pattern is reflected in the non-ELP sample, yet with more serious assaults being the most common. It is also interesting that common assault is the most prevalent offence recorded in the ELP sample given the lack of injury and therefore visible evidence associated with this offence. However, as can be seen in Graphs 6 and 7 below, there were other forms of evidence associated with these cases including witness statements, CCTV, 999 calls, suspect admissions, BWV and officers as witnesses.

Graph 5 – Initial offences recorded



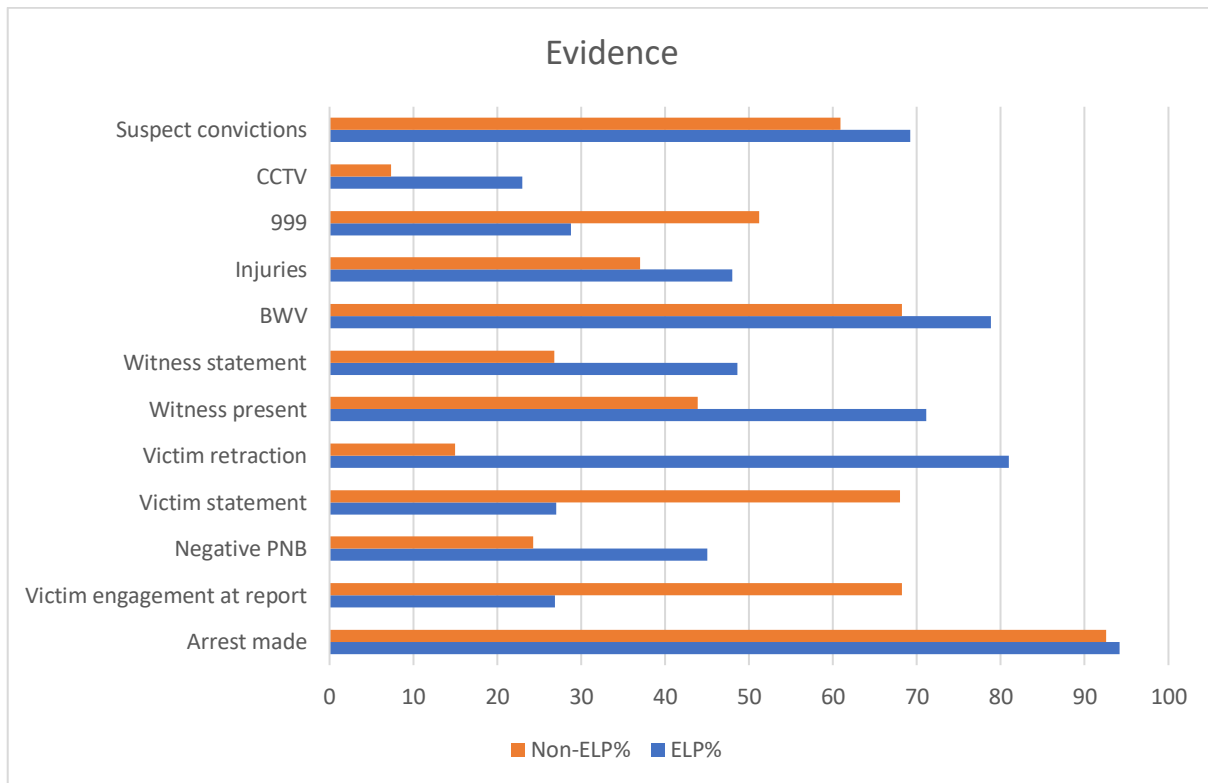
Evidence

The most important factor in determining whether an ELP can be pursued is the availability of corroborating evidence. We analysed the casefiles to determine the types of evidence that were recorded during the investigation and considered if and how this differed between ELP and non-ELP cases.

Graph 6 below suggests there are some material differences between the two samples regarding available evidence and this was confirmed by the use of chi square tests. There were statistically significant differences between ELP and non-ELP cases for the following types of evidence; CCTV (77% ELP compared to 23% non-ELP, $p < 0.05$), victim/survivor engagement at report (27% ELP compared to 74% non-ELP, $p < 0.005$), the victim/survivor giving a statement (27% ELP compared to 68% non-ELP, $p < 0.001$), the victim/survivor making a retraction statement (81% ELP compared to 15% non-ELP, $p < 0.001$), and the presence of an independent witness (71% ELP compared to 44% non-ELP, $p < 0.01$). It is interesting that despite witnesses being present in 71% of ELP cases, only 44% provided a statement to the police, yet this did not prevent the case being considered/pursued as an ELP. While not statistically significant, the use of BWV was clearly very important in the ELP sample and this is possibly connected to the faster response times in the ELP sample with more officers witnessing some of all of an

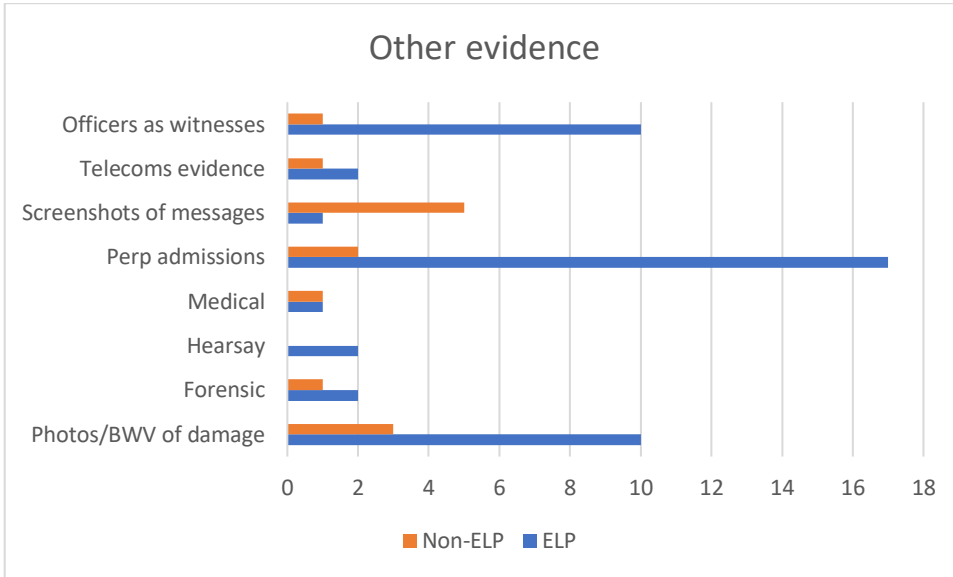
incident, yet the high proportion of BWV in the non-ELP sample suggests officers are routinely making use of this evidence.

Graph 6 –Common forms of evidence



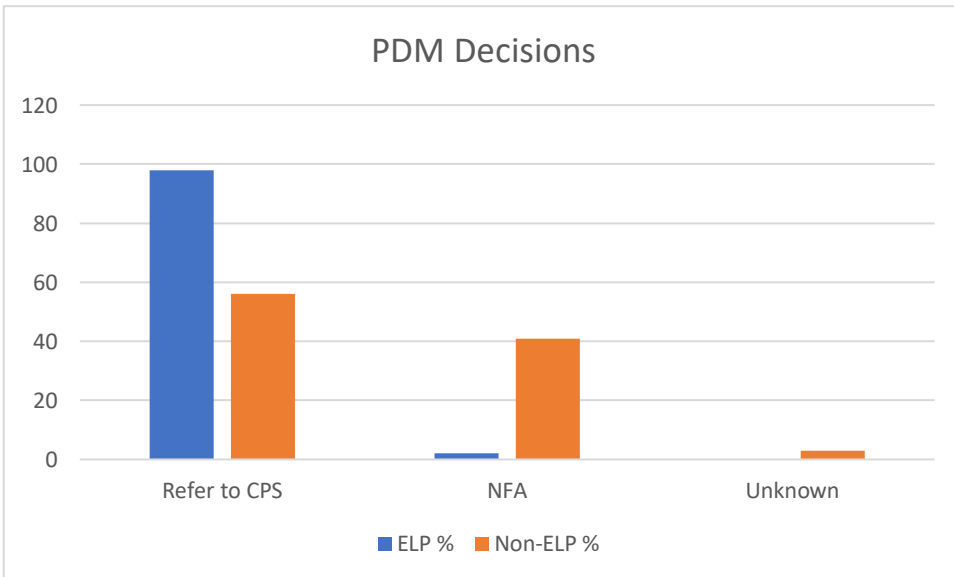
In addition to the most common forms of evidence discussed above, there were some other forms of evidence noted in the casefiles (Graph 7 below). Interestingly in the ELP sample, all cases had additional forms of evidence recorded compared to 59% in the non-ELP sample (this was statistically significant at the $p < 0.001$ level). Breakdown of the different types of corroborating evidence suggests that some may be more important to ELPs than others. Admission by the suspect was more common in ELP cases than non-ELPs (43% vs. 12%, $p < 0.01$), as was a statement provided by police (24% vs 6%, $p < 0.01$). On the other hand, the presence of photographic evidence (including photographs of injuries, screenshots of text messages etc) (53% vs. 24%, $p < 0.01$) or other forms of evidence (such as forensics and medical reports) (29% vs. 8%, $p < 0.01$) were more often associated with non-ELP cases. This may be explained by victim/survivors who are supportive of prosecution being more willing to provide corroborating evidence to the police e.g. photographs of injuries, emails and text messages, or medical records

Graph 7 – Other forms of evidence



PDM decisions

Graph 8 – Police Decision Maker decisions



A Police Decision Maker (PDM) plays a gateway keeping role for those files officers request for CPS consideration. The PDM provides an overview of the case in terms of the relevant strengths and weaknesses and is responsible for deciding whether there is sufficient evidence to submit the case for CPS consideration. There were some interesting (and statistically significant) differences in PDM decisions between the ELP and non-ELP samples. The PDM authorised a referral to CPS in all but one of the ELP cases (98%), whereas in the non-ELP sample this was 65%, with the PDM deciding to

NFA 35% at this point (this difference was statistically significant at the $p < 0.001$ level). This is perhaps not surprising given the levels of corroborating evidence contained in the ELP cases (compared to non-ELP), yet only 6 (15%) victim/survivors in the non-ELP sample withdrew their statement. This suggests that cases that were more reliant on a victim/survivor's evidence were more likely to be NFA'd before reaching the CPS. The above data also raises a question about at which point a case is considered for an ELP. Nearly three quarters (73%) of victim/survivors in the ELP sample did not support a police investigation at the scene and so the requirement to obtain corroborating evidence was apparent. In contrast, in the non-ELP sample, 74% of victim/survivors supported police involvement with all but one making a formal statement, and despite other forms of evidence being available in those cases, the PDM took the decision to NFA 41% of the non-ELP rather than referring them to CPS.

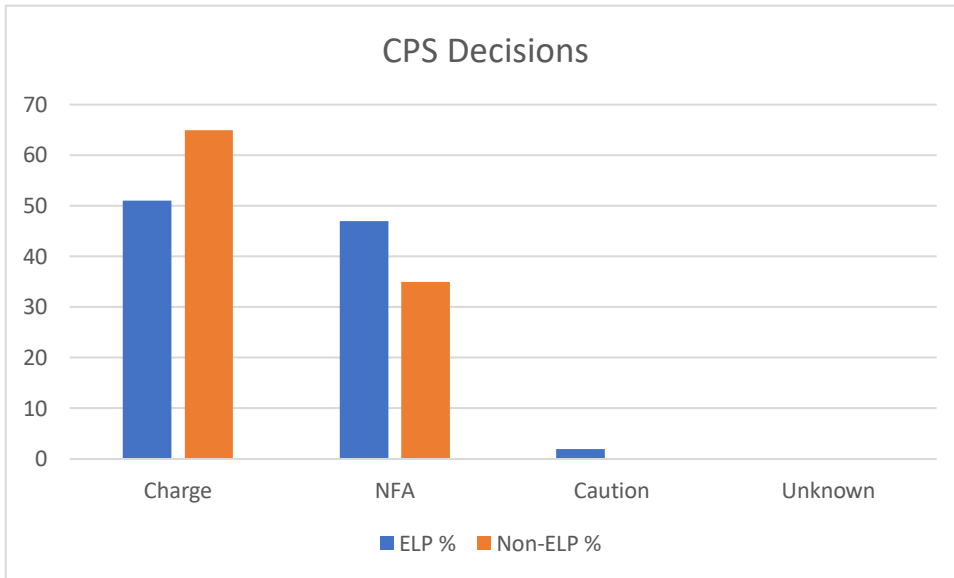
Analysis of the PDM decision making on when to NFA a case revealed this decision was taken based on the following:

- Lack of corroborating evidence such as CCTV and photographs of injuries
- Victim/survivor not willing to attend court
- Perpetrator denies the offence
- No previous history
- Victim/survivor does not have any injuries
- One word against the other
- Statements obtained are not sufficiently detailed
- ELP condition of hearsay not achieved

CPS decisions

However, when this is compared to CPS decisions for the two samples, it is clear that the percentage charged by CPS is higher in the non-ELP sample (65% compared to 51%), while the NFA rate is 47% in the ELP sample and 35% for non-ELP cases. In seeking to understand the difference between PDM decisions and CPS decisions, particularly for ELP cases, our qualitative analysis of interviews with CPS prosecutors identified some possible explanations regarding hearsay evidence (see below).

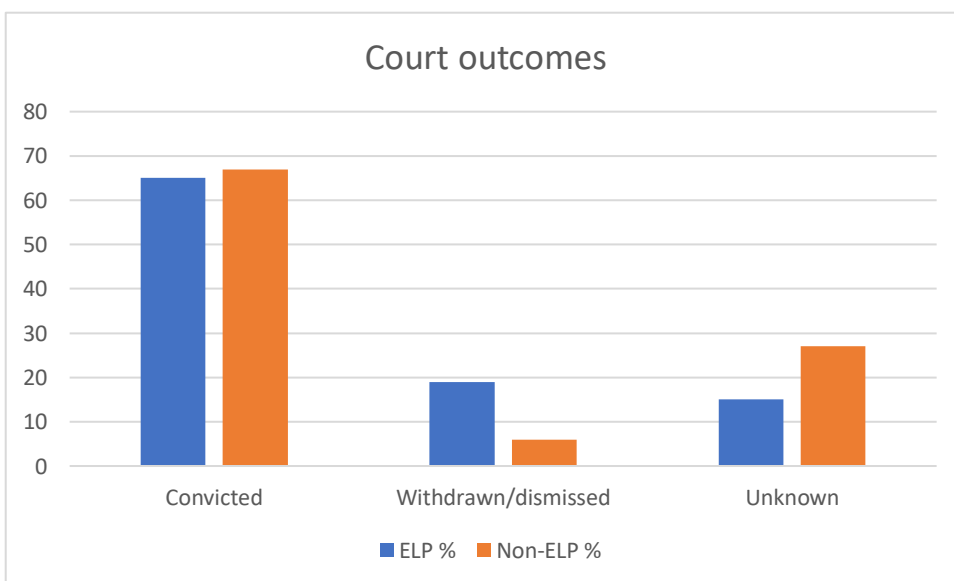
Graph 9 – CPS decisions



Court outcomes

Despite differences in the charging rate between ELP and non-ELP cases, the conviction rate at court was relatively similar (65% ELP compared to 67% non-ELP). This figure is below the national conviction rate for all domestic abuse cases in England and Wales which currently sits at 76.4% (ONS, 2022) but there were some cases with unknown outcomes which may have affected this.

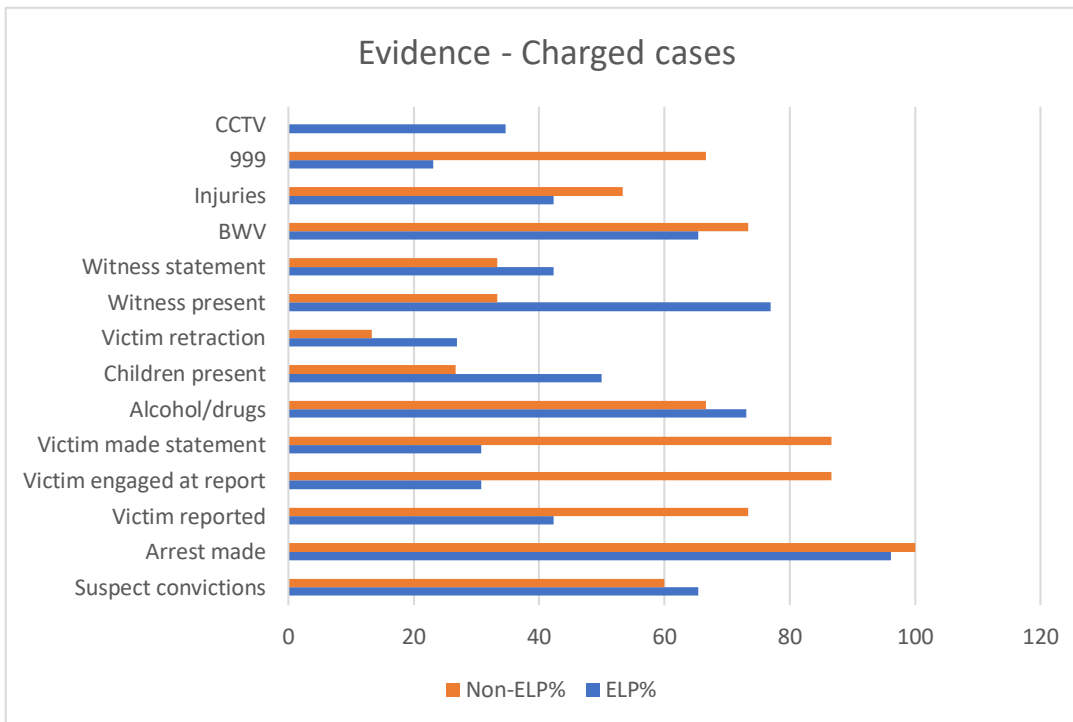
Graph 10 – Court outcomes



Characteristics of charged cases

Given the dearth of research regarding ELPs, it is helpful to consider the data on cases that were charged by CPS in order to understand their characteristics and whether this differs between ELP and non-ELP cases.

Graph 11 – Evidence in charged ELP cases

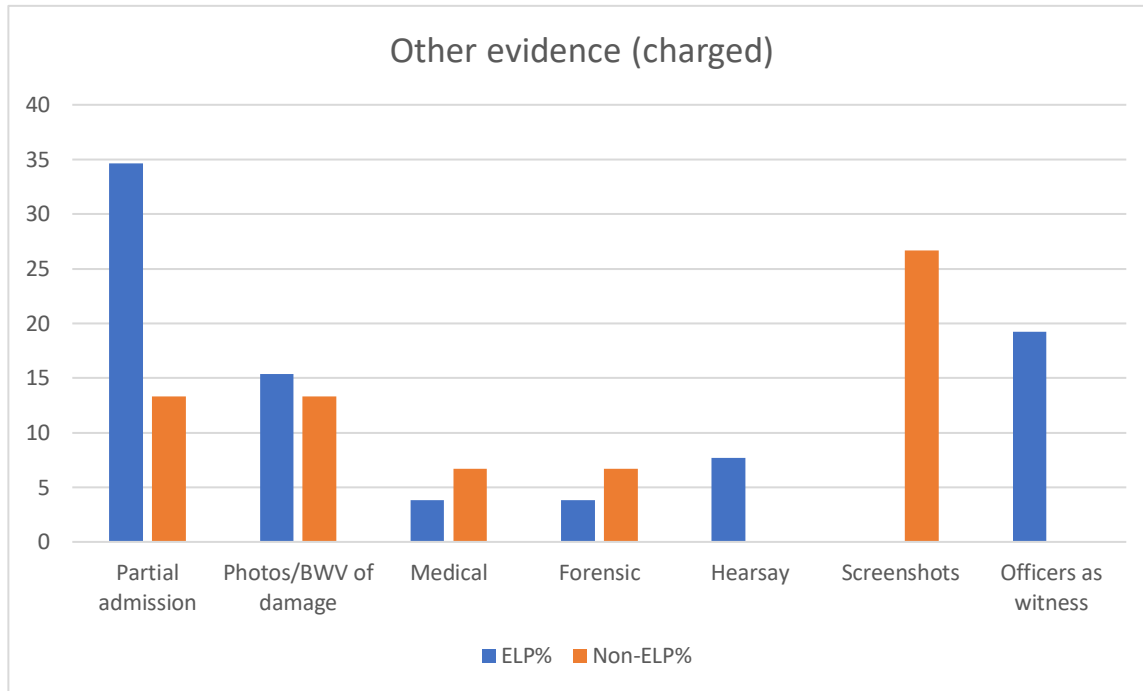


The above graph depicts some key differences between ELP and non-ELP cases that were charged. It is perhaps not surprising that in the non-ELP sample the fact the victim/survivor reported, engaged at report and made a statement were more prevalent (compared to ELP). In contrast, the presence of a witness was much more likely in the ELP sample, even if a minority of them provided a statement. CCTV evidence was also a key aspect of ELP cases that were charged, yet this was not present in any of the non-ELP cases.

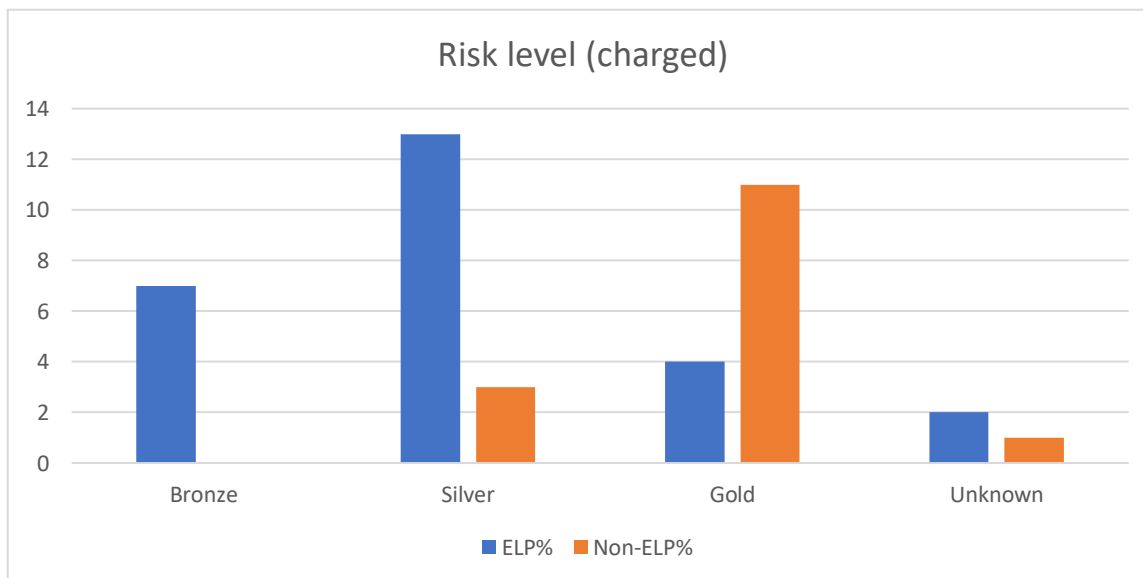
Other evidence

There were also other forms of evidence identified in the cases that were charged. As can be seen in Graph 12 below, suspect admissions in interview, hearsay evidence and statements from officers as witnesses were all more prevalent in the ELP sample. Conversely, medical evidence, forensic evidence and screenshots of messages were more prevalent in the non-ELP sample.

Graph 12 – Other evidence in charged ELP cases



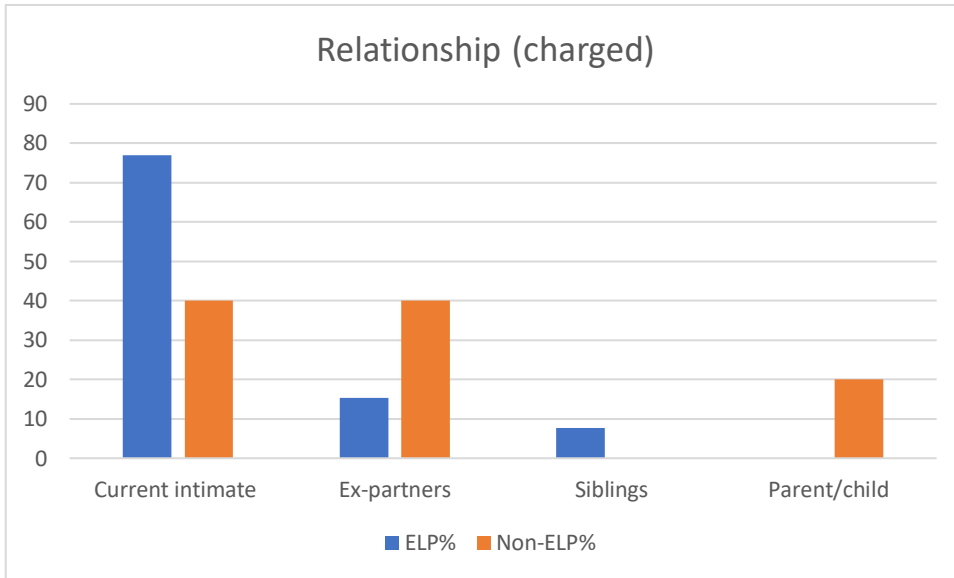
Graph 13 - Risk level in charged ELP cases



Graph 13 above depicts a clear difference between ELP and non-ELP cases regarding risk level. In the ELP sample a number of charged cases had been assessed as bronze risk, with the majority assessed as silver. In contrast, the non-ELP sample did not include any assessed as bronze with the majority assessed as gold. This is potentially explained by a number of reasons. Firstly, the fact that non-ELP cases rely heavily on the cooperation of the victim/survivor, but the majority of victim/survivors assessed as bronze and silver are unlikely to receive specialist support (such as through an IDVA). This can have a negative impact on a victim/survivors decision to keep supporting a criminal investigation and may therefore explain why it is mostly those who qualify for

IDVA support that result in charge (where the case is reliant on the victim/survivor’s testimony). An alternative explanation is that when the risk is high, victim/survivors are more likely to remain supportive of the criminal prosecution.

Graph 14 – Relationship between victim/survivor and suspect in charged ELP cases



It is interesting to note that the nature of the relationship between victim/survivor and suspect differs between the ELP and non-ELP sample. This reflects the data presented in Graph 14 above and suggests that ELPs are being used to prosecute offenders where the victim/survivors remains in a relationship with the perpetrator.

Summary and Key messages from casefile data

- ELPs appear to be used more commonly for lower risk DA (bronze and silver) and for lower level assaults (common assault).
- Police decision makers were significantly more likely to refer ELP cases to the CPS for a charging decision than non-ELP cases (p<0.001)
- ELP cases were less likely to be charged by CPS than non-ELP cases.
- Police attendance was faster in more ELP cases which may have increased the chances of the attending officers witnessing some or all of the incident.
- The rate of conviction between ELP and non-ELP was virtually identical.
- ELPs were significantly more likely when the victim/survivor and suspect were in a current relationship, compared to non-ELP cases which were more common with ex-partners (p<0.001)
- A substantial proportion of victim/survivors and suspects disclosed vulnerabilities or disabilities during the course of the investigation.
- Certain types of evidence were statistically more prevalent in ELP cases, including a third party calling police, CCTV, independent witnesses, and a negative PNB (p<0.001).

- In contrast, the victim/survivor engaging at initial report, the victim/survivor calling police themselves and the victim/survivor making a statement were statistically more prevalent in non-ELP cases ($p < 0.001$).
- Other forms of evidence statistically more prevalent in ELP cases included, suspect admissions and statements from officers as witnesses ($p < 0.001$).

CPS Interviews

RQ 1 - Are there particular characteristics involved in cases that are prosecuted through the use of an ELP? How do these compare to DVA cases prosecuted without the use of an ELP?

In addition to analysing the casefiles, we also asked prosecutors about the characteristics of ELPs as very little is known about the types of cases that are considered/pursued. It became clear from interviews with prosecutors that there are different types of ELPs. Firstly, there are cases in which a victim/survivor provides an initial account but does not provide a statement. In these cases, if there is corroborating evidence, possibly due to an independent witness, CCTV or photographs of injury or damage, these cases were seen as relatively straightforward to pursue by participants:

Probably the 999 call and the body cam footage of the scene, or CCTV absolutely. The camera never lies. So yes, if you've got CCTV showing the assault, I think that's probably the best evidence you can get. The 999 with the first account, or the body cam with the first account. They're generally the best things you've got. (CPS 06)

So we might have some evidence there. So we could have the 999 call, we could have body worn footage. You know, we could have pictures of injuries. And of course the evidence of the officers of what they see when they attended the scene. If they see a room that's smashed up, if they see a victim clearly in distress with fresh injuries coming on then that's all evidence that the officer can give in court, happy days, fantastic. (CPS 01)

In these cases, the importance of officers as evidence gatherers was stressed particularly in capturing the more complex aspects of evidence such as the victim/survivor's emotional state:

I would rather get as much as in, I'd rather them write a story about what they saw that's really descriptive about how they felt when they went in. You know, get the facts in of course, put everything, how they felt, how they thought somebody was, etc. Because we can read that, if that's deemed not admissible, we'll just redact it out, we'll just take it out. You know, the rule of thumb is this, it's got to be this, hasn't it? Put as much in as you can, and we'll redact out if we can't use it. If you don't put it in, we'll never know it was there and we'll never use it. You need to tell us as much as possible. (CPS 02)

Then there are cases where a victim/survivor provides an account but later withdraws their statement and explains they are not willing to attend court. In these cases, it depends on the reason; if the reason cited is fear, and the police can provide evidence that the victim/survivor is in fear of anything related to the court hearing, then they can apply to the court to have the victim/survivor's statement/evidence read in court without the need for cross-examination – known as 'hearsay' evidence. However, as the CPS participants explained, there are very strict rules regarding the admission of hearsay evidence:

It is no good just having a little bit of body worn, and an upset victim who gives the first account of it, and then a police officer's notebook which says, I just don't want to prosecute them, I don't want to go to court for my own personal reasons. And actually, you might have somebody who's upset on the initial account, but actually we can't demonstrate fear beyond a reasonable doubt as being the causal reason why they don't want to come to court...and there is lots of case law to the effect that the reluctance of a witness to give evidence in court is not a ground to admit their evidence using one of the exceptions, hearsay. (CPS, 10)

Participants also described the possibility of using res gestae evidence where a victim/survivor's account (through a 999 call, body-worn footage or comments made to an officer) can be offered in court, but only in cases where the account was given very shortly after the event happened and the victim/survivor was in such a state of distress that they could not have concocted or distorted their account. Participants explained that while this type of evidence may be available in domestic abuse cases, prosecutors still need to satisfy the court that the victim/survivor is not providing the account themselves due to fear:

So, but some cases the police will send them through to us and we've got a victim but the police will say we've got the 999 call and we've got the body worn footage and she's very distressed. She's clearly very emotionally overpowered. So res gestae, it's fantastic. We can satisfy that element of the test. What we can't satisfy is why she's not in court. You know, unless we can satisfy that res gestae isn't something that can be brought in. (CPS 01)

If prosecutors do not feel they can evidence fear sufficiently to make an application for hearsay, then they must decide whether to summons the victim/survivor to court. However, all of the participants who discussed the use of witness summonses felt they had to be considered very carefully so as not to further traumatise the victim/survivor.

So assault by beating or common assault, you don't usually do it because it is quite a draconian step to, especially if you know that on the back of the summons, if they don't attend court, you're going to send the police out to pick them up. So it is quite a heavy-handed way of dealing with it, so it's not something that we bandy about much. Significantly more if I see a review that's considering a summons, significantly more times than not they don't. It's argued that a summons isn't appropriate. (CPS 08)

The above accounts suggest there are numerous factors to be considered by prosecutors who are making decisions about ELPs. There are strict rules they must follow in order to admit hearsay or *res gestae* evidence in court and in the experience of some participants, meeting the necessary threshold was rare:

I have never, in my personal experience I have never seen one that's proceeded on the hearsay provision, rather than a res gestae one. The barrier to that is that you then have evidence of fear...And obviously if they're not there to say they're afraid, you're already in a bit of difficulty. So you need to do a lot of, well we need the police to have done a lot of groundwork to lay the foundations for that and whether or not it's just that I've been unlucky, for want of a better term, in the cases that I've had personal experience of, or whether routinely these aren't being dealt with as we would like them to be, or we needed to be by police. I don't know, but they're rare, non-existent in my experience. (CPS 08)

I've never done a trial on a res gestae basis and when I've had other cases where we've considered that, we haven't got the right criteria to actually get that evidence in. So that side of it is quite, I've never done a prosecution in court based purely on res gestae. (CPS 07)

However, this was not the case for all participants, which might suggest different approaches between prosecutors. The below quote is from a prosecutor with many years of experience who had specialised in domestic abuse:

I've done quite a lot and I've quite often managed to get a conviction (CPS 06).

The final issue regarding the characteristics of ELP cases discussed during interviews with prosecutors relates to the types of offences. It was noted by some that offences such as coercive control, stalking and harassment are very difficult, if not impossible to charge without the victim/survivor due to the requirement to evidence 'alarm or distress'. As the below quotes explain:

I mean the issue with harassment and stalking is that you've got to be able to show harassment alarm or distress. Without a victim how are you showing that? You can't. If they're not going to provide a statement, we can show that it's been sent or, you know, that so many messages have been sent, but we can't prove what the effect on the victim is to show that harassment, alarm or distress has been caused. (CPS 01)

So it's difficult in cases like stalking and harassment, coercive and controlling behaviour, where you actually need the principle evidence to say what the effect of the offending behaviour was upon them. We've had this discussion often about how, with third party only evidence, would you prove that that victim was caused anxiety or distress in an admissible way? (CPS, 10)

This was reflected in the casefile analysis, with no cases of harassment, stalking or coercive control in the ELP sample resulting in a charge.

CPS Interviews

RQ2 - What are the benefits and challenges of using ELPs?

Benefits of ELPs

When discussing the benefits and challenges of ELPs with prosecutors, all interviewees focussed more on the challenges, yet there were some recognised benefits. One of the key benefits described related to the ability to protect victim/survivors:

Well, the advantages are that we get convictions. We convict people where victims have been unable to support the prosecution, therefore protecting the victims. That's a massive advantage, isn't it, and it's a real good tool to protect them. (CPS, 02)

This quote suggests that a criminal conviction can help to protect victim/survivors, however, as can be seen in page 44 for some victim/survivors, convicting the offender may actually make them less safe.

It was also suggested that ELPs protect victim/survivors from the court process. It is often the case that victim/survivors have numerous concerns about attending court, including fear of the perpetrator, fear of repercussions and fear of being cross-examined (Robinson and Cook, 2006). Indeed, research has demonstrated that the court process can lead to secondary victimisation in cases of domestic abuse and sexual violence (Wemmers, 2013). The use of ELPs to avoid this potentially re-traumatising process may have benefits, but related to the points raised on page 45, if the police and/or prosecutors are not asking victim/survivors about the potential impact on them of an ELP, then this benefit may not be realised.

Finally, benefits to wider society and the potential for rehabilitation were also cited by one of the participants:

...and I suppose securing a conviction against the individual perhaps helps society, and perhaps helps the victim in the long run if they're forced to undergo some sort of rehabilitation, so usually positive. (CPS, 09)

However, this raises the question as to where the balance should lie between the needs of victim/survivors and the wider benefits of prosecuting domestic abuse perpetrators. If pursuing an ELP is going to have a detrimental impact on a victim/survivor, does that undermine any wider positive impact?

Challenges of prosecuting ELPs

Hearsay evidence

Participants were unanimous in their description of the first challenge – evidencing fear in order to admit hearsay evidence. As one of the participants explained:

So if there's, for the res gestae principles for introducing the hearsay evidence we've got to show that there's, one of the hearsay criteria is they are in fear to provide evidence. You know, they're strict. (CPS 01)

Some of the participants explained that in order to meet the threshold for submitting hearsay evidence, prosecutors needed to be able to demonstrate to the court that they (and the police) had made every effort to get the victim/survivor to court:

The other difficulty was that there'd been no real effort to get her to court. The police had made appointments with her to take statements, but never managed to do so. No statement from the officer...If he had provided a statement detailing the efforts he'd gone to get her statement, what support she'd been offered, what special measures, it's something that we could have used...Prosecution need to be able to show what efforts have been made to get the victim there, not just rely on the res gestae over hearsay. Without that statement from the officer, I couldn't do that. (CPS 06)

Related to this point, some participants explained that in order to meet the requirements for hearsay evidence due to fear, there needed to be ongoing dialogue with the victim/survivor, particularly in cases where the incident had happened some time ago:

You need to have ongoing attempts to get that victim onboard or get statements from an officer in relation to the level of fear that she has. You can't just say oh there's a statement from an officer in January saying she's in fear, and then the trial's in May, and they just rock up to court and say oh we've got a statement, the officer says she's in fear, she's not here. That wouldn't be enough. There would be an ongoing process. It would be work intensive on one and all parties to show that you've exhausted all avenues. Because at the end of the day it's the preference of the court to have a witness evidence, a complainant's evidence heard in a court, as opposed to the account of a third party from a statement for obvious reasons. (CPS 09)

However, we know from existing research that contact between police officers and victim/survivors can be sporadic and given the demands on policing in the current climate, being able to maintain this ongoing dialogue is likely to be challenging.

Retraction statements

Connected to the issue of hearsay applications, there were some challenges discussed by participants that related to the information provided in retraction statements. Across both ELP and non-ELP cases, 19 victim/survivors withdrew their statements at some point during the investigation. Given the requirement to evidence fear for the submission of hearsay evidence, prosecutors explained how important it was that retraction statements explore the reasons behind the victim/survivor's decision in sufficient detail, yet in their experience this was rarely done:

And when you get a retraction statement usually all the ones I've seen are saying I've not been coerced, we just want to get the family back together, you know, or the relationship's over, I've moved on now. And so we've got nothing to show fear. You know, we've got nothing there. (CPS 01)

The importance of retraction statements in domestic abuse cases has been explored by Hopkins (2023) who suggests the low word count in analysis of retraction statements

are indicative of officers missing the opportunity to engage with victim/survivors and obtain a more insightful account of why they would like to retract their statement. Indeed, in the cases we analysed they were often brief and followed a very similar structure. This point was acknowledged by one participant who commented on the fact that police statements appeared to follow a template rather than being tailored to the specifics of each case:

...because the police are often using, I've got no evidence of this, but they all look very similar...They've all got the same patterns. If I'm a judge, or if I was on the bench, or you were making a decision, you're looking at them and going how much have you added into this statement, and how much was already written by either another officer who attended, or from a previous incident, because they're all very similar....And I get that, why they are, but we really need to get into that position of just telling the story, telling people exactly what they saw and have witnessed. Because like I say at the end of the day if someone decides it's no good, we'll just redact it out, it'll just get taken out. (CPS 02)

In line with the recommendations of Hopkins (2023), some participants discussed how officers could use the process of obtaining a retraction statement to facilitate an application for hearsay evidence:

So I suppose my dream scenario for pursuing a hearsay application would be the police have attended that property in person with body worn camera on and recorded the victim saying, I'm absolutely terrified, I am not prepared to do this prosecution. You've got the evidence of the victim there and that police officer can then come to court to give evidence and play that body worn footage, so the judge or the magistrates, whoever, can see for themselves how terrified or not that victim is. That's kind of the gold standard of what we would like to be presenting in court. (CPS 08)

And what would be very helpful, is that not only you get a retraction statement from the victim, but you get a statement from the officer who takes the retraction statement. And again, not to just regurgitate what the contents of the retraction statement is, but to just again a bit more to her demeanour. (CPS 03)

However, there was an important point raised by one prosecutor who felt that ELPs could be undermined by the existence of a retraction statement:

I think the problem you've got with retraction statements is the moment you've got a retraction statement, you're putting two contradictory statements into the court, the court are very unlikely to convict without the victim, to hear from the victim, and sort of gauge that opinion. So you would struggle with an evidence-led prosecution with a retraction statement. (CPS 02)

Yet this view was not shared by others who suggested that a retraction statement due to fear would not undermine the case.

Self-defence

A further challenge in prosecuting ELP cases described by some of the participants relates to the issue of self-defence. As the below quote explains, if the defendant claims they were acting in self-defence but there is no account directly from the victim/survivor to contradict this and no corroborating evidence, then the prosecution cannot proceed:

Now if the defendant raises self-defence, we have nothing to rebut that. So nine times out of ten if self-defence is raised and we don't have a victim who's going to give evidence, or we don't have any hard evidence in the form of CCTV, maybe someone's been voice recording and you can hear that they are clearly being assaulted and not the aggressor in the situation, if we don't have that, there's nothing we have to rebut that, therefore there's no reasonable prospect of conviction, and it would have to be discontinued or, no, NFA'd. (CPS, 01)

We also found evidence of this in some of the casefiles where CPS could not refute the claim of self-defence resulting in the decision to NFA:

I have no doubt that what she tells the officer is a true and credible account, particularly given the defendants previous history of violence against her. However we have no evidence to put before the court to provide a realistic prospect of conviction without her evidence. The def has effectively raised self-defence at the doorstep when he is arrested. And without her evidence we have nothing to rebut this, he has also suffered injury which could be deemed supportive of his account. (ELP 13)

Victim/survivor interviews

RQ3- What are victim/survivors' lived experiences of ELPs?

Victim/survivors	Offences	Outcomes	Victim/3 rd party reporting
Female, 32, white Asian	S18 assault	S47 assault	3 rd party
Female, 63, white British	Stalking	Case dropped. Restraining order	Victim/survivor
Male, British, 25	S 39 assault	Court- outcome unknown	3 rd party
Female, British, refused	Rape and assault	Court-outcome unknown, restraining order	Victim/survivor
Female, British, 27	S18 assault	S47 assault	Victim/survivor
Female, white British, 45	S39 assault	NFA	Victim/survivor
Female, white British	S47 assault, causing sexual activity without consent	NFA	Third party

Table 2: Overview of victim/survivor and case characteristics

Conflict between victim/survivors' wishes and police understanding:

Victim/survivor disengagement is a common occurrence in the policing of DA (McPhee et al, 2021). In examining the interaction between procedural justice in terms of the victim/survivor's perception of the police's response, this has shown to have a significant effect upon the decision to remain engage where this often leads to victim/survivor disengagement (Robinson & Stroshine, 2004). Feeling believed and listened to has been shown to be a key factor in victim/survivors' satisfaction with police responses (Williamson, 2019).

Victim/survivors reported a general lack of understanding of their needs at the point of contacting the police, particularly around their reluctance to engage with a prosecution where victim/survivors felt police were seeing things from in a way that differed from the victim/survivors' views and highlighted a need for officers to be more aware of the difficulty for the victim/survivor making the decision to engage initially.

They couldn't understand the reasons why I didn't want to go against him in court and stuff like that. They were like, oh if you make a statement and stuff. They've already done all the damage and left and do you know what I mean. The police just don't see it as like. Basically, you end up begging them to come out, do you

know what I mean, because I think they don't sometimes see it from a different perspective (P01).

Victim/survivors also referred to police's inability to recognise the victim/survivors' vulnerable emotional state and how this impacted upon their ability to think rationally in order to weigh up the pros and cons of formally engaging with the police and making demands upon the victim/survivors that they felt unable to complete due to the effect their abuse had had upon them.

I suffered from dissociation disorder, every single thing, if you look on the Mind website, all those I have had. I understand it, I understood it at the time, because it was my brain protecting itself, but at the time it was like it's the fucking police's fault! I've still got the sheet of paper, I did ring, I did have help, the Samaritans I never rang because they were my ultimate last port of call. So I needed to have that as a backup, I wanted to live, but I couldn't see it. And the police wanted a timeline of my relationship with this man (P05).

For some victim/survivors, they felt manipulated into the provision of their statement due to the promise that their statement would enable them to seek help with their perpetrator.

Then the police came round to take a statement from me. Initially, I was just like I don't want to criminalise my son, he needs support. This is a trauma reaction, he witnessed domestic violence when he was a baby, he can't remember any of it, he's had a difficult relationship with his father from dot, and I've become a proxy for all of that. The police officer was basically, well if you don't make a statement, then there's nothing that can be done to help him. The only way he's going to get help is if you make a statement at this moment in time. So I was just like, after a sleepless night and just been crying all night and not knowing what to do, I just eventually did what I thought was best to get my son the help that he needed (P11).

This sense of manipulation and loss of control was further compounded by the realisation that the case would proceed without them even following their retraction statement.

But never at any point did I think it was going to end up going to the CPS, and that was just a complete, once it was out of my hands, once I've given that statement, it was that realisation of oh fuck. I've actually lost control of this situation now, because the police are actually going to do what the police do. I

wouldn't have said anything. I would not have said a single thing. I would have just said thanks very much but actually I don't need to give a statement (P11).

A further conflict between the victim/survivors and the police was around the timing of the statement given the victim/survivors' emotional states after the incident has recently occurred where victim/survivors felt a sense of being pushed into the provision of information and their formal engagement. Reflecting on this, victim/survivors felt officers did not consider their emotional state and offer them to attend once further time had elapsed between the incident and the official report.

So xxx said you need to come in and give a statement. I did. I gave a statement. I'd not slept, probably wasn't in the right state to give a statement because I hadn't slept properly for more than an hour or two for a good, I don't know, maybe six, seven days by this point. It was just too long. So even though they were very, very good and they were very, had to push for a prosecution with my ex-partner, which I understand, the injuries were horrific, I had explained to them I'd been staying in XXX which is probably about a 50-minute drive but I hadn't been sleeping. It'd been at hospital the whole night before. I didn't get back until about four in the morning until my, that morning, about four in the morning, I got back to my friends in XXX and then drove to xxx for like nine in the morning because they were pushing me to come and give a better, more detailed interview. I do feel that they could have maybe taken into account the fact I'd not slept and I hadn't spoken my options through with anybody by this point. I appreciate they need to get a statement as early on as possible and catch an offender but initially I needed, A, sleep and, B, support, you know, to speak through my options. I was vulnerable. I was very, very vulnerable (P08).

For those victim/survivors who withdrew despite the case then progressing as an ELP, there were consequences for the perpetrator's charging decision where a less charge was decided upon due to the victim/survivor deciding to withdraw their support.

After he was charged I withdrew. They pursued it anyway. My ex-partner pleaded guilty. So he was, because I'd dropped the charges he was on bail for a Section 18. He was charged with Section 20 instead, GBH Section 20. He attended court about 3rd September and made a pleading with the prosecution and pleaded guilty to ABH (P08).

and that's when they phoned me and said look, are you definitely not going to speak, because the charge is going to get reduced. So obviously I said no,

obviously I'm not making a statement, just go ahead with whatever, with the Section 20, so they went ahead with that. So when they reduced his charge, he then changed his plea to guilty. So he pled guilty at the end, but he only went guilty last minute. (P01).

Negative impacts of CPS decision making on victim/survivors:

DA victim/survivors' overall perception of the service they receive from CPS has been documented as being somewhat problematic where victim/survivors report a lesser level of satisfaction compared to those victim/survivors of non-sensitive crimes. Victim/survivors' perceptions of CPS can vary depending on whether they are vulnerable or not, where vulnerable victim/survivors report less clarity in the explanations of altered charges compared to non-vulnerable victim/survivors. Additionally, those victim/survivors with enhanced status and those of sensitive offences are more likely to report being treated disrespectfully by CPS. Finally, victim/survivors of non-sensitive offences are more likely to have a higher level of overall satisfaction with CPS than those victim/survivors of sensitive offences such as DA. (Wood et al, 2015). In other research, victim/survivors' views of CPS services were mixed dependent upon the individual CPS' actions during their case (Taylor-Dunn, 2016).

The way in which victim perceived CPS and their decision making within an evidence-led prosecution was, on the whole, not favourable. Victim/survivors reported confusion as to the time delays, confusion with bail decisions, a sense of being kept in the dark due to it being an ELP and poor decision making leading to their cases being dropped:

Absolutely. I was devastated when he wasn't remanded. It made me feel like maybe what he's done isn't so bad or maybe it's not that, you know, or he's not been remanded. He's on bail. He's not been charged and for months he wasn't charged. Maybe it's not that bad. Maybe they're going to turn round in a few months and say no we're not pursuing it. You know, give me all this doubt in my mind. (P08)

Victim/survivors further perceived a lack of transparency in the decision making process of CPS and felt they were invisible and not a focal point of their considerations and that this was heightened by their case being progressed as an ELP. Decisions around remand and bail conditions influenced some victim/survivors' decisions to disengage whereas for others having never engaged in the first instance, led to further frustration and feelings of being out of control of their own situation.

And then the major negative from my situation was the fact the CPS effectively, it felt like I didn't exist to the CPS. That to me was really bad. And at the end of the

day it was about my safety. It wasn't about getting a man into prison, it was about me staying safe, staying alive from that man. It should be about stopping, trying to stop this behaviour for my sake. So CPS didn't speak to me. Now whether they would have spoken to me if I hadn't retracted, I don't know, but even if I hadn't they still should have done, hadn't retracted they still should speak to me. How can they know somebody? (P05)

Decision to disengage/retract

The decision to retract in DA has been shown to occur through a variety of factors including returning or ending the relationship, seeking alternative civil action and children (Hopkins, 2023). Other reasons for retraction include confusion regarding the Criminal Justice System (Ford, 1991), reasons relating to the defendant (Robers, Wolfer & Mele, 2008), and case characteristics relating to alcohol consumption by perpetrator, injury to the victim/survivor as a result of an assault (Robinson & Cook, 2006). The extant literature further distinguishes between those victim/survivors who formally or informally disengage from the CJS where those who disengage informally do so without the provision of a retraction statement and cease to communicate with the CJS (Sleath & Smith, 2017).

There is no existing literature to determine the effect of a case progressing post retraction statement. As such, this project uncovers new insights into the effect of case continuation after the disengagement of a victim/survivor whether formally or informally where evidence of both of these were present in the findings. There was a general divide between those victim/survivors retracted in attempt to put a halt to the case continuing and those who felt they were not emotionally strong enough to proceed and retracted for the purpose of removing themselves from the purpose. For the former, case continuation post their retraction statement impacted negatively upon them as it was felt this was going directly against their wishes.

I did, yeah, as the court case loomed I got in contact with the arresting officer and I said look this isn't what I wanted, and I said at the time that I didn't want him to be criminalised and this was all on account of the fact that he's experienced trauma as a child, as a baby, as an infant. And he said well if you're going to do that, I'll have to come round and re-interview you, so you can put a retraction statement in. And I was like all right, fine, let's do that. So we did that, went through the retraction process, and I don't think that ultimately made a difference about the fact that it was still going to court. It was all going to court, like this fucking juggernaut that I had no control over. (P11)

Conversely, for the latter case continuation was something they welcomed the decision to take the case forward without their involvement and felt a sense of relief not to have

to participate with some quoting their dire mental health as something they needed to prioritise over and above attending court:

My mental health got the better of me. Come July, I went to the police station and said I was suffering from PTSD and I didn't want to give evidence in court. I'd come under immense pressure from my ex-partner and his family and friends to withdraw the charges and say I was lying. There was no way on earth I was going to turn round and say I was lying. That was a step too far. You know, I couldn't bring myself to say it, not just out of respect for myself but out of all the other victims out there that don't get justice. I thought there is absolutely no way I can turn round and say I've made it up, because I haven't. CPS wrote to me a couple of weeks later and said that, due to the severity of the injuries and his admissions during interview, they were going to charge anyway, which I was happy with. I didn't want them to stop proceedings. I just didn't feel strong enough to attend court and due to coming under immense pressure from him (P08).

Reflections on ELPs:

There was a mixture of positive and negative reflections by participants in terms of their cases being assigned to an ELP: For some victim/survivors, there was a sense of a relief in not having to attend court with the knowledge that justice would be obtained by means of the case progressing in their absence:

Am I glad I didn't go to court and given evidence? Yes, I am. I am so glad. I don't think I'd have been able to face it. I would not have wanted to go to court and give evidence. That's not changed. I'm so glad I didn't do that, for my own wellbeing, but I am still glad now when I look back. I am glad that CPS pursued anyway, pursued those charges. (P08)

Victim/survivors also reported experiencing repercussions due to the case going to court and lack of knowledge of what how an ELP worked and this working against them:

Because obviously I'm sure you're aware, because you're doing this study, people go to me oh you're a grass. I've just said to them but I never reported. And I actually never, but I still get the repercussions like I did. So do you know what I mean, it's a lose-lose situation (P01)

For others, the case progressing without their support gave the sense the victim/survivors being penalised by the law and losing control of the situation due to the conditions imposed as the court case progressed:

So then it became clear that it was going to go to court without us, and there was also that period of time where he wasn't allowed to get in contact with us, because there was a case pending. So he wasn't physically allowed to be anywhere near us, we weren't allowed to be anywhere near him, so we couldn't even contact each other to try and rectify anything. It was just the force of the law came down on not just XXX, but it came down upon us as well. It was almost as if I've had my ability to manage my son, and to be his mother taken away from me, because they perceived this situation in a particular way. (P11)

CPS perspectives on victim/survivors' views

In our analysis we identified conflicting views of prosecutors regarding the importance (or otherwise) of victim/survivor's views when considering an ELP. By definition, and as explored earlier, ELPs are characterised by victim/survivors who have either not provided a statement, have withdrawn a statement and/or have indicated they will not be attending court. We were keen to understand if prosecutors took any steps to seek the views of victim/survivors in ELP cases they were working on. Interestingly, there were differing views in relation to whether victim/survivors' views should be a consideration. For some, the decision to proceed is an evidential and public interest matter and therefore the victim/survivor's views are not relevant:

You know what, it's not like in lots and lots of cases that the police actually ask the victim's views on whether they're going to proceed or not. Actually, it's not the victim's choice. It's a public interest test; it's not the personal interest test. There are concerns that we have in terms of we may have an unsupportive witness/victim from the outset, but we might have a comprehensive account on body worn video or something like that. (CPS 10)

However. This was not the perspective taken by all participants. For some, there was a clear recognition of the risks faced by those experiencing domestic abuse and the need to understand why a victim/survivor may not support the prosecution:

The victim's views have got to be considered as well. It's the victim's views with the circumstances, with the history. Not just, well we've got enough here to get a conviction, so let's go for it anyway. It's about protecting the victim. So again, seeing what support we can give, explaining to her why the case is carrying on. So there's a whole host of reasons and without an individual case I can't say. But no, I would never ever just discount the victim's views. The whole point of the, if they've done a statement and there's a retraction, the whole point of that is so

that you can see their reasons, look at the logic and why they don't want it to proceed. (CPS 06)

Taking this a step further, one participant reflected on a case they had dealt with where a domestic abuse victim/survivor had been summonsed to court:

And I've been on both sides. And I've been at court being the advocate for the trial where a DA victim has been summonsed on the day. And she's turned up and sat there and gone I've turned up because I don't want to be arrested, but I will not give evidence in court. And I remember just thinking why have we put you through this? You are a victim, you know, you've decided for whatever reason that you can't give evidence and then yet we've summonsed you. And I think it's, and I understand why it's there, I do understand why it's there, but I fear there's a risk of doing more harm than good. (CPS 01)

This quote suggests there is possibly a tension for some prosecutors between the needs of the case (in terms of getting a victim/survivor to court) and what is in the best interest of the survivor. The fact that victim/survivors' views are not part of the decision-making process for all prosecutors is understandable, given their role is to apply the evidential and public interest test. Yet the fact some prosecutors see the wider context in terms of risk, as well as witnessing the consequences of some of those decisions, raises the question of whether victim/survivors' views of ELPs should be captured. It was certainly clear in the case-file analysis that victim/survivors' views were rarely captured by the police, and therefore could not be communicated to CPS. Yet when making the decision to summons a victim/survivor, the police are asked to complete a risk assessment as to whether it is suitable (given the potential to further traumatise a victim/survivor). We recommend that all decisions to proceed with ELP cases (not just the decision to summons) should be subject to a risk assessment where the views of the victim/survivor are recorded and considered (particularly, where pursuing an ELP could increase the risk to that individual).

How can the results help us move forwards with the solution to the problem you originally identified?

The current project provides the initial contribution towards an understanding of the above issues whilst also raising more questions around what further action now needs to be taken which will be addressed in the second STAR funded ELP project.

The original issue identified with ELPs was the absence of an evidence-base on which to inform the operational use of ELPs. This resulted in:

- A lack of understanding regarding the types of cases that typically get put forward for consideration of an ELP, whether they result in a successful conviction, and on what evidence the cases are built.

- A lack of understanding regarding CPS decision making and their “ideal” ELP prosecution.
- A lack of understanding regarding victim/survivors’ experiences of ELPs.

How have/will your findings/innovation be operationalised by policing?

It is as yet too early to provide any quantitative impacts/benefits for the findings of this project. Merseyside Police take great pride in contributing to this area in which they are considered national leads and moving forwards will incorporate the findings into their force 4P strategic plan for domestic abuse: Preventing VAWG, Pursuing VAWG perpetrators, Preparing policing and working with other agencies to better combat VAWG and Protecting those at risk of VAWG .The workshop held in Liverpool provided a comprehensive insight into the project’s findings and focused on how to improve evidence gathering at ELP cases which Merseyside officers will be able to implement in their policing approaches. The follow on project also funded by STAR will be able to add the impact and benefits Merseyside Police have witnessed as a result of this pilot project.

2.2 Limitations of the innovation/approach/design/system

This is a pilot project that analysed a relatively small number of ELP cases and due to difficulties in victim/survivor recruitment, the team were only able to speak to 7. As such, caution needs to be exercised in making generalisations from the data. The police case files and the victim/survivor sample additionally do not match geographical locations despite originally being hopeful of doing so. Due to difficulties in victim/survivor recruitment as outlined in section 1.2, this further provides a disjoint in the data sample where ideally the recruitment of ELP victims/survivors would have been obtained from the Merseyside Police area. Furthermore, as the majority of data related to Merseyside Police force, regional variations may apply thereby causing a further limitation to the interpretation of the results to forces outside of the Merseyside area. Other forces may have different systems in place for police decision making on case files prior to the decision being made to send the case file to CPS, for example. Merseyside Police represented the best police force with which to conduct the pilot study due to them being the only police force to have a system in place to detect which cases have been considered as ELP cases. This system is something the additional three forces for phase 2 have been made aware of and work is in progress to replicate the process Merseyside use.

Despite the limitations outlined above, this study was designed as a pilot study (viz. definition of a pilot study “a small-scale test of the methods and procedures to be used on a larger scale”) and the research team has subsequently been successful in further funding which allows the research design to be tested in 3 further police forces: North Yorkshire, Hampshire and Thames Valley Police. All three forces participating in the

second project operate the same “Niche” police operating system and as such it is anticipated these forces will adopt Merseyside’s ability to create an ELP flag system to monitor which cases they consider as ELPs. Upon completion of the subsequent project, these limitations will be reduced somewhat by obtaining an increased data sample across the different data strands thereby providing increased confidence in the interpretation of the findings.

3 Innovative Research

3.1 Outline of the concept

Outline on a scientific basis how the technology/research is going to help to solve a problem.

This research is the first known study to explore how ELPs are being used in an English police force. This knowledge is essential as both the police and CPS advocate the use of ELPs but are doing so in the absence of an evidence-base. This research used a mixed-methods design to explore the characteristics of ELPs cases (compared to non-ELP), the outcomes of ELP cases, the decision-making of CPS prosecutors and the lived experience of victim/survivors who cases were taken forward as an ELP. In doing so, the project is able to provide an authentic insight into the use of ELPs which can help shape police and CPS decision making on when to explore the possibility of using an ELP. Having this deeper understanding will allow CPS and police to understand the typology of cases where an ELP was successfully pursued to the point of a obtaining a prosecution, what impact ELPs have upon victim/survivors, how CPS decision making interacts with victim/survivors views, and importantly what the tensions are in gathering the evidence needed for a successful prosecution.

3.2 Innovation

Please provide further detail on how your concept outlined above is innovative e.g. is your solution applying existing technologies in new areas, developing new technologies for existing areas or is it a totally disruptive approach? How does it differ from other work in this area?

The innovation of this project lay in the topic under investigation – ELPs. As mentioned above, this project is the first known study of ELPs in England and Wales. Whilst there has been extensive research conducted into victim/survivors' experiences of police responses to DVA, there had been nothing regarding their views or experiences of ELPs. Moreover, there was no evidence-base regarding the types of cases taken forward as ELPs, their success rate (compared to non-ELP) or the decision-making processes of CPS. As the report has outlined in detail so far, the policing response to DVA is problematic with a continuing disjoint between what the CJS set out to achieve in comparison to what victim/survivors' wishes often are, leading to a high rate of attrition in DVA cases. As such, understanding the tools that are available to the CJS comes with a heightened importance both in terms of protecting individuals and for the greater benefit of society.

The projects' innovative findings suggest that, with a greater understanding of the impact these prosecutions have upon victim/survivors, (which have been shown to be varied), this could result in increased security and protection for some of society's most vulnerable victim/survivors by obtaining a CJS outcome where victim/survivors do not feel able to pursue this course by attendance at court. With proper management of ELP cases as outlined in the conclusionary recommendations for practice, this could further

contribute towards an increased sense of trust and confidence in the police. Additionally, the project allows for insight from a policing perspective on the profile of case characteristics that are successfully considered as ELPs and understand better their need to provide detailed evidence often available at the point of the incoming report and at the point of police arrival. Finally, from a CPS perspective, the findings of this project allow them to reflect firstly upon what the role of the victim/survivors is in ELP prosecutions whilst also gaining insight into the disjoint between police decision making and their own subsequent charging decisions.

3.3 Assumptions made

Provide detail on any assumptions made prior to beginning the project work.

Based on Dr Anna Hopkins' conversations with Merseyside Police during her role in advising during the Domestic Abuse Multi-Agency Tactical Group bi-monthly meetings the assumption was made it would be possible to discern the satisfaction levels of victim/survivors assigned to an ELP in terms of the surveys completed with victim/survivors of DA as outsourced to Leicestershire Constabulary. However, upon accessing the surveys provided by Merseyside Police it was found there were insufficient customer satisfaction surveys to complete any in- depth analysis and add any insightful understanding to this relationship. It is perhaps understandable that ELP victim/survivors, having either never engaged or disengaged, do not make themselves available to complete such a survey.

Secondly, based on nothing more than a "hunch" a further assumption was made that those cases submitted for consideration as an ELP would be of a higher risk and of a higher severity of crime but the opposite was found where lower risk and lower severity crimes were prosecuted by means of an ELP.

4. Implementation

4.1 Project management and team

Please outline the project team structure, skills and responsibilities. This should include detail on any collaboration with other organisations.

<i>Title</i>	<i>Organisation</i>	<i>Key skills and responsibilities</i>
<i>Principal investigator: Dr Anna Hopkins</i>	<i>Open University</i>	<i>Overseeing the overall project, key point of contact with Merseyside Police, collecting and analysing data.</i>
<i>Academic Researcher: Dr Holly Taylor-Dunn</i>	<i>Open University</i>	<i>Overseeing the overall project, collecting and analysing data</i>
<i>Police Lead: DCI Lynsay Ambruster</i>	<i>Merseyside Police</i>	<i>Overseeing the overall project, liaising with Anna Hopkins</i>
<i>Police point of contact: Casey Walton</i>	<i>Merseyside Police</i>	<i>Providing police equipment, providing samples of ELP and non ELP case files</i>

4.2 The work conducted

Provide a summary of activity undertaken including technologies/approaches/equipment used, challenges faced and their resolution/mitigation.

1) Data protection forms, vetting, contracts completed

As is standard in many other research projects seeking to address sensitive police data, there was a prolonged and detailed process to obtain approval in data protection forms and to pass the vetting process detailed by Merseyside Police. These processes did, unfortunately, introduce a delay in the research team being able to commence data collection but without these necessary requirements in place it would be difficult to foresee proper and legal arrangements between an external organisation such as a university and police

force to agree upon ethical access to police data. The legal contract between the Open University and Merseyside Police took considerable time for mutual agreement to be formed but did not detract from the overall progress on the project.

2) IT training

This was facilitated by Merseyside police and both researchers attended Merseyside's police premises to partake on a day's worth of training to understand the basics of Merseyside's police information system "niche". This training allowed for a swift understanding of how the IT system worked and enabled both researchers to navigate the system without any inherent problems or issues.

3) Case file analysis

Following the required IT training and the provision of force laptops, the researchers were able to commence the analysis of case files. Excel spreadsheets were provided of the relevant ELP and Non ELP case files that had been selected at random by Merseyside Police. Upon receipt of these, the researchers accessed the relevant URN case file numbers from the spreadsheet and inputted these onto the Merseyside laptops to be able to commence analysing the respective case files. Prior to the analysis of the case files, full details of the required case characteristics had been discussed and agreed upon and approved with Merseyside Police.

4) Victim/survivor recruitment and interviews

Upon ethical approval being granted to the researchers by their university, permission was granted to seek support and recruitment of victim/survivors from our third sector partners. Despite this not being as successful as originally anticipated, the research team had anticipated this eventuality and included victim/survivor recruitment via social media in their ethics application. Despite repeated attempts of the third sector agencies to recruit ELP victim/survivors, no leads were brought forward. As such, drawing upon experience of the researchers to recruit DVA victim/survivors other third sector organisations in different geographical locations were contacted before moving to recruitment via social media on a national UK basis. This did lead to some delays in locating participants with relevant experience of ELPs and a reduction from the desired 10 to 7 participants in total. In addition, as already mentioned in section 1.2 some victim/survivors responded to the advert and were interviewed who retrospectively had not experienced an ELP but responded with the

misunderstanding of the research team wanting to gain a broader understanding of the impact of a police investigation on DVA victim/survivors.

5) CPS interviews

The arrangements of CPS interviews ran smoothly due to the close working relationship between Merseyside Police and Merseyside and Cheshire CPS. In addition, the CPS lead for the area was part of the original discussion between Merseyside Police and Dr Anna Hopkins and was in agreement to support the exploration of the issue. Although 10 had been contacted, 8 availed

6) Presentation of preliminary findings to Merseyside Police

In an event that took place 25th April in Liverpool, Merseyside Police together with representatives from HMICRS, CPS, and academics nationally, the initial findings were presented with a focus on the required evidence gathering aspects of the findings of this project. In order to ensure a shared context was facilitated across the differing organisations present, a theatre company was brought in to demonstrate some of the typical critical moments in an ELP case. The four scenarios performed by the theatre company represent the timeline featured in the executive summary in terms of identifying where the main tension points in an ELP investigation. The findings were discussed after each scenario was performed and at the end of the workshop the remaining findings of case file analysis, CPS interviews and victim/survivor interviews were presented.

5. Next Steps

5.1 Further development

Include the costs, time and resources required for next steps of development/implementation

Note any funding/planning to apply for such.

Note any partnership developments, new funder engagement etc.

The team has been successful in acquiring further funding to extend this current project. The team acquired £90,000 from STAR funding to complete a further ELP project by the end of March 2024 (Bid 126). The aim for the new funding is to expand on the current understanding of ELPs by replicating the research design of this study, with the addition of focus groups with police officers, from three additional police forces (North Yorkshire, Hampshire and Thames Valley Police) and to run three workshops across the three forces. During the workshops, the findings of the project will be disseminated by means of using theatre to replicate some of the typical scenarios that were captured in the case file analysis. Present in the audience will be police, CPS, HMICFRS and academics. The focus of the workshops will be to gather the multiperspective insights into what evidential requirements each scenario presents from an evidence gathering basis. Once these have been collated, this will then feed into a third stage of designing an online learning tool that will assist officers in gathering better evidence which has been shown to be a key element for the success of ELPs.

5.2 Dissemination plan

How are you planning to ensure the learnings from your projects are shared and have the biggest impact? Try to break this down into local, regional & national engagement where possible.

Academic researchers Dr Anna Hopkins and Dr Holly Taylor-Dunn are based in the Centre for Police Research and Learning (<https://www.open.ac.uk/centres/policing/>) which is a growing collaboration between 26 forces in the UK. The learning from this project will be presented to the membership of the centre and a report uploaded on the website for forces to be able to access it at their leisure. In addition, Dr Anna Hopkins chairs the Domestic Abuse Working Group where the findings will be presented at the next meeting in September.

The academic team have been invited to present their findings at the HMICFRS external reference group to ensure the findings inform their subsequent inspections in this area.

Finally, the findings of this project will be written up as a policy guidance for the purposes of Merseyside police and other forces should they wish to adopt this. The researchers will also submit the findings for publications in academic journal articles thereby ensuring dissemination to both national and internal academic audiences.

Explain what dissemination you have done already or what you plan to do if you haven't done any yet. Who are you focusing on? What are you telling them

Dr Anna Hopkins and Dr Holly Taylor-Dunn have already held a one day workshop in Liverpool for Merseyside police officers and Merseyside CPS prosecutors. Also in attendance were representatives from HMICFRS including the HMI inspector who oversees vulnerability, Roy Wilsher. In addition to several academics with an interest in the area, we also had representation from the NPCC Violence Against Women and Girls Taskforce and the NPCC Vulnerability Knowledge and Practice Programme.

The project has already been presented at two national conferences, one at the Open University and one in Wolverhampton and in September, the project findings will be presented at a domestic violence conference in Iceland.

In terms of what key messages will be shared from the project, this is somewhat dependent upon the time allocated for the presentation and the make-up of the audience. For policing audiences, the focus will be upon the implications of the main findings of the project and how to best implement these into everyday policing with the anticipation of providing a more nuanced understanding of the use of ELPs in DVA cases. For more academic audiences, it is anticipated a more thematic aspect of the findings will be selected for presentation looking at, for example, the tensions between CPS and victim/survivors' lived experiences.

Is your audience responding to what you are telling them? – how do you know?

The researchers have had several discussions about the project where interested parties have approached the team requesting information on the project and have expressed an interest in receiving the findings once the project has completed. The interested parties so far have been:

- College of Policing
- VAWG Taskforce
- Vulnerability Knowledge and Practice Programme
- HMICFRS

Discussions are ongoing currently with the VAWG Taskforce in terms of incorporating the findings of this project and Phase 2 into their overall VAWG strategy. Referring back to the workshop held in Merseyside, a feedback survey captured the responses of the delegates which is included in the appendix. We collected 38 post workshop surveys and a highlight of the responses include:

- I found the use of theatre to generate discussion useful - 97% agreed or strongly agreed.
- My understanding of Evidence Led Prosecutions has increased as a result of the workshop - 87% agreed or strongly agreed
- Discussing evidence led prosecutions from different organisational perspectives was useful to me - 95% agreed for strongly agreed
- I understand better the effect evidence led prosecutions have upon victim/survivors - 87% agreed or strongly agreed

6. Conclusion

The analysis of this project has revealed some key findings regarding the use of ELPs in DVA cases which contribute towards a foundation of an evidence base to further the understanding of these types of prosecutions. The analysis of case files and interviews with CPS prosecutors revealed a concerning disjoint in approaches and understanding of ELPs which was evidenced twofold:

- The high % of cases referred for CPS charging decisions in the ELP sample (98%) which was statistically significant compared to the number of non-ELP cases referred to CPS, yet CPS were less likely to charge ELP cases compared to non-ELP cases. This suggests there is a misunderstanding of evidential requirements between police and CPS there needs to be an improved understanding between CPS and Merseyside police for cases likely to pass the evidential threshold.
- The most common types of cases to be put forward as an ELP were common assaults, assault occasioning ABH and criminal damage and in terms of risk, ELP cases were more commonly Bronze and Silver.
- Across both police and CPS, there was evidence of victim/survivors' wishes not being taken into consideration which was evidenced by a lack of victim updates on the case files and CPS adopting a social change style approach where prosecuting DVA was in the public interest and victim/survivors' wishes should not be considered (despite another prosecutor stating the victim wishes should be taken into consideration). This was further corroborated during victim/survivor interviews who spoke of feeling invisible to the CPS. As the victim/survivor sample reflects, the impact of a case being assigned as an ELP had a mixed effect upon victim/survivors where some were supportive of the prosecution despite not wanting to be involved. This distinction between not wanting to be involved yet wanting to be kept updated needs to be reiterated to officers who may assume ELP victim/survivors do not want any involvement with the case including being kept updated.

Recommendations for practice:

- ELPs sit at the extreme end of action taken within the positive action policy still employed by police forces in the UK when dealing with DVA cases. This is a policy that is in urgent need for a review and additionally for research to establish how this policy is implemented into the reality day to day policing decision making. It is known this policy is applied with different interpretations into the meaning and corresponding actions in policing DVA with higher levels of re-victimisation and increased levels of victim/survivor dissatisfaction as a result of

the policy being applied (Ariel & Sherman, 2012; Stark, 2012; Myhill & Johnson, 2016). The main disjoint existing between whether policing DVA should be victim/survivor led or whether action is taken regardless of what the victim/survivor's wishes are. This disjoint was also reflected in the data of this project where some CPS prosecutors spoke of ELPs needing to take the victim/survivor's wishes into consideration but others referred to it being a question of whether it was in the public interest. Despite ELPs sitting at the extreme end of the continuum of the positive action policy, it is recommended a victim/survivor led focus is maintained throughout an ELP with effective and regular communication maintained with the victim/survivor from start to finish. It is recommended to build in specific check in points with ELP victims/survivors regarding their decision making as to whether they would like to participate in the prosecution given the current time it takes for a case to reach court. Some victims/survivors may want to change their mind and participate as time and their initial trauma has subsided. Additionally, it is recommended to keep the victim/survivor informed of how the case is progressing regardless of their involvement with the case irrespective of their initial engagement.

- We suggest there is an urgent need to ensure there is consistency in approaches between police and CPS in terms of their standpoint of whether an ELP is motivated by a victim/survivor centred approach or a social change/public interest type of approach. Inconsistency across the two organisations will lead to an inconsistent approach as to how the victim/survivor is viewed. Additionally, to ensure there is consistency within CPS in terms of their understanding of where the victim/survivor is placed within a ELP and whether their working framework is one of public interest or victim/survivor focused. Given the findings of this project, it is recommended both organisations take a victim/survivor centred approach where the victim/survivor is involved and consulted in the decision making around ELPs.
- To reconsider officers encouraging those victim/survivors who are unsure whether they wish to provide a statement in cases of strong independent and circumstantial evidence bearing in mind the findings of ELPs being easier to prosecute without their initial statement. It is recommended officers receive training on recognising cases that present with strong independent and circumstantial evidence and with these cases, do not encourage victim/survivors who are unsure of whether they want to formally engage, to provide a statement.
- Given the time of arrival of officers to the scene was higher for ELP cases (although not statistically significant), this opens up opportunity for officers to be able to gather good and detailed evidence of an incident that has very recently occurred or is still unfolding. Given the stringent requirements of hearsay evidence and evidencing fear, this is particularly pertinent to ELP cases where officers are then able to act as evidence gatherers in detailing the emotional composure of victim/survivors particularly around fear. This is a key aspect of what was focused upon in the workshop already held with Merseyside and one

that will also be a central focus in the subsequent workshop for our second project. It is recommended officers receive training on identifying and evidencing more complex victim/survivor emotions such as fear and where operationally feasible, arrival to DVA incidents is achieved within the 10 minute time frame.

- It is recommended the risk assessment that takes place for a victim/survivor summons consideration is also adapted for ELPs. The approach with victim/survivors in ELPs requires much more involvement of victim/survivors even if they do not appear to want to engage. Findings suggest there is a mixed response to being assigned to an ELP as a victim/survivor and the reactions to this assignment can also develop and change over time. For those victim/survivors who are adamant they do not want to engage they may well be of that mindset with intimate knowledge of what repercussions they may face from their perpetrator or the broader network of acquaintances of the perpetrator. Given that the success rate of ELPs being finalised in convictions and even if they do, they can be suspended sentences, the ramifications for victim/survivors can introduce serious concerns for their safety. Consultation with the victim/survivors in terms of potential risks they may encounter should the case progress to court is a key consideration for the safety of victim/survivors and should be conducted routinely to ensure police can demonstrate this consideration has been accounted for.
- For those ELPs where the victim/survivor retracts and the cases revert to hearsay evidence, given the importance of evidencing the necessary fear of the victim/survivor, increased focus and consideration needs to be provided in terms of training in officers' ability to not just recognise the fear but be able to describe, in detail, how the fear manifested itself. In other words, officers need to become better evidence gatherers in demonstrating their ability to capture and explain the emotional state of a victim particularly around fear. This will require a more in-depth understanding on the literature around fear and how fear presents itself in different manners with differing resulting behaviour that follows the emotion. Officers should be trained in being more confident in being inquisitive as to the victim/survivor's emotional state and wellbeing and receive training on how to best formulate such questions. This will be a key focus in Phase 2 of the project and will also feed into the online learning tool.
- For those ELP cases where a retraction statement is obtained, it is recommended officers obtain more detailed retraction statements that provide firstly an overview of the initial offence by consulting with the victim/survivor their original statement, and secondly a focus is given to the exploration as to whether the victim/survivors' motivations for retracting are borne out of fear of the perpetrator. Alluding to the previous point, a better understanding of the literature around fear will allow for officers to obtain a more insightful understanding of how fear may present itself in victim/survivors, particularly when considering those repeat victim/survivors who are acquainted with the CJS and may have developed

mechanisms for playing down fear- an ability often also mastered in DVA relationships. As referred to in the findings section, the findings from CPS interviews revealed mention of officers using what appeared to be templates for retraction statements which were evidenced by the similarity and brevity in retraction statements CPS prosecutors had encountered.

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7. Appendix

Any additional supporting evidence, evaluation or report produced during the project can be appended here


7.1 Appendix A

Post-Workshop Survey


1. 1. List three things you've learned by attending the workshop today: 

2. I found the use of theatre to generate discussion useful 

	Strongly agree	Agree	Neither agree nor disagree	Disagree	Strongly disagree
Statement 1	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

3. My understanding of Evidence Led Prosecutions has increased as a result of the workshop 

	Strongly Agree	Agree	Neither agree nor disagree	Disagree	Strongly disagree
Statement 1	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

4. Discussing evidence led prosecutions from different organisational perspectives was useful to me 

	Strongly agree	Agree	Neither agree nor disagree	Disagree	Strongly disagree
Statement 1	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

5. I understand better the effect evidence led prosecutions have upon victims 

	Strongly agree	Agree	Neither agree nor disagree	Disagree	Strongly disagree
	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

Statement 1

6. I would have liked to have had more content on:

7. I think the idea of an online learning tool to address evidence gathering in Evidence Led Prosecutions will have the following challenges:

8. Was there anything missing from today's event that you would have liked to see included?

9. Do you have any suggestions for future workshops on ELPs?

7.2 Appendix B