Good morning. I would like to thank the organisers for giving me the opportunity to speak about my experiences in the field of Domestic Abuse over the last few years in the Magistrates' court in Derry/Londonderry.

Since 2011 we have been running a Domestic Violence Special Listing Arrangement, whereby all DV contested cases are listed for hearing on each second and (where applicable) fifth Tuesday of the month.

This clustering of cases allows the various partner agencies in the Criminal Justice System to pool their resources to make the court experience a less stressful/traumatic one for complainants. The PPS provide trained specialist prosecutors; Victim Support/Witness Service Volunteers take complainants through the whole process of giving evidence in advance; separate waiting areas are provided to avoid any contact with the accused; in conjunction with Women's Aid arrangements are made to provide childcare and safe travel to and from court. The aim is to allow the complainant every opportunity to give the best evidence they can free from anxiety.

These cases are regularly reviewed prior to the contested hearing to ensure they proceed without any avoidable delay. These measures were inspired by a growing realisation that the attrition rate among complainants in DV cases was much higher than in other criminal cases. In November 2011 52% of DV complainants did not give evidence at the contested hearing. After the introduction of the listing arrangements, by July 2014, that figure had fallen to 46.5%. We do not have up to date statistics but the attrition rate is still unacceptably high.

Far too many complainants are opting out quite early in the prosecutorial process. This is due to various factors. However it is important to note that the attrition rate in the Glasgow Specialist DV court is only 10%.

In Glasgow complainants are assigned a trained worker within 24 hours of the incident, quite often as soon as the police have left the scene, and that person supports and mentors the complainant all the way through to the conclusion of the prosecution. Here Victim Support/Witness Service will provide similar support but it largely depends on the complainant taking a phone-call from that agency. If 3 calls go unanswered then that is that. Voice messages, texts and letters are not used due to fear of interception by the perpetrator. This is not acceptable. Victim Support are not happy with this procedure and would

prefer to work more closely with the police and other agencies to address this weakness in the system.

In Derry our next step is to set up the DV Perpetrator Programme (DVPP) court. This pilot project will provide the opportunity for defendants found guilty of a DV related offence to be referred by the court to participate in a therapeutic behavioural change programme delivered by PBNI. There will be a maximum of 30 offenders per annum and the programme will take 10 – 12 months to complete. They will be intensive and challenging. The defendants progress will be monitored in DVPP reviews in court on a regular basis and any failure to fully engage with the programme will result in ejection from the programme and the case will move to the sentencing stage,

Successful participation in the programme will be rewarded by a more lenient sentence than would otherwise have been the case.

It is hoped that the availability of these specialist perpetrator programmes post conviction as a direct alternative to immediate custody will improve the attrition rate. It is clear that some complainants simply do not want to play any role in the incarceration of their abuser. They want the abuse to stop but not at that cost. We have to recognise the emotional difficulties involved and this initiative may appeal to some complainants who would otherwise withdraw their cooperation.

Time will tell whether this initiative will ultimately be successful, but there is already ample evidence that short custodial sentences have no positive effects whatsoever in changing human behaviours.

It is expected that the DVPP court will commence in 2018.

In the absence of a functioning Executive and Legislature the Dept. of Justice have been working hard to advance certain other key DV initiatives. These are:-

New Domestic Abuse Offence.

- Although awareness of what domestic violence can entail is increasing, **all too often people still associate** this with **physical violence.**

- For that reason a new domestic abuse offence is being progressed which will capture patterns of **psychological abuse**, violence, and/or **coercion** of a partner, former partner or close family member.

- This is intended to reflect the victim experience that all too **often abuse is ongoing and non-physical.**

- It will also provide a **statutory domestic abuse aggravator,** which could attract enhanced sentencing for other offences where domestic abuse is involved.

Domestic Homicide Reviews.

- On average around six people are **killed** every year in Northern Ireland by a **current or former partner or close family member.**

- In providing services, and introducing change, a **key obligation** for us all is to **reduce the number of victims.**

- This focus **shouldn't stop** in the tragic circumstances **where an individual dies.**

- To reduce the risk of this a **domestic homicide review model** is **being developed** for introduction in NI.

- This will adopt a multi-agency approach to **identify lessons learnt,** with a **view to improving services** and helping prevent future victims from coming to harm.

Domestic Violence Protection Notices/Domestic Violence Protection Orders.

- The Department of Justice is continuing to prepare for implementation of **Domestic Violence Protection Notices and Orders** in Northern Ireland In 2018.

- They will **strengthen police officers' first-line response** to victims of domestic violence, who need **immediate protection and support,** through placing **restrictions on the abuser.**

- The notices and orders will ensure that the police and courts can put protective measures in place for victims in the immediate aftermath of a domestic violence incident.

- They will place **restrictions on perpetrators,** for example, **stopping** them from **entering** and being **within a certain distance** from the **victim's home** or making them **leave the victim's home.**

- An order can provide protection for up to **28 days.**

Domestic Violence Disclosure Scheme

- The Department of Justice is working towards finalising a framework for the introduction of a **domestic violence disclosure scheme** in Northern Ireland by spring 2018.

- This is a **police-led scheme** that will help ensure the safety of victims of domestic violence and abuse.

- It will enable the provision of **information on a partner's violent and/or abusive past** to help individuals make an **informed choice** about whether or not they want to stay in their relationship.

Advocacy

- The Department will be bringing forward a model of **advocacy support services** to underpin the range of initiatives that are being introduced.

- Going forward this will build on **collaborative work between** the **statutory** and **voluntary sector.**

- The ultimate aim is a safer society, with fewer victims and perpetrators.

These initiatives are all most welcome and will undoubtedly help to convict more perpetrators, in the long term. However the challenge of getting admissible evidence before the court without the oral evidence of the complainant remains the greatest obstacle to successful prosecutions.

In light of that I now wish to turn to a recent case which addressed the admissibility of Hearsay Evidence in DV incidents.

In terms of case law, the most significant development in many years has been the decision of the Court of Appeal in N.I. delivered on the 2nd May 2017 by Weatherup LJ and McBride J. (the McGuinness case).

The case concerns the questions of admissibility of hearsay evidence and the court's discretion to **exclude** such evidence even **if** it is ruled admissible.

The hearsay evidence in that case involved **body worn video footage** captured by PSNI response officers although it is clear that the judgement would apply equally to 999 call recordings and indeed verbal statements made during or shortly after the incident.

The use of body worn cameras by police was initially piloted in my own jurisdiction in Derry/Londonderry. On the 9th November 2014 police attended a house pursuant to a 999 call alleging that the caller had been assaulted by her partner and recorded her verbal complaint. She later made a written statement withdrawing said complaint on the basis that the couple had reconciled.

The PPS decided to pursue the prosecution anyway on grounds of public policy. The matter came before me in the Magistrates Court. The PPS sought to have the BWC footage admitted. I acceded to that application and on the 8th April 2016, convicted Gerard McGuiness of common assault.

The Defendant appealed that decision to the County Court. On the 12th May 2016 Her Honour Judge Loughran dismissed the appeal and affirmed the conviction, having also ruled the BWC footage admissible. The matter was then further appealed by way of Case Stated to the Court Of Appeal in N.I. The matters raised in the CA concerned **firstly** the admissibility of the BWC footage and **secondly** the courts discretion to exclude such evidence under Article 30 of the Criminal Justice (evidence) (NI) order 2004 and under Article 76 of the Police and Criminal Evidence Order 1989.

The admissibility of hearsay evidence in criminal proceedings is dealt with in the Criminal Justice (Evidence) (NI) Order 2004.

Article 18 (1)

In criminal proceedings a statement not made in oral evidence in the proceedings is admissible as evidence of any matter stated if, but only if -----

(b) Any rule of law preserved by Article 22 makes it admissible.

Article 22 (1) The following rules of law are preserved.

Res Gestae.

Any rule of law under which in criminal proceedings a statement is admissible as evidence of any matter if ----

(a) The statement was made by a person so emotionally overpowered by an event that the possibility of concoction or distortion can be disregarded….

So, to quote Lord Ackner in R v Andrews [1987] 1 AC 281;

"The primary question which the judge must ask himself (well it was 1987) is –

Can the possibility of concoction or distortion be disregarded?"

To answer that question the judge must first consider the circumstances in which the particular statement was made, in order to satisfy himself **that the event was so unusual or startling or dramatic as to dominate the thoughts of the victim, so that his utterance was an instinctive reaction to that event, thus giving no real opportunity for reasoned reflection.** In such a situation the judge would be entitled to conclude that the involvement or the pressure of the event would exclude the possibility of concoction or distortion, **providing that the statement was made in conditions of approximate but not exact contemporaneity.**

In order for the statement to be sufficiently "spontaneous" it must be **so closely associated with the event which has excited the statement, that it can be fairly stated that the mind of the declarant was still dominated by the event.** Thus, the judge must be satisfied that the event, which provided the trigger mechanism, was **still operative.** The fact that the statement was made in answer to a question is but one factor to consider under this heading.

Quite apart from the time factor, **there may be special features in the case, which relate to the possibility of concoction or distortion.** The defence may rely upon evidence to support the contention that the complainant had motive to fabricate or concoct, namely, a malice which resided in her against the alleged perpetrator. The judge must be satisfied that the circumstances were such that having regard to the special feature of malice, there was no possibility of any concoction or distortion to the advantage of the maker or the disadvantage of the accused.

As to the possibility of error in the facts narrated in the statement, if only the ordinary fallibility of human recollection is relied upon, this goes to the weight to be attached to and not to the admissibility of the statement and is therefore a matter for the jury. However, here again there may be special features that may give rise to the possibility of error. For example, if the complainant was heavily intoxicated when speaking to police. Another example would be where the identification was made in circumstances of difficulty or where the declarant suffered from defective eyesight. In such circumstances the trial judge must consider whether he can exclude the possibility of error.

Lord Ackner went on to say "I would, however, strongly deprecate any attempt in criminal prosecutions to use the doctrine as a device to avoid calling, when he is available, the maker of the statement. Thus to deprive the defence of the opportunity to cross-examine him, would not be consistent with the fundamental duty of the prosecution to place all the relevant material facts before the court, so as to ensure that justice is done."

Once the court decides to admit the hearsay evidence the next stage is to consider its discretion to exclude the evidence.

The power to exclude arises firstly under Article 30 of the 2004 order where the court is satisified –

"That the case for excluding the statement, taking account of the danger that to admit it would result in undue waste of time, substantially outweighs the case for admitting, taking account of the value of the evidence."

Secondly there is the general power under Article 76 of PACE (1989) to exclude evidence on the grounds that to admit such evidence would seriously adversely affect the fairness of the proceedings.

Under this heading the court is obliged to consider the circumstances under which the evidence was obtained.

The court is further obliged to consider the purpose of the proposed admissibility of evidence under the Res Gestae exception. The court must be satisfied that there is no improper purpose or no resort to unfair tactics by the prosecution. The use of the Res Gestae exception must not be used as a device simply to avoid calling, where available, the maker of the statement, so as to deprive an accused of the opportunity to cross-examine the maker of the

statement. The availability of the maker of the statement to give evidence is not the only, definitive issue. The withdrawal of a statement of complaint may arise out of fear of the perpetrator, reconciliation (as in the McGuiness case) or pressure from family/friends.

In English case law it is well established that the complainant's fear of reliving the whole incident through giving evidence in court **or** fear of the likely consequences of further violence from the perpetrator **or** reconciliation with the perpetrator are all legitimate reasons for the prosecution not to call the complainant.

See Barnaby v DPP [2015] EWHC 232 (Admin) and

Morgan v DPP [2016] EWHC 3414 (Admin)

In the McGuiness case Judge Loughran noted the reliance by the prosecution on the public policy consideration of the importance of proceeding with the prosecution of persons accused of domestic violence in cases where the complainant made a withdrawal statement which was not dictated by fear but rather by a sense of loyalty to a partner.

It should be noted that there was other corroborating evidence in the McGuinness case.

In most cases therefore it should now be possible to admit 999 calls and BWC footage.

This is an enormous step forward in terms of securing successful prosecutions.

To conclude, I want to talk briefly about another upcoming innovation in Derry that I believe will greatly improve protection and support for DV victims.

This is the proposed **Family Justice Centre - "One safe Place"** – which will hopefully open in Pump Street in the next 12 – 18 months.

This facility will be operated by Foyle Women's Aid in conjuction with various partner agencies. A victim will be referred by social services, the PSNI or even the Court, or she may simply hear of the service by word of mouth and walk in off the street to seek advice.

The types of advice under this one roof will include legal, housing/accommodation, social security benefits, education provision and various types of counselling.

A question frequently asked of victims is “Why did you not just leave”

As we all know it is not that simple. A victim may have to move to new accommodation in a different area; this may necessitate children moving school; benefits may have to be switched into the victim’s name plus other difficulties.

Ordinarily this would involve the victims visiting various agencies, spending several hours explaining their problems and waiting weeks to hear back whilst living in fear of the abuser finding out that they are preparing to leave,

The very prospect of all this is often enough to deter victims from leaving.

The instant, one stop service provided by One Safe Place will hopefully persuade more victims to leave abusive situations.

A trained volunteer will interview the victim and collate all basic relevant facts which will be stored on a disc/usb stick. Depending on the victim’s most immediate needs she will then be taken around different desks in the centre to talk to NIHE officers, Benefits officers, specially trained law students or duty solicitors, PSNI officers and so on.

Within the space of a morning it is hoped to provide a victim with a viable escape route.

AS more victims learn about this and come to believe that they can escape the violence more will surely come forward to report their abusers. “One Safe Place” for victims, “No Hiding Place” for perpetrators.

Thank you.