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Measuring what Matters in Specialist Domestic Violence Courts



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Abstract

Using data from seven specialist domestic violence courts (SDVCs) in England and Wales, it is argued that these relatively new institutions need to re-orient themselves away from typical criminal justice performance measures (such as arrests, prosecutions and convictions) and towards measuring what matters to the service users themselves (in this case, victims of domestic violence). Analysis of 438 cases revealed substantial variability in the case progression practices across the seven SDVCs. Sentencing outcomes also were significantly different by court location, despite hearing similar types of cases. Together with victim interview data, these findings suggest that traditional performance indicators cannot tell us much about the performance of SDVCs, in part because 'success' in a domestic violence case is difficult to define using criminal justice terms alone. An alternative approach involving the measurement of 'quality prosecution' and 'quality sentencing' is offered which could not only provide a more meaningful assessment of a court's performance, but also could more accurately represent 'what matters' to victims of domestic violence.

Key words: domestic violence; victims; specialised domestic violence courts; criminal justice; performance measurement; performance indicators

Measuring what Matters in Specialist Domestic Violence Courts

Introduction

'Measuring what matters' refers to a series of meetings held in the US during the 1990s to discuss ways to expand, update and improve the criteria used to assess police performance, particularly in light of the proliferation of community-oriented policing programmes across the country. The proceedings took place in Washington, DC and were attended by police executives, researchers and scholars. The final report, published in 1999, included a compilation of papers by leading experts, all of whom argued that police performance measurement needed to be re-oriented from an exclusive focus on crime control to measuring what really matters to the communities being served (Langworthy, 1999). 'Measuring what matters' means assessing service delivery from the perspective of those receiving the services (among other things). While the impact of these proceedings on the actual measurement of police performance is arguable, it serves as a useful example of how the performance of our key institutions could be measured in alternative, and potentially more meaningful, ways.

Using data from seven specialist domestic violence courts (SDVCs) in England and Wales, it is argued here that these courts also need to re-orient themselves away from typical criminal justice performance measures (such as arrests, prosecutions and convictions) and towards measuring what matters to the service users themselves (in this case, victims of domestic violence). They must do so because, as will be shown in this paper, case progression and sentencing practices are variable across the courts, but even if they were consistent, these measures still would not help us identify 'success' from a victim perspective. The implications of this change are substantial because what matters to victims is often very different to what matters to police, prosecutors, magistrates and/or judges. Perhaps most importantly, 'measuring what matters' is necessary to adequately substantiate the claim made by government that these courts are prime examples of attempts to make the criminal justice system more victim-centred.¹ In short, SDVCs are in a unique position to adopt alternative measures of performance that reflect what truly matters to victims. This paper, in the discussion section, provides some feasible alternatives to the status quo.

This paper makes a further contribution because, despite recent policy and legislative directives intending to improve the criminal justice response to domestic violence, there is little understanding of what happens to the cases that actually make it to court. Prosecution and sentencing practices in domestic violence cases

¹ For example, see CPS press release 'Specialist Domestic Violence Courts point the way ahead' on 22 March 2004 following the launch of the independent evaluation report on the first five SDVCs (see http://www.cps.gov.uk/news/pressreleases/archive/2004/112_04.html) and the more recent Home Office press release on 21 December 2006 'Domestic Violence: No Excuse At Christmas, No Excuse at Anytime' (see <http://press.homeoffice.gov.uk/press-releases/DOMESTICVIOLENCE>).

being heard in SDVCs are no exception; therefore, this paper presents some empirical evidence regarding the following:

- How are cases progressed through SDVCs? In other words, where does attrition occur in the process and is this similar across SDVCs?
- What does sentencing practice look like in SDVCs? What penalties are most commonly applied in these courts?
- What are the perceptions of victims and practitioners about case outcomes and sentencing in SDVCs? What seems to matter most to victims in terms of their contact with these new courts?

Data from 438 cases progressing through seven SDVCs in England and Wales (Cardiff, Derby, Leeds, West London, Wolverhampton, Caerphilly and Croydon) were analysed along with qualitative data from interviews with victims and practitioners working in the courts. In the sections that follow, the literature on case progression and sentencing in domestic violence cases is reviewed before proceeding to the methodology and findings from the current study. First, however, a brief description of the current British policy context is provided.

Recent Domestic Violence Initiatives in the UK

In the first few years of the 21st century there have been many changes in the response provided to victims of domestic violence in the UK. The government's White Paper for criminal justice reform, *Justice For All* (2002), introduced its commitment to put the victim 'at the heart of the system' and recommended introducing specialisation within the criminal courts to improve the handling of domestic violence cases. *Narrowing the Justice Gap* (2002) was then published, premised on the idea that the number of perpetrators 'brought to justice' could be increased by enhancing criminal justice engagement with victims and witnesses and by encouraging more effective practice and inter-agency coordination at local levels. The government's strategic approach to domestic violence was set out in *Safety and Justice* (2003), which called for a three-pronged approach including prevention, protection, and justice and support. This led to the *Domestic Violence Crime and Victims Act*, which received royal assent in 2004, touted as the biggest legislative overhaul in 30 years, and which the Home Office regards as a key part of its attempt to put 'victims at the heart of the criminal justice system'.

The Home Office's national domestic violence plan,² announced by Baroness Scotland in March 2006, has a tripartite structure whereby 'one-stop-shops' for victims, specialized courts and multi-agency responses for very high risk victims³ come together in a coordinated way to assist victims, hold perpetrators accountable and target resources to the most vulnerable families. This plan capitalises on local innovation and documented evidence that such approaches can make a positive difference in the lives of victims and their children. Other national developments include new guidance for police on investigating domestic violence published by

² Available at <http://www.crimereduction.gov.uk/domesticviolence/domesticviolence51.pdf>.

³ Multi-Agency Risk Assessment Conferences (MARACs) were developed in Cardiff in 2003 (see Robinson, 2004; Robinson & Tregidga, 2005) to respond to the needs of very high-risk victims and their children. Recognising the ability of MARACs to deliver improved safety, the Home Office announced nearly £2 million in funding in March 2007 to support the implementation of 100 MARACs across England and Wales by March 2008.

ACPO in 2004, a revised prosecution policy published by the Crown Prosecution Service (CPS) in 2005, and a joint national training programme for police and prosecutors developed by CENTREX in 2005. In addition, the government provided £2 million to underpin a new national training and accreditation programme for Independent Domestic Violence Advisors (IDVAs) beginning in 2005.⁴ The support, information and advocacy provided by IDVAs to victims were found to be crucial in the success of specialist courts (see Cook, Burton, Robinson, & Vallely, 2004; Vallely, Robinson, Burton & Tregidga, 2005).

Most relevant to the current study is the adoption of Specialist Domestic Violence Courts (SDVCs) as a key element of the government's national domestic violence strategy. The Home Office implemented 25 Specialist Domestic Violence Courts in 2005-2006, and as of April 2007 there were SDVCs in 64 sites across England and Wales.⁵ SDVCs attempt to improve the efficiency, effectiveness, and empathy of the criminal justice response to cases of domestic violence. Documented benefits of these new courts include reducing the number of cases lost before trial, increasing the number of defendants pleading guilty or being convicted after trial, and providing support and advocacy to victims (see Cook, 2003; Cook, Burton, Robinson, & Vallely, 2004; Robinson, 2003; Standing Together, 2003; Vallely, Robinson, Burton & Tregidga, 2005). However, further investigation of court outcomes is necessary not only because they are how the criminal justice system seeks to portray its own performance, but also because they reflect society's symbolic and literal condemnation of these crimes to victims, offenders and the wider community. At the same time, we must critically assess whether court outcomes and penalties handed down in SDVCs constitute 'success' from victims' points of view.

Finally, the implementation of guidance to sentencers in relation to cases of domestic violence is an important recent development in the criminal justice response to domestic violence.⁶ Informed by a two-year consultation exercise, in April 2006 the Sentencing Advisory Panel produced draft guidelines for the Sentencing Guidelines Council about how cases of domestic violence should be sentenced by the courts. This guidance was later revised into *Overarching Principles: Domestic Violence Definitive Guideline*, to which every court is required to have regard, in accordance with Section 172 of the 2003 Criminal Justice Act, on 18 December 2006.⁷ In this guideline, the Council made an explicit statement that 'offences committed in a domestic context should be regarded as being no less serious than offences committed in a non-domestic context' (p. i). It also endorsed the principle that offences of *serious* violence committed in a domestic context should generally attract a custodial sentence, although how sentencing decisions should be made in less serious incidents is more complicated. In particular, how the

⁴ The accredited training program for IDVAs is provided by CAADA (Coordinated Action Against Domestic Abuse). For more information see <http://www.caada.org.uk>.

⁵ Scotland's first Domestic Abuse Court was piloted in Glasgow from October 2004 and evaluation research published in March 2007 will inform the Scottish Executive's decision about roll-out of specialist courts to other jurisdictions (see <http://www.scotland.gov.uk/Resource/Doc/173485/0048418.pdf>).

⁶ A good overview of this development is provided in the Third Report of Session 2005-2006 of the Home Affairs Committee 'Draft Sentencing Guidelines – *Overarching Principles: Domestic Violence and Breach of a Protective Order*' (see <http://www.publications.parliament.uk/pa/cm200506/cmselect/cmhaff/1231/1231.pdf>).

⁷ Available at http://www.sentencing-guidelines.gov.uk/docs/domestic_violence.pdf.

use of Domestic Violence Perpetrator Programmes (DVPPs) fits into the sentencing strategy was somewhat contentious. Some argued that the proposal to incorporate DVPPs into sentencing was premature, especially if used instead of rather than in addition to short custodial sentences, as was indicated in the guidance (see p. 7).⁸

Initially DVPPs were not accredited programmes, and they were not available in all areas. Very recently, however, they have become both accredited and widespread: every Probation Area now delivers an accredited domestic violence programme (either the Integrated Domestic Abuse Programme or the Community Domestic Violence Programme). The National Probation Service Annual Report (2005-2006) stated that, 'All areas have now had their implementation plans agreed, staff trained and the number of completions increased to over 1,000 this year from a very low starting point' (p. 11). In fact, the expansion of SDVCs and raised awareness of domestic abuse has increased the number of community sentences with the requirement to complete a DVPP so much so that 'capacity building to manage waiting lists remains a concern for most areas' (Mackin, 2006, p. 12).

Existing Research on Case Progression in Cases of Domestic Violence

Research shows that domestic violence cases tend to progress through the criminal justice system differently from comparable cases not committed in a domestic context. In an early study into this issue, Sanders (1988) looked at prosecution practices in England and Wales and found that compared to non-domestic violence cases, domestic violence cases were less likely to be prosecuted and, when they were, more defendants were found not guilty. This study, however, relied on a small sample of domestic violence cases (n=40). In a more recent British study using a larger sample size, Cretney and Davis (1997) examined 296 cases of assault (both domestic and non-domestic) and found routine charge reductions from Sect. 47 Assault occasioning Actual Bodily Harm to Sect. 39 Common Assault and high rates of withdrawals and bindovers⁹ in the progression of domestic assault cases.

⁸ For example, see the written responses to the consultation provided by Rights of Women (http://www.rightsofwomen.org.uk/pdfs/dv_sentencing.pdf), Women's Aid (http://www.womensaid.org.uk/landing_page.asp?section=000100010009000300040002), the Deputy Chair of the Metropolitan Police Authority and chair of the Authority's new Domestic Violence Board (<http://www.gnn.gov.uk/Content/Detail.asp?ReleaseID=196043&NewsAreaID=2>), and Baroness Scotland representing the Home Office (<http://www.cjsonline.gov.uk/downloads/application/pdf/Government%20response%20to%200draft%20sentencing%20guidelines.pdf>), all of which were concerned with how attempts at 'rehabilitation' of offenders using DVPPs could be managed alongside keeping victims and their children safe. Also, see BBC news item 'Anger at no jail plan for abusers' released on 12 April 2006 and available at http://news.bbc.co.uk/2/hi/uk_news/4901398.stm.

⁹ A 'binding over order' is an exercise by the Magistrate of their power within civil (rather than criminal) jurisdiction to require the defendant to enter into a recognisance with the court that they misbehaved. Such orders will specify a specific sum of money (usually £50-£400, dependant on means) over a specific period of time that requires defendants to keep the peace. Failure to do so may result in an arrest, a return to court, a forfeiture of the money, and/or additional charges. Bindovers mean that misbehaviour has been recognised by the defendant but that prosecutors may lack factual evidence with which to proceed to trial. Bindovers may be

One of the main aims of SDVCs is to reduce the attrition of domestic violence cases, and the available evidence suggests that case progression is different when it occurs in SDVCs. For example, in the US Henning and Feder's (2005) study of more than 4,000 defendants processed by a SDVC in Memphis concluded that 'prosecution was the norm rather than the exception' (p. 638). Specifically, prosecutors proceeded in 80% of cases, and more than two-thirds of defendants plead guilty, were found guilty, or were placed on diversion. Recent 'snapshot' statistics provided by the Crown Prosecution Service (CPS) show that conviction rates for domestic violence¹⁰ in British SDVCs are higher than in other courts: 71% compared to 59%. Therefore SDVCs appear to be successful at keeping more domestic violence cases in the criminal justice system.

A large part of what makes case progression in domestic violence cases unique is the important role ascribed to – and evidenced by – victim participation. The influence of the victim's willingness to participate in the case cannot be overstated, and there is a well documented and pronounced relationship between victim participation and the continuation of domestic violence cases (Cretney and Davis, 1997; Davis, Smith and Nickles, 1997; Hirschel and Hutchison, 2001; Schmidt and Steury, 1989; Ventura & Davis, 2005). Even within SDVCs victim participation remains a crucial determinant of case outcomes. For example, a recent study of a SDVC in Toronto found that prosecutors were seven times more likely to prosecute a case when victims were perceived to be cooperative (Dawson and Dinovitzer, 2001). Robinson and Cook (2006), in their study of victim retraction in five SDVCs in England and Wales, found that even with the support provided to victims from advocates (IDVAs) and the multi-agency partnerships within which the courts were embedded, half of victims still chose to retract. Case progression in SDVCs still depends in large part on the perceived willingness or credibility of the victim as a prosecution witness.

The research on victim retraction highlights the difficulty of using the criminal law and the criminal justice system to address problems between people that have once had, or that continue to have, an intimate relationship. In the US, Ford (1991) found that women called the police to help them manage the violence against them, but after this immediate goal was satisfied, they often disengaged from the system (i.e., dropped the charges against their ex/partners). He viewed victims' decision-making as rational and strategic, even when it was at odds with the goals of the criminal justice system. Research in the UK and Australia has reinforced this observation, showing that the decision of victims to retract is taken in the context of a range of pressures, many of which derive from the actions or 'controlling behaviours' of perpetrators (ACT Department of Justice and Community Safety, 2001; Cook, 2003; Hoyle & Sanders, 2000; Robinson & Cook, 2006). Factors influencing victims'

viewed as lost opportunities for courts to grant non-molestation orders, and they are now discouraged by the CPS in cases of domestic violence.

¹⁰ Myriad behaviours and criminal offences may be included under the rubric 'domestic violence', such as violent offences, harassment, property offences and sexual offences. The process of adequately identifying domestic violence cases and then analysing the criminal justice responses to them is made more complicated by the fact that, under British criminal law, there is no specific offence of 'domestic violence'. Consequently, monitoring the performance of criminal justice agencies is more difficult than in other jurisdictions (e.g., certain states in the US).

decisions to engage or withdraw from the criminal justice process include: fear of the perpetrator and/or repercussions from his family, her own family and/or the community; the extent and nature of her injuries; fear of damaging family status and honour; fear of losing children; a lack of information about and fear of criminal and civil processes, particularly for women who do not speak or read English; lack of information about, and delays to, the progress of their case; whether the defendant offers an initial plea of guilty; changes to bail conditions; and immigration status. Many of these concerns are not under the direct control of people working in the criminal justice system, yet they are directly relevant to the victims, and therefore rightly inform their attempts to keep themselves and their children safe. To what extent their choices facilitate case progression and sentencing has to be seen as a secondary consideration to their goal of resolving a difficult personal situation as safely as they know how.

Existing Research on Sentencing in Cases of Domestic Violence

What is the most common sentence for a typical domestic violence case? In the US, analysis of 204 convicted domestic violence cases by Ventura and Davis (2005) revealed that the most common sanction was probation with all or part of a jail sentence suspended. About one-third were sentenced and actually spent some time in jail. A fraction (7%) received only a suspended jail sentence or fine and court costs. One of the few studies looking at this issue in the UK found that conditional discharges were the preferred penalties imposed on convicted domestic violence offenders (49% compared to 36% of non-domestic offenders) (Cretney & Davis, 1997). The authors attributed this to the prevalent use of charge reductions resulting in 'bindovers and conditional discharges [being] the standard response to violence in the home' (p. 153). A recent consolidation of the evaluations of several demonstration projects aimed at reducing domestic violence found that sentencing practices varied considerably across five sites in Britain (Hester and Westmarland, 2005). For example, the use of custodial sentences for convicted defendants ranged from 11% to 50%.

Sentencing practices are expected to differ when courts are specialised. An evaluation of coordinated community responses to domestic violence in six sites in the US (including elements of specialisation in the court process) found the benefits to be more consistent sentencing, and the added value of incorporating advocacy into the court process (Clark et al., 1996). About half of defendants in one American SDVC were sentenced to time in prison (with the average sentence being 35 days) (Henning & Feder, 2005). Walsh (2001) studied the specialization of drug and domestic violence courts in West Yorkshire (the oldest SDVC in the UK is in Leeds) and noted that, 'specialisation, coupled with community-based, treatment-oriented, rehabilitative sentences, could provide the answer to the spiralling rate of imprisonment and signal the welcome return to a form of justice with a focus on reintegration' (p. 37). In conclusion, the research suggests a far from uniform approach to sentencing in cases of domestic violence.

What are victim perspectives on sentencing? Research suggests that victims often desire rehabilitation rather than punishment for offenders. For example, research conducted with victims of domestic violence in the US found that many had conflict over the use of incarceration when they had children with the offender and/or believed

that their partners needed rehabilitation rather than punishment (Bennett, Goodman & Dutton, 1999). In the UK, Cretney and Davis (1997) found that many victims said that 'what they had really hoped for from the court was that their assailants receive some kind of "treatment" to help him control his behaviour' (p. 154). This was reinforced with later research which showed that rehabilitation was a key goal of victims' participation with the criminal justice system (Lewis, Dobash, Dobash & Cavanagh, 2000). This is not to say that rehabilitation is the only thing that matters to victims, only that it will be difficult to achieve 'justice' from the victim's perspective without it. The recent expansion of domestic violence perpetrator programmes in the UK means that rehabilitation has the chance of becoming a viable goal of sentencing in cases of domestic violence, although as mentioned previously, the demand of such programmes is currently exceeding supply, and their utility has been questioned. Although victims often express a desire for rehabilitation, how this is achieved in practice is debatable.

Although the impetus of SDVCs is to 'bring more perpetrators to justice' and 'increase victims' satisfaction and confidence with the criminal justice system', it is unclear what penalties specifically imposed on defendants might achieve this. Surprisingly, there is very little research that examines patterns of sentencing in cases of domestic violence or the impact of sentencing options on the recidivism of domestic violence offenders. Most of the research that exists on this topic has been conducted in US courts. British research to date has been limited to a few descriptive accounts of the types of penalties that are most common for domestic violence offenders.¹¹ The limited evidence-base means that it is not possible to assess the impact associated with any particular theoretical approach to sentencing (for example, rehabilitation, retribution, incapacitation, etc.) or the specific penalties representing these approaches (such as community penalties or custody) on the behaviour of offenders. In addition, the effect of various sentencing outcomes on victims and the decision-making practices of the criminal justice officials handling these cases remains unclear. The present study aims to make a contribution in this regard.

Methodology

Data were collected for two government-sponsored¹² evaluations of SDVCs at Caerphilly, Cardiff, Croydon, Derby, Leeds, West London, and Wolverhampton. The overall design of this multi-site evaluation was a mixed method approach which included a literature review, site visits and key informant interviews with a range of stakeholders at each of the seven SDVCs. The quantitative element involved analysing a sample of 438 domestic violence cases finalized in the seven courts to document trends in case progression and sentencing. Information from the Crown

¹¹ In 2004, when the Chairman of the Sentencing Advisory Panel (SAP) issued a *Consultation Paper on Domestic Violence and Sentencing* in order to obtain information from the public and interested parties as to what approach they felt should be taken by the courts in cases of domestic violence, he was able to cite only two studies that identified the penalties imposed in cases of domestic violence, for a total of 166 cases (see Standing Together, 2003 and Cook, Burton, Robinson and Vallely, 2004).

¹² The research was funded by the Crown Prosecution Service and the Department for Constitutional Affairs (see Cook, Burton, Robinson, & Vallely, 2004; Vallely, Robinson, Burton & Tregidga, 2005).

Prosecution Service (CPS) case files and was collected by trained researchers using a comprehensive 10-page instrument designed to gather data on charging decisions, case progression, case outcomes and sentencing; defendants' pleas; bail conditions, civil orders, aggravating and mitigating factors, evidence, defendant background information including criminal justice history, victim background characteristics including the decision to retract, and details about child witnesses. Data were collected from cases finalized in the Autumn of 2003, Spring 2004 and Autumn 2004, and the research was completed in the Spring of 2005. The breakdown of the sample of 438 cases is as follows: Caerphilly (n=91, 21%) Cardiff (n=50, 11%), Croydon (n=131, 30%), Derby (n=35, 8%), Leeds (n=50, 11%), West London (n=32, 7%), and Wolverhampton (n=50, 11%).

The quantitative data are complemented by qualitative interviews (n=54 practitioners and n=46 victims) conducted in the seven sites as part of the research. The practitioner interviews helped to identify how the court process has changed with the introduction of SDVCs, benefits of multi-agency working and continuing challenges posed to the effectiveness of the new courts. Thus, they are not entirely focused on issues pertaining to case progression and sentencing, although these issues were discussed during the interviews. Quotes from the interviews are denoted by CJ (criminal justice practitioner)¹³, VS (respondent from the voluntary sector)¹⁴, or V (victim).

The interviews with victims sought to achieve a range of objectives, including: identifying their experiences of being involved in a domestic violence criminal case; any factors that may have led victims to attend, or not to attend, court dates (such as satisfaction with support and court facilities); their experiences of the SDVC itself, where applicable; and their recommendations for better handling of domestic violence cases by the criminal justice system. The interviews were designed to collect comprehensive information about victims' experiences with the criminal justice system – from initial contact with police at the time of the incident to case disposal and sentencing if the defendant was convicted. The victims were not asked details about the incident itself, although these often emerged during the course of the interview. For the purposes of this paper, only part of these often lengthy interviews is relevant – that pertaining to case progression and sentencing – and not all victims would have had experiences relating to these issues. This paper mainly deals with the end result of the criminal justice process whereas the victim interviews elicited information about the entire process.

Because the victim interviews are not perfectly suited to the aims of this paper (although they are indeed relevant), and because understanding the perspectives of victims is central to the main argument of this paper, they have been supplemented with data from another study looking at victim perceptions of the criminal justice system that took place at one of the sites (Cardiff) during the same time (see Robinson, 2005). The Cardiff study involved structured interviews with a random sample of 120 victims of domestic violence who received support from the Women's

¹³ Criminal justice practitioners include prosecutors and administrators working in the Crown Prosecution Service, police and probation officers, magistrates and court clerks.

¹⁴ Voluntary sector respondents include those working in advocacy/support agencies based at the court (Victim Support, Witness Service) or community-based agencies (such as the WSU in Cardiff or CDVAS in Croydon).

Safety Unit (WSU)¹⁵ during the 12-month period of 1 August 2003 to 31 July 2004. The interviews gathered information about their histories of abuse, their perceptions of the police and what they hope to gain from criminal justice involvement in their lives, the consequences of domestic violence on their employability and health, and finally their experiences and satisfaction with the WSU. Thus, the research complements the SDVC victim interview data and therefore will be discussed where appropriate.

Although this paper draws upon several extensive sources of rich and detailed data, there are some issues which it cannot address. Perhaps most notable is its silence on the experiences and perceptions of the offenders in these cases. In addition, information about their backgrounds and histories of offending was not consistently collected across the sites. Therefore this information cannot be used in the analysis of case progression and sentencing outcomes, although it is relevant. Likewise, incomplete data on another important variable (extent and nature of victims' injuries) means that this cannot be considered in the subsequent analyses, although offence type can be considered a proxy measure. Nevertheless, these are limitations of the current study.

Finally, time has passed since these data were collected and in this time there have been several pertinent policy and procedural changes that will impact upon SDVCs. First, the bulk of changes introduced by the Criminal Justice Act 2003 came into force in April 2005, after the data for this research was collected. Thus, some of the sentencing options described and analysed in this paper were about to be replaced at the time of data collection. For example, the Community Order¹⁶ has come to replace all community sentences such as the Community Rehabilitation Order (CRO) and Community Punishment Order (CPO) that are discussed in the next section. The prevalence of community penalties in SDVCs could have likewise changed as different options have become available.

The recent expansion of Domestic Violence Perpetrator Programmes (DVPPs) mentioned earlier also makes this study less current. Similar to the SDVCs themselves, at the time of data collection, DVPPs were relatively rare as options for sentencers to utilise as part of community penalties. Although figures of defendants sentenced to DVPPs and completion rates are not publicly available,¹⁷ the use of DVPPs as a sentencing option is potentially very different than it was at the time this

¹⁵ The Cardiff Women's Safety Unit (WSU) is a 'one-stop-shop' providing advocacy, support and services to victims of domestic violence. Its remit includes supporting victims who have cases being heard in the SDVC in Cardiff (see Robinson, 2003).

¹⁶ The new Community Order allows magistrates and judges to tailor-make a different sentence for each offender, based on their crimes, by choosing from a range of 12 different requirements, rather than having to match an offender with a pre-existing order. The 12 requirements that sentencers can choose from are: unpaid work (between 40 and 300 hours); participation in any specified activities; accredited programmes aimed at changing offending behaviour; prohibition from certain activities; curfew; exclusion from certain areas; residence requirement (e.g. in a Probation Hostel); mental health treatment; drug rehabilitation requirement (these are provided by the Drug Treatment and Testing Teams); alcohol treatment; supervision treatment; attendance centre requirements (for under 25s).

¹⁷ Personal communication with the Program Manager of the National Probation Directorate Interventions Unit in the Home Office, 20 May 2007.

research was conducted. Therefore this paper cannot consider the impact of DVPPs on case progression and sentencing as it is currently likely to be happening in the courts.

Despite these limitations, the current study makes a valuable contribution by charting case progression and sentencing practices in SDVCs while at the same time looking at these issues from the perspectives of practitioners and victims.

Findings

Cases Heard in SDVCs

Domestic violence offences analysed for this study were primarily committed by male defendants (98%) against female intimate partners, although in one-third of cases the relationship was dissolved at the time the offence was committed. Most defendants were white (67%) and younger than 40 years old (71%). In a majority of cases the victim stated that she had previously experienced domestic violence from the defendant (60%).

The most common type of offence charged was Sect. 39 Common Assault (55%), followed by Sect. 47 Assault with Actual Bodily Harm (16%), Criminal Damage (15%) and Sect. 2 Harassment (6%). The proportions of these different types of offences did not vary to a statistically significant extent across the seven courts (i.e., they were generally hearing the same types of cases). This is a very important point given the variation in case progression and sentencing practices that are discussed in the following sections. In more than one-third of cases (35%), the defendant was charged with more than one crime. The rates of this occurring also did not vary significantly across the courts. The charges were altered by the prosecutor in less than one-quarter of cases. In most of these cases charges were reduced or dropped, although there were instances of charges being altered to a more serious offence or more offences being added to the case. In relatively few instances did SDVCs refer cases to the Crown Court, although this was not consistently monitored in the sites.¹⁸

The most common types of evidence included in the case files were statements from attending officers (93%), statements from the victims (96%), and transcripts of defendants' interviews with police (91%). Therefore most cases had these three basic forms of evidence, although some defendant interviews would be more valuable to prosecutors than others. For example, in nearly one-quarter of cases the defendant admitted guilt in the police interview and in 11% of cases he expressed remorse for his actions. Other forms of evidence were much less frequently found in the case files: statements from other witnesses (28%), case exhibits (27%), transcripts or recordings of 999 calls (26%), and medical statements (19%). The majority of case exhibits (82 of 120) were photographs, usually of injuries. Forensic

¹⁸ In Caerphilly and Croydon there were 21 instances out of 163 cases where the SDVC referred the case to Crown Court. This was generally viewed as a positive development indicating that practitioners were recognising the seriousness of some cases was sufficient to require their handling by the Crown Court. In this study, there were no instances of cases, following conviction of the defendant in the SDVC, being committed to the Crown Court for sentence.

evidence was rare (5%). It is worth noting that since most offences considered 'domestic violence' are assaults that often result in injuries (e.g., 71% of offences in this study), the rates of case exhibits, medical statements, and forensic evidence appear to be very low.

SDVCs from the Victim's Perspective

Several clear and unambiguous messages emerged from the SDVC victim interview data: victims want to have their stories listened to and believed by respectful and well-trained professionals; they want to receive timely information about the progression of the case through the SDVC; and that they want the violence/abuse to cease.¹⁹ It is this last point that is so crucial to understand in the context of criminal justice performance and notions about what constitute 'successful outcomes'. Namely, what happens in the SDVC – whether the defendant is convicted or not, and if he is, what type of sentence he receives – often has very little bearing on the long-term safety and security of victims of domestic violence. Time and again, victims mentioned being fearful of what was going to happen to them or their children as a result of the case being heard in the SDVC, and this sentiment was expressed by women who had very different experiences at court and/or exposure to various sentencing options. For example:

'There were no screens available, my daughter was so nervous, and then he goes and gets off. I have never seen her so upset, he just walked out smiling with his new girlfriend... [Now] I am getting phonecalls from people in my community. I am being persecuted, slandered. He should have been warned off, something to show that he did do wrong even if he was found not guilty. He may have been found not guilty but the case went all the way to court for a reason didn't it?' V

'He got 18 months probation. He took it badly blaming me for the sentence. He was saying that it was because of me that he nearly got sent to prison. He kept threatening me, and was arrested for breach of probation order. I had to change my number. I would like some confirmation that he cannot get me. There have definitely been gaps in support since the case has finished.' V

'I know that he is just waiting for the injunction to run out. He will want vengeance. He is convinced that my child is his although I know that isn't [the case]. I feel especially unsafe now that the case is over. There are no bail conditions with his conviction. I feel very vulnerable now that they have gone. All I have now is that injunction. He cannot come within 50m but I have measured the end of my garden fence and it is

¹⁹ Findings from the interview data are presented in full in the two CPS/DCA commissioned reports (see Cook, Burton, Robinson, & Valley, 2004; Valley, Robinson, Burton & Tregidga, 2005).

51m. He can just watch me and there is nothing that the police can do.’ V

‘I felt insecure in my own home. His family intimidated me. My ex was arrested and they kept him in overnight. Then they released him but I was never told about this. I think that I should have been updated more about what was happening to him, I should have been notified of bail and court adjournments instead of hearing it all from his brother. I felt in the dark a lot. I think that they should think carefully about when they adjourn. I wasn’t coping very well. It was a huge ordeal for me to go to court and then to realise that I had waited all day and it wasn’t over.’ V

These quotes all indicate the insecurity experienced by victims as their cases are progressing through the SDVCs. These feelings of insecurity, anxiety and fear can be exacerbated from having a lack of information throughout the court process. On the other hand, victims feel empowered when they are kept fully informed and involved in the process.

‘The police said that they didn’t know when he would be released because it was the court that had remanded him in custody. It was my life, I wanted to know what to expect but nobody would tell me anything because of confidentiality. I just had to sit and wait, that time was very stressful. When was he going to find out about the injunction? I felt vulnerable. I needed to know when he would be out and about, information is power.’ V

‘I have been left out of the loop at all stages, no input. It has always seemed as if what I want is not important although I was the one who was beaten.’ V

‘Yes [I am] very pleased about the outcome... She [prosecutor] even asked me what I thought he needed. They made me feel included in what was happening. I was called with the result straight away. I didn’t have to hang around wondering what was happening. The decision came out on Christmas eve and they made a big effort to let me know. I really appreciated that.’ V

‘I was scared, depressed, and didn’t understand a lot of what was happening. For example I didn’t realise that it was the CPS that was prosecuting him and not me. Nobody told me that I would just be acting as a witness [and] that I wasn’t in control. The first time that I had any contact with my lawyer was about 2 minutes before the hearing.’ V

Thus, regardless of whether there is a conviction or an acquittal, the process itself will always be difficult for victims, so much so that some will decide that their

involvement is 'not worth it'. When victims mentioned their decision to withdraw or continue with a case, what is notable is that they mention 'personal reasons' that may have little to do with the performance of criminal justice practitioners or interventions. This is consistent with other research on victim retraction discussed earlier (ACT Department of Justice and Community Safety, 2001; Cook, 2003; Ford, 1991; Hoyle & Sanders, 2000; Robinson & Cook, 2006). As these victims explained:

'No, I didn't [retract] but I had thought about it. There were a lot of things that were off-putting. I kept going back for personal reasons though. I had to be strong; I had separated and gone back to him a lot. I needed to show him that this time I wasn't going to back down. Standing up to him was very important to me.' V

'I didn't retract but this was for personal reasons, due to the history of the abuse. I had retracted statements in the past but I was quite determined this time. Although I think that I only continued because of my strength of character. I didn't have very much support during this stage, and I think that had I been a weaker person, I may well have buckled.' V

'[I retracted] because we are just a normal couple. They should listen to what I say. If it happens 2-3 times afterwards fair enough but it was his first offence and I should have been allowed to drop it. I would have never called the police if I had known this was going to happen. They're playing with my life.'
V

'No I didn't retract but for personal reasons rather than outside support. I was determined to go through with it, it wasn't the first time and I finally had got the strength. I did think to myself though – what happens to other women who get minimal information and support like I did? What happens if they don't know what to do and to keep chasing – do their cases just get thrown out?' V

Although SDVCs aim to reduce levels of victim retraction, unfortunately the situation remains that it is not an uncommon decision amongst victims. The quotes above are indicative of the recurring nature of domestic violence and the *process* of leaving an abusive relationship which is often at odds with a criminal justice system predicated on specific *incidents*. However it does highlight the importance of providing proper support to victims, as it is clear that they choose to continue with cases when *they* feel ready to do so. The focus should be on providing them with the information and support necessary to make fully-informed decisions that maximise their chances of safety. Practitioners should remember that these decisions will be more easily understood as part of a process rather than a response to a specific incident.

In conclusion, the SDVC interview data show that victims have different perspectives on what, if anything, can provide them with 'justice' and that, in light of this, outcomes from criminal justice initiatives cannot be easily equated with 'success'

from their perspectives. The Cardiff study reinforces this finding. For example, data from 120 victims showed that by far the most common response to the question 'What do you want to result from this incident?' was 'to be safe' (80%). However they had different ideas as to what type of outcome will be most likely to facilitate their safety. Most stated that they wanted the relationship to be over (63%) and relatively few (although some – 11%) were interested in the relationship continuing without the violence.

In terms of the outcomes that might directly result from criminal justice involvement in their lives, the most common desire expressed by women was for their partners to receive some kind of help. For example, nearly half wanted anger management therapy or some other type of counselling for the perpetrator (45%), and their next most common desire was for the perpetrator to receive treatment for their alcohol and/or drug problem (35%). Nearly a quarter of women also desired treatment for themselves (24%); however, very few women wanted to engage in couples' therapy with the perpetrator (1%).

A desire for a more punitive response by the criminal justice system was less common amongst the victims. About one-quarter (26%) wanted the perpetrator to receive a custodial sentence. Only about 1 in 10 desired the perpetrator to receive probation or a fine as a result of the incident coming to police attention.

Analyses were conducted to determine the relationships between the women's various desires from criminal justice involvement. Results indicated that women who desired alcohol/drug treatment for the perpetrator also wanted him to receive anger management/counselling. These victims also were more likely to want counselling for themselves. This group (comprising about half of the sample of 120 victims) appeared to prefer treatment-oriented goals as a result of criminal justice involvement. Next, there was a group of women (comprising about one-quarter of the sample of 120 victims) who wanted a custodial sentence for the perpetrator and who also were more likely to want them to be put on probation and to pay a fine. These women appear to want the criminal justice system to use its punitive capabilities when dealing domestic violence offenders.

Interestingly, the women who desired safety as a result of criminal justice involvement (the overwhelming majority of women) were significantly more likely to want anger management or counselling for the perpetrator and to want the relationship to be over. There was no statistical association between any punitive criminal justice action and the desire for safety – in other words the women surveyed did not feel that they could achieve safety by having the perpetrator receive a custodial sentence, probation, or a fine. Instead, they felt that safety could be achieved by either providing treatment to the perpetrator or by their decision to end the relationship.

Given the relative infrequency with which 'treatment' was provided by sentences handed down in the SDVCs (see below), we must ask how far current sentencing practices can give victims the safety they desire? The perceptions of victims about case progression and sentencing in SDVCs is also incorporated into the sections that follow.

Case Progression in SDVCs

Of the 438 cases progressed in the SDVCs, about half resulted in convictions (237 defendants). The pattern of attrition showed that 87 were lost before the case was listed for trial (41 were withdrawn and 46 were discontinued).²⁰ The most common reason for pre-trial attrition was due to victim retraction (relevant to 69 of 87 cases). A further 101 cases were lost by prosecutors offering No Evidence at trial. Again, the most common reason was due to victim retraction (59 of 101 cases). In 13 cases the defendants were found not guilty at trial. The overall pattern of attrition, therefore, appears to be due to victims deciding whether to continue with the case or to retract their statements: but not all cases where victims retracted were lost. In 58 cases the victim decided to retract her statement, yet the offender was still convicted. This demonstrates the possibility of prosecutors continuing with cases regardless of victim involvement.²¹

These findings suggest that case progression in SDVCs very much remains dependent on the cooperation and participation of the victim, which can be interpreted in one of two ways. Firstly, it may be viewed as evidence that the prosecution practice in SDVCs remains much the same as that in traditional courts, where prosecutors rely on the two part test when determining whether to pursue a case: is there enough evidence and is it in the public interest to prosecute? If so, the case should move forward, regardless of the victim's desires, because domestic violence is a crime that should be prosecuted vigorously, and those convicted of it punished appropriately. An alternative interpretation is that SDVCs – as institutions attempting to have a victim-focus – are paying attention to victims' wishes and therefore prosecutors are not pursuing cases that victims are unwilling to support. Proponents of this viewpoint suggest that it would be a secondary victimisation of the victim to go against her wishes, and that it also could put her and any children at increased risk (Mills, 1999). Thus, while it is apparent that victim retraction is a key factor influencing case progression in the SDVCs, it is less clear as to whether prosecutors are taking the lead from victims out of respectful deference to their wishes or simply as a way to avoid prosecuting difficult cases (or both). This is an area worthy of further study. It also highlights the futility of assuming that outcomes viewed as negative from a criminal justice perspective (such as retractions) cannot necessarily be equated with negative experiences by victims. Indeed, retraction cannot even be equated with the poor performance of police or prosecutors in a straightforward way, since victims often retract for 'personal reasons' and sometimes even when they do, the defendant is still convicted.

Table 1 below indicates that there is substantial variability in the case progression practices across the seven SDVCs. Although they might all be specialist courts

²⁰ Basically there is not much difference in any practical sense between cases being withdrawn or discontinued. They both achieve the same result. A discontinuance is given in writing by formal notice under S. 23 of the Prosecution of Offences Act 1988 (prior to that matters could only be withdrawn or the prosecution would have to offer no evidence at trial and have the case dismissed).

²¹ Indeed, this was a key recommendation made by the CPS following the evaluations of the DV Pilot Sites – that 'victimless' or 'professional' prosecutions needed to be encouraged, but only in the context of the support and risk assessment made by IDVAs familiar with each victim's specific wishes and needs (see Valley, Robinson, Burton & Tregidga, 2005).

dealing with a similar docket of cases (as discussed earlier), different patterns have emerged as to how cases move through them. For example, some courts seem to facilitate defendants offering their plea of guilty early, before a case has been listed for trial (21% in one court compared to none or few in the other courts). In other courts defendants plead guilty later in the process (this varies from a low of 16% to a high of 37%). While both of these outcomes may be viewed as positive in criminal justice terms because a ‘perpetrator has been brought to justice’, they have very different resource implications for the courts and indeed all those involved with the cases. Late guilty pleas (also known as ‘cracked’ trials) could mean that defendants are manipulating the system, holding out to see whether the victim will retract her statement, and then at the last minute deciding to plead guilty. This could cause enormous stress for the victim while at the same time lengthening the entire process and expending court resources as the case is listed for trial (and all the logistical arrangements that implies). In a defendant’s mind, this might outweigh any benefit, such as a sentence reduction, accrued from offering an early guilty plea. Thus, these ‘successful cases’ from a criminal justice perspective probably represent very different experiences in terms of victims’ safety, satisfaction and confidence with the criminal justice system. While the differences across courts as to *when* guilty pleas are offered probably represent the variable influence and styles of local prosecutors and defence solicitors, this cannot be addressed empirically by the current study, but is worthy of further research attention.

Table 1. Different case progression practices in the SDVCs.

OUTCOME	COURT							TOTAL
	SDVC 1	SDVC 2	SDVC 3	SDVC 4	SDVC 5	SDVC 6	SDVC 7	
<u>Pre-Trial</u>								
Early guilty plea	0	0	0	1	0	15	19	35
	0%	0%	0%	3%	0%	11%	21%	8%
<u>Withdrawn/discontinued</u>								
Withdrawn/discontinued	9	11	4	2	14	24	23	87
	18%	31%	8%	6%	28%	18%	25%	20%
<u>At Trial Hearing</u>								
No evidence offered	16	2	23	15	24	15	6	101
	32%	6%	46%	48%	48%	11%	7%	23%
<u>Guilty plea at trial</u>								
Guilty plea at trial	12	13	12	10	8	47	25	127
	24%	37%	24%	32%	16%	36%	27%	29%
<u>Found guilty at trial</u>								
Found guilty at trial	5	2	3	1	0	19	10	40
	10%	6%	6%	3%	0%	15%	11%	9%
<u>Found not guilty</u>								
Found not guilty	0	0	0	1	1	6	5	13
	0%	0%	0%	3%	2%	5%	5%	3%
<u>Bound over</u>								
Bound over	8	7	7	1	3	5	3	34
	16%	20%	14%	3%	6%	4%	3%	8%
<u>Defendant cautioned</u>								
Defendant cautioned	0	0	1	0	0	0	0	1

	0%	0%	2%	0%	0%	0%	0%	0%

N=438 cases.

Note: Chi-square=159.49, df=42, p=.000.

Likewise, the stage at which cases officially depart the system also varies. In some courts the prosecutors tend to use withdrawals or discontinuances before trial (e.g., SDVC 2, 6, 7) rather than offering no evidence at trial and having the case dismissed (e.g., SDVC 1, 3, 4, 5). Although they achieve the same result in that there is no conviction, there are different implications from these different stages of attrition. Once the case is dismissed, that is final. Therefore one could argue that a withdrawal/discontinuance before trial is the preferable option as it is specific as to the case having insufficient evidence (and therefore if more evidence is forthcoming the case may be resurrected). However this presumes that prosecutors should have the foresight to abandon weak cases sooner rather than later. But no evidence at trial outcomes might well be the result of prosecutors' noble efforts to stick with cases in the hopes that victims *will* participate or that more evidence *will* be forthcoming. Thus, the case is dismissed and cannot be resurrected but the performance of the prosecutor might have been superb. This is yet another example of a criminal justice performance indicator being difficult if not impossible to interpret in the absence of a substantial amount of contextual information about each individual case.

The use of bindovers ranged from 3% to 20% of cases in each SDVC (for a total of 34 defendants being bound over). In 12 of these cases it was known that the victim was consulted and agreed to the bindover. Although their use in cases of domestic violence is discouraged by the CPS, they do reflect the notion that 'something is better than nothing' when there has been recognition of misbehaviour by the defendant but a lack of factual evidence with which to proceed to trial. As one practitioner explained:

'They can be effective in providing a degree of protection. You can't make someone give evidence and a bindover is better than nothing.' CJ

Furthermore, prosecutors might believe that bindovers are effective with defendants not familiar with the criminal justice system, such as employed or first-time offenders, where the process alone has been punishment enough.²² Bindovers might also be useful for any future cases that are brought to court, as they provide a documentation of misbehaviour and an agreement by the defendant to cease such behaviour. However, there is the potential that bindovers represent 'lazy prosecuting' and/or can be misused by prosecutors as a 'soft option' for serious offences.²³ The extent to which bindovers reflect positive or negative outcomes is therefore a judgment that must be based a thorough knowledge of the organisational

²² This assertion is supported by empirical research. In their study of more than 4000 male suspects, Maxwell, Garner and Fagan (2002) found that employed domestic violence suspects were less likely to re-offend compared to unemployed suspects, independent of whether they were arrested at the scene.

²³ Cretney and Davis (1997) found that bindovers were significantly more likely in Sect. 47 cases that were domestic rather than non-domestic assaults (16% compared to 4%).

climate of a particular court and the characteristics of the individual case, including whether the victim was consulted and/or supported the use of a bindover.

In some courts more cases actually went to trial than in other courts, with varying degrees of success (e.g., found guilty at trial rates varied from 3% to 15% and found not guilty at trial rates varied from 0% to 5%). These rates are jointly influenced by the decision-making of defendants (whether and when to plead guilty) and prosecutors (whether to jettison cases when victims retract or continue with them under the guise of 'professional' prosecutions) and no doubt by other factors such as the level of evidence in the case and overall volume of cases in the courts. It is therefore doubtful that they can be used as reliable discriminators of a court's performance, although convictions remain a key performance indicator in the CPS.

In conclusion, it appears that case progression practices in SDVCs are not cut from the same cloth. Different models of performance have emerged, even in a group of courts that presumably are similar and attempting to achieve the same goals. One explanation is that each local context is producing different mechanisms for progressing these cases, using the expertise and resources at hand. Another is that different aims of the courts are taking different levels of priority (e.g., efficiency over empathy for victims, or vice versa).

Further complicating attempts to measure performance in the courts is that their practices must be viewed from the perspectives of many different audiences, each of whom might have different ideas about what should be prioritised in terms of case progression. A prosecutor's success will not necessarily translate into a victim's safe outcome. The court clerk attempting to 'speed up the process' and reduce ineffective trials might be at odds with the advocate who needs more time to support the victim so that she does not drop out of the process. Furthermore, problems for victims can result from a range of different court outcomes, as discussed earlier and reinforced by the following quotes:

'I felt very unprotected, he was found guilty, I did that to him and am therefore fearful of any repercussions.' V

'Probably some protection as he was found not guilty – what was I meant to do after that, knowing that he is still around, he could have done anything.' V

Successful case progression is therefore in the eye of the beholder. As a result, the monitoring of case outcomes cannot tell us whether victims are more empowered, satisfied or safer as a result of having their cases heard in a SDVC. These quotes remind us that it is often impossible to simultaneously accomplish the goals of the court as well as those of the victim, especially since both are multifaceted and might also vary on a case-by-case basis. As the government is currently undertaking an SDVC expansion programme, it worth considering what the overarching rationale for these courts should be – increasing victim safety, improving the efficiency of the criminal justice system, or bringing more perpetrators to justice? Furthermore, we must ask whether it is possible to simultaneously accomplish these different goals, and if not, which should take priority?

Sentencing in SDVCs

The type and frequency of the various penalties imposed on offenders in the SDVCs is as follows: of the 237 defendants convicted, 149 received a financial penalty, 63 received a Community Rehabilitation Order (CRO), 52 were conditionally discharged, 38 received Community Punishment Orders (CPO), 28 received a custodial sentence and 1 received a caution. Each of these types of penalties will be discussed in turn and, where feasible, these findings will be compared to the sentences handed down in Magistrates' courts nationally. Perspectives on victims and practitioners on particular penalties are also included in this section.

Of the 237 defendants that were sentenced, 144 (61%) received one penalty, 88 (37%) received two penalties and 5 defendants received 3 penalties (1%). Of those that received two penalties, the most common combination was to have a financial penalty with a CPO or a CRO. Four of the 5 defendants with 3 penalties all received fines with CPOs and CROs. One of these had a term of custody in addition to a CRO plus a CPO.

By far the most common penalty handed down in the SDVCs was financial (n=149, 63%), which includes fines, court costs, and compensation to the victim. The amount of the financial penalty ranged from £5 to £2000, with the average defendant being ordered to pay a total of £190.²⁴ Most financial penalties (94 of 149 or 63%) were less than £200. Compensation to the victim was specified in one-half of cases where there was a financial penalty.

The use of fines in SDVCs should be understood in the context of their use in other Magistrates' courts across the UK. Fines are still the most common sentence handed down in Magistrates' courts, although their use has practically halved since the 1970s (to one-third instead of two-thirds of offenders receiving a fine) (Tarling, 2006). Thus, SDVCs appear to be handing out fines at rates more similar to those of Magistrates' courts three decades ago. Even if their rates were similar to 21st century Magistrates' courts, one would have to question whether sentencing practices in SDVCs should even be similar, given their supposedly different rationale and purpose. Furthermore, the inappropriateness of fines was a universally held view amongst the victims. Typical responses included:

'I wasn't satisfied with the outcome. I wanted to see him punished for threatening to kill me, but he was just punished for criminal damage and got a fine.' V

'A fine is nothing to him, what sort of punishment is that? He appointed a barrister for an appeal so he has money. [The appeal was about] torturing me right up until the day and then he withdrew his appeal. He still wants power over me.' V

²⁴ Magistrates cannot normally order fines exceeding £5000, although in cases triable either way (in either the Magistrates' court or the Crown Court), the offender may be committed by the magistrates to the Crown Court for sentencing if a more severe sentence is thought necessary.

'The fine made me really angry. I had no input so they just took what he said about his financial situation. He is claiming benefits, he was told to pay me £100 but we have just sold our house. He has £180,000 in the bank. I could have put the record straight if I had been given the chance.' V

Community Rehabilitation Orders (CROs)²⁵ were the next most common penalty, handed down to 67 of the 237 defendants (28%). In 18 of 66 (27%) CROs there were requirements for defendants to attend a Domestic Violence Perpetrator Programme. The utility of CROs sparked a range of different views across victims and practitioners:

'I was very pleased. He didn't deserve to go to prison. He has problems and they were recognized – he got fine, probation and perpetrator programme.' V

'Most victims do not want the defendant imprisoned, they want to see him change... we take the view that in 99.9% of cases imprisonment would be justified, but whereas that would provide short-term protection we are looking towards long-term protection and it may be that is possible through perpetrator programmes.' CJ

'For some victims a CRO is a slap in the face. There is a waiting list for perpetrator programmes so often the defendant walks away from court with no real immediate consequences. Defendants who are sentenced to CROs frequently show no remorse – in fact they can be seen laughing just outside the court.' VS

Community Punishment Orders (CPOs) were given to 38 of the 237 defendants (16%). The time ordered ranged from 10²⁶ to 200 hours, with the most common being 100 hours. As one victim reminds us, the appropriateness of these orders depends on the circumstances of the case:

'I wanted to see him imprisoned... the police thought that because the history of abuse he would probably receive a custodial sentence. This hasn't happened and now he might just get an order that makes him paint a fence for a couple of hours.' V

Taken together, SDVCs used community penalties (CROs and CPOs) in 44% of cases. This compares to 36% of defendants receiving a community penalty (of any type) in Magistrates' courts in 2005 (30% of defendants convicted for indictable offences and 6% of those convicted of summary offences) (SGC, 2007). Thus,

²⁵ As stated previously, the CJA 2003 has replaced Community Rehabilitation Orders (CROs) and Community Punishment Orders (CPOs) with Community Orders that can be tailored to the needs of offenders using twelve different requirements.

²⁶ As a reviewer rightly pointed out, this is below the statutory minimum requirement of 40 hours. It is unclear how this sentence could have been imposed in this way.

sentencers in SDVCs appear to use community penalties more often than their counterparts nationally.

Surprisingly perhaps, 'non-sentences' such as conditional discharges and cautions are used in SDVCs. For example, conditional discharges were given to 52 defendants (representing a low of 12% to a high of 37% of cases and 22% overall). The time specified ranged from 24 to 104 weeks, with the most common being one year. This is comparable to the 24% of defendants who were discharged in Magistrates' courts in 2005 (19% of defendants convicted for indictable offences and 5% of those convicted of summary offences) (SGC, 2007). The caution was given in a Sect. 39 Common Assault case where the defendant was disabled and admitted responsibility for the offence.

Custody was especially rare, with only 28 defendants (12% of 237) spending time in jail or prison. The 28 defendants in this study served time in custody ranging from less than 1 week to 104 weeks.²⁷ Most (61%) custodial sentences were 16 weeks or less in duration. Three of the custodial sentences also included restraining orders.

Nationwide, this compares to roughly 18% of defendants receiving immediate custody in Magistrates' courts in 2005 (16% of defendants convicted for indictable offences and 2% of those convicted of summary offences) (SGC, 2007).²⁸ Thus, on average the SDVCs hand out custodial sentences less frequently than other Magistrates' courts. Compared to American courts (specialised or not), British SDVCs appear even less punitive. For example, one-third of defendants received a custodial sentence in a non-specialised court (Ventura & Davis, 2005) and half of defendants were sentenced to time in prison (with the average sentence being 35 days) in a SDVC (Henning & Feder, 2005). Thus, sentencers in SDVCs seem especially unlikely to use custody.

A higher proportion of defendants convicted of harassment were sentenced to custody (6 of 34 or 15%) compared to those convicted of property offences (7 of 61 or 10%) or assault (15 of 296 or 5%). In cases resulting in custodial sentences, victims were significantly less likely to retract their statements (applicable to only 4 of the 28 cases). Otherwise there is little to differentiate the defendants who received custodial sentences from other defendants in the sample; however, relevant variables that might differentiate these defendants (such as prior convictions and extent of injuries sustained by the victim) were not available for all 28 defendants.²⁹

²⁷ Magistrates cannot normally order sentences of imprisonment that exceed 6 months (or 12 months for consecutive sentences). The custodial sentence of 104 weeks was given in a Sect 47 ABH case referred to Crown Court. In cases triable either way (in either the Magistrates' court or the Crown Court), the offender may be committed by the Magistrates to the Crown Court for sentencing if a more severe sentence is thought necessary.

²⁸ In comparison, only 7% of defendants received custodial sentences for indictable offences in 1975 (Tarling, 2006).

²⁹ More complete information was available for 9 of the 28 defendants who received a custodial sentence. What were these defendants like? All of them had both initial and final pleas of guilty. Two of them had breached their bail conditions. Eight of these cases cracked on the trial day, while the other defendant was found guilty after trial. Four had multiple charges against them. All were male perpetrators with female victims. Four defendants were

Determining the factors related to the use of custody in cases of domestic violence is an area worthy of additional research, especially in light of the new sentencing guidelines and the introduction of Custody Plus.³⁰

Restraining orders were known to be added to sentences in 13 cases. Twelve of these defendants were charged with offences of harassment. Victims were often positive about these orders, although others noted their limitations:

'I was very happy with the restraining order. It was unlimited and that made me feel safe.' V

'I thought the restraining order would make me feel safer but he has broken it. I was led to believe that if that happened then we would be arrested quickly but this hasn't happened. Apparently the police are working on a file for him. So he is still free to harass me and make my life hell. He gets to me through a third party. I feel powerless.' V

The use of restraining orders has been extended to other types of cases by new provisions in the *Domestic Violence Crime and Victims Act (2004)*, although these changes were not implemented at the time the research was conducted.³¹

Offence type was generally not related to use of different types of penalties. The only case where offence type was significantly related to the type of penalty was for CROs. Specifically, the overwhelming majority (82%) of CROs were handed down in cases where the defendant was convicted of assault rather than a property offence or harassment. Overall, it is counter-intuitive that most penalties are not related to offence type, as presumably that is the most important criterion for sentencing, albeit obviously one of a number of key criteria that influence the type of sentence imposed.

Reinforcing this observation are the analyses presented in Table 2, indicating that sentencing has more to do with the court where the offence is heard rather than the

former partners, four were current partners, and one was a former spouse. All but two defendants had served previous custodial sentences. Considering that these facts are true for most of the defendants studied in this research, it is not clear that these nine men differentiated themselves in terms of being the most dangerous offenders.

³⁰ The 'custody plus order' requires adults aged 21 and over who are sentenced to less than 12 months' custody to receive probation supervision after release. It is estimated that in 2007–2008, 49,400 offenders will be starting custody plus orders. It offers, for the first time, supervision for all offenders who are released from prison following short periods of imprisonment. A custody plus order will vary in length from 28 weeks to 51 weeks; consist of a custodial period ranging from 2 weeks to 13 weeks for a single offence; and consist of a licence period of between 26 weeks and 49 weeks. The conditions of the licence will be set primarily by the court at the time that sentence is imposed. Thus, to accommodate the new orders, there will be an increase to 12 months of the maximum length of a custodial sentence able to be imposed for a single offence in a Magistrates' court.

³¹ From July 2007, the courts will be given the power to impose restraining orders on domestic violence perpetrators on sentencing for any offence and on acquittal, if they consider them to be a danger.

offence type. Of the five types of penalties, the use of four varied to a statistically significant extent based on the location of the court. The use of conditional discharges ranged from a low of 12% to a high of 27%; financial penalties ranged from a low of 47% to a high of 88%; the use of CPOs ranged from a low of 0% to a high of 30%; and the use of CROs ranged from a low of 0% to a high of 54%. The use of custody did not vary to a statistically significant extent across the courts, but there was still substantial variance in its use (from a low of 0% to a high of 27%). There are not any obvious patterns with which to facilitate understanding of the data, except perhaps a trend whereby less use of financial penalties translates into more use of custody, and vice versa. It is also noteworthy that the use of community penalties varied enormously, from no use at all to use in 72% of cases (combining CPOs and CROs together), signalling a very disparate adoption of penalties designed to facilitate ‘rehabilitation’ of offenders. Those courts with the highest rates of community penalties (SDVC 3, 4, and 6) were the ones that had DVPPs available with which to sentence defendants; therefore, the availability of perpetrator programmes can be seen to increase the extent to which sentencers use penalties based in the community. However, further research into this issue is necessary, particularly given the recent expansion of DVPPs discussed earlier.

Table 2. Different sentencing practices in the SDVCs.

SENTENCE	COURT							TOTAL
	SDVC 1	SDVC 2	SDVC 3	SDVC 4	SDVC 5	SDVC 6	SDVC 7	
Conditional discharge ¹	5	6	4	2	4	10	21	52
	20%	27%	17%	15%	36%	12%	37%	22%
Financial penalty ²	22	18	18	10	6	40	35	149
	88%	82%	78%	77%	55%	47%	61%	63%
Custody ³	1	3	0	3	3	13	5	28
	4%	14%	0%	23%	27%	15%	9%	12%
Comm Punish Order ⁴	1	4	1	0	0	26	6	38
	4%	18%	4%	0%	0%	30%	11%	16%
Comm Rehab Order ⁵	3	2	9	7	0	36	10	67
	12%	9%	39%	54%	0%	42%	18%	28%
Multiple penalties used ⁶	7	10	9	9	2	37	19	93
	28%	46%	39%	69%	18%	43%	33%	39%

N=237 cases.

Notes: ¹ Chi-square=15.09, df=6, p=.020.

² Chi-square=23.82, df=6, p=.001.

³ Chi-square=10.13, df=6, p=.119.

⁴ Chi-square=23.84, df=6, p=.001.

⁵ Chi-square=28.19, df=6, p<.000.

⁶ Chi-square=09.98, df=6, p=.125.

Looking at sentencing from another angle, the last row of Table 2 provides information about the use of multiple penalties (i.e., when convicted defendants received a sentence containing two or three penalties). While not a statistically significant difference, the rates do vary widely from a low of 18% of convicted defendants receiving more than one penalty to a high of 69% of defendants receiving multiple penalties. Thus, in addition to variation in type of sentence imposed on defendants, courts also differ in terms of the amount of penalties imposed or their 'punitiveness'.

In conclusion, even within SDVCs which are by definition hearing similar types of cases, there is substantial variability in sentencing practices. This may be seen as evidence of a lack of a rationale about what the aims of sentencing should be in cases of domestic violence.

Discussion and Conclusions

There are three dimensions of penal policy – what to punish, how to punish and how much to punish (Easton & Piper, 2005). While the emergence and proliferation of SDVCs makes it clear that 'domestic violence' is now perceived to be a priority response to the first question, the answers to 'how' and 'how much' to punish those convicted of this crime are anything but straightforward. Unfortunately, the recent *Definitive Guideline* issued by the Sentencing Guidelines Council does not help clarify the situation, as an explicit discussion of what aims were meant to be achieved by the penalties imposed on convicted defendants was not provided in the guidance. Thus, it has not been made obvious to sentencers whether the primary aim of sentencing should be justice, punishment, rehabilitation, or reducing the risk of future harm to victims.³²

A lack of clarity around the aims of sentencing is often cited as a cause of variations and inconsistencies across courts in the sentences handed down (Halliday Report, 2001; Home Office, 2004; Tarling, 1979, 2006). Tarling (2006) concluded that 'Research in the 1970s identified large variation between magistrates' courts in the sentences imposed. Twenty-five years later wide variations continue to exist despite a significant shift in the sentencing landscape and despite the information and guidance that has been developed to assist magistrates with their sentencing decisions' (p. 29). The current study provides evidence that this is true even in a small group of specialised courts.

The current research revealed that, even among a group of SDVCs which have many similarities, there was significant variation in terms of how they progress cases as well as their sentencing practices. The location of the court appeared to matter more than key factors such as offence type (assault/harassment/property), as analyses indicated statistically significant differences between courts in terms of their

³² Although in their evidence to the Home Affairs Committee on the draft sentencing guidelines, at least two consultative bodies made it clear that it is this last aim that should be considered to be the most important (reducing harm to victims). See HC 1231 published on 28 June 2006.

case progression practices as well as their use of various penalties, whereas offence type was generally unrelated to these performance measures. It would be reasonable to believe that SDVCs would differ from Magistrates' courts generally, but their dissimilarity with each other, in terms of process and outcome, is surprising.

Also unexpected are some of the case progression and sentencing practices revealed by the quantitative data. For example, bindovers were used in the courts despite being discouraged by the CPS and viewed as inappropriate in cases of domestic violence. The timing of case attrition also differentiated the courts, with some SDVCs preferring to use withdrawals or discontinuances rather than proceeding to trial and offering no evidence. Some courts also were more successful at obtaining early guilty pleas from defendants. All of these findings are difficult to interpret in terms of 'good' or 'bad' performance without having detailed contextual information not only about the court culture and impact of local defence solicitors, but also detailed longitudinal data about the victim's experience of and participation in the case.

In terms of sentencing, custody was used infrequently, community penalties were relatively popular (especially if a perpetrator programme was available) and discharges were used at a rate comparable to Magistrates' courts nationally. However, the use of all of these penalties pales in comparison to the fine: SDVCs in this study gave out fines at the rate of Magistrates courts thirty years ago (in about two-thirds of cases). This is a disappointing finding, especially since the use of financial penalties in cases of domestic violence has always drawn criticism. For example, more than a decade ago, Hoyle (1998) found that domestic violence victims felt that the sentence received by their ex/partners (usually fines) was often not worth the process of prosecution. In this study, victims were similarly nonplussed by their use.

Interviews conducted with victims having their cases heard in SDVCs did not conjure images of a coordinated, well-maintained or highly efficient system that is able to routinely deliver 'successful outcomes'. This is not to say that SDVCs are not a huge improvement on what has come before. Indeed, one could argue that it is only because of the system's heretofore abysmal treatment of domestic violence victims that SDVCs can claim any success at all. Although the SDVCs dealt with similar types of cases (those involving 'domestic violence'), it was apparent from the interviews that the experiences of victims with the SDVC process varied quite substantially, as did their desires about what they actually wanted to happen as a result of the abusive or violent incident coming to police attention. This point was also picked up in the Cardiff data where victims had different ideas as to how they might achieve 'safety', the outcome they most often desired from criminal justice intervention.

Perspectives of victims and practitioners on the SDVC process and on the resultant punishment illustrates how concepts such as 'justice' and 'fairness' are formulated and perceived in different ways. Consequently, it is difficult to meaningfully assess the performance of these courts, as safety is not always achieved when criminal justice outcomes are achieved. What produces a satisfied, safe victim in one case (e.g., custodial sentence) will produce the opposite effect for a different victim, or even the same victim at a different point in time. Furthermore, even when a victim's

safety has been increased, this can have occurred due to myriad reasons, only some of which might be due to actions taken within the court. Conversely, outcomes viewed as undesirable by the courts might be exactly what some victims want (e.g., bindovers or conditional discharges). Because courts do not routinely collect information about *victim safety* as part of the case finalisation process, let alone include this as an official performance target, the situation remains that criminal justice performance indicators are used as proxies. The criminal justice system should be encouraged to collect direct measures of this crucial outcome.

So what else should be measured? What is it about these courts that can make a difference to the victims and offenders coming through their doors? Mastrofski's (1999) work elucidated the type of performance that citizens desire during encounters with police using six non-crime indicators: (1) attentiveness, (2) reliability, (3) responsive service, (4) competence, (5) manners, and (6) fairness. He termed this model 'policing for people', and it could easily be adapted to evaluate other realms of criminal justice. Recent research in the UK substantiated Mastrofski's claim that police demeanor is important, especially to domestic violence victims. For example, taking the time to listen, being attentive, empathetic and concerned to hear the victim's version of events all were evidenced as 'quality policing' from the victim's point of view (Robinson & Strohshine, 2005).

Likewise, conceptualizing 'quality prosecution' and 'quality sentencing' should be informed by victims' perspectives and attention to the process as well as the outcome of a case going to court. From a victim's perspective, 'quality prosecution' would not decontextualize their experiences into 'bits of evidence' but rather provide an outlet where their experiences are heard and believed. Decontextualizing the violence and taking away a victim's sense of control is disempowering. As Nils Christie commented thirty years ago, 'conflicts have been taken away from the parties directly involved and thereby have either disappeared or become other people's property' (1977, p. 1). This results in victims becoming 'double-losers': from the crime itself and from being denied the right to full participation in a case that involves their own conflict. To counteract this, he recommended a victim-oriented court that included a stage where 'the victim's situation was considered, where every detail regarding what had happened – legally relevant or not – was brought to the court's attention' (p. 10). Data from this study and others has consistently shown that providing support, timely information, listening to victims and consulting them before key decisions can make victims feel empowered rather than disenfranchised by the process (Cook, 2003; Cook, Burton, Robinson, & Vallely, 2004; Robinson, 2003; Standing Together, 2003; Vallely, Robinson, Burton & Tregidga, 2005). Therefore, in a practical sense, 'quality prosecution' would suggest that the victim is offered a pre-court visit, guidance about the legal process, and up-to-date information during case progression to counteract a sense of being 'left out of her own case'.

'Quality sentencing' would require incorporating 'what matters' to victims into the sentencing process. This would necessitate communicating to victims the likely outcomes of a criminal conviction and consulting with them before sentencing takes place. Victim personal statements must be taken consistently and be made available to courts before sentences are passed, so that a victim's concerns and experiences are heard and part of the official court record. This is not to say that

victim's wishes should have a *direct* bearing on the sentence imposed (which should be determined by reference to the seriousness of the crime), but rather that their views and wishes are incorporated into the *process* so that the *outcome* does not feel out of their control. At the very least, victims should receive timely notice of the case result and sentence, a situation far from routine at the moment. In conclusion, since the victim data in this study clearly showed that mapping the contours of 'success' is a different exercise for each victim, the focus should instead be on providing a supportive, consistent and professional response that makes *all* victims feel heard and provides the support they crave before, during and after the court case. Consistency in process can be achieved even when outcomes are unknown or undesirable.

The notions of quality processes that take into account the individual concerns of victims and the outcomes that matter to them (namely, for the violence to stop) point to the utility of therapeutic jurisprudence. Therapeutic jurisprudence is a useful lens through which criminal justice practice can be evaluated, as it asserts that the law should promote the well-being – even the empowerment – of people with whom it comes into contact. Victim empowerment is a concept that could provide a more meaningful indication of the performance of institutions in contact with victims of domestic violence (Hoyle & Sanders, 2000; Russell & Light, 2006), as it brings attention to the victim's own power and her own actions to improve her life and keep herself and any children safer. The law may be seen as victim power resource (Ford, 1991) or as a mechanism by which some of society's most vulnerable are doubly victimized (Mills, 1999): the key is for SDVCs to not only steer away from the latter, but also to measure and prioritize the former.

Ideally, therefore, we should directly measure 'what matters' to citizens, and include these measures in the performance evaluations of all criminal justice agencies, including SDVCs. As insightfully argued by Römken (2006, p. 179):

'More than just thinking cosmetically about how to improve the criminal justice system's response, we need to consider the reconcilability of law enforcement's focus on arrest and prosecution with the victim's interests in safety to get a more complex and realistic picture of the potentials and limitations of interventions. A critical examination of the fit between the interests of victims and those of the criminal legal system is required to develop a realistic perspective on what counts as success.'

It is clear that 'success' case can take many different forms. Most obviously in cases of domestic violence, we must remember that there is not one purpose to criminal justice intervention but a number of purposes (Holder, 2006). Furthermore, the importance of recognising the subjective nature of success can be a useful reminder that the law is only one element of a wider social response to domestic violence that must also include community-based and preventative strategies (Lewis, 2004; Robinson, 2007). It also has been suggested that 'healing and restorative approaches may be an effective alternative' to a criminal justice response to domestic violence, especially from the perspective of victims (Mills, 2003, p. 103). Further research needs to be conducted about the potential impact of locating the

primary government response to domestic violence within, rather than outside of, the criminal justice system (for example, in health or social services). Providing a truly holistic response to victims of domestic violence must include the criminal justice system and beyond.

Finally, we cannot forget what we are asking of victims when we encourage them to participate in a criminal justice case against someone with whom they have been, or may continue to be in an intimate relationship. Many studies have described the very understandable concerns that victims have over participation, including fear of retaliation, negative impacts on children, frustration with the complexity and lengthiness of the court process, immigration status, housing issues, and others (Bennett, Goodman & Dutton, 1999; Robinson & Cook, 2006; Römkens, 2006). When we do not routinely consider their wishes when it comes to prosecution and sentencing, how can we claim to put them at the 'heart of the process'? How can we expect to increase victim satisfaction and confidence in the long-term unless we consider what 'success' looks like from her point of view? Now that SDVCs appear to be a permanent fixture on the criminal justice horizon, measuring what really matters to the victims known to these courts, and using this as a key performance indicator, is the next challenge to be met.

Directions for Further Research

The current study highlighted several areas in need of further research. Firstly, more research should be undertaken to improve the evidence-base about which penalties promote deterrence and desistance from domestic violence. Limited research means that it is not possible to assess the impact associated with any particular theoretical approach to sentencing (for example, rehabilitation, retribution, incapacitation) or the specific penalties representing these approaches (such as rehabilitation orders, punishment orders, custody) on the behaviour of offenders. Important impacts to consider are not only those that may produce reductions in re-offending, but also the effect of sentencing outcomes on victims and the decision-making practices of the criminal justice officials handling these cases. More evidence is required as to whether any penalty that a Magistrate or Judge hands down in SDVCs (or any other court for that matter) deters future offending amongst domestic violence offenders.

Whilst it is necessary to study whether any of the most commonly applied penalties are linked to reductions in future offending, two in particular are especially worthy of study. The use of custody in cases of domestic violence warrants further research attention, especially in light of the new sentencing guidelines and the introduction of sentences such as the 'custody plus order'. Identifying the defendants most likely to receive custodial sentences as well as other case characteristics (e.g., type of offence, level of evidence, victim retraction, etc.) would enable fuller understanding of the use of this most punitive of penalties. The proliferation of domestic violence perpetrator programmes and their impact on the use of other penalties is another crucial area of study. Does the availability of DVPPs increase the use of community penalties over other options such as custody, and if so, is this a desirable outcome? Determining the perspectives of victims, advocates and women's groups, criminal justice practitioners, offenders and sentencers on the impact of these penalties on a variety of outcomes also should be a key dimension of the research.

It is also necessary to fully appreciate the courtroom dynamics and local defence and prosecution cultures on case progression practices. While applicability of results is typically limited from research conducted within a single jurisdiction, the benefits of taking a case-study led approach outweigh the disadvantages in terms of being able to understand the reasons behind trends such as the use of bindovers, the timing of guilty pleas, and different methods of jettisoning weak cases (withdrawals/discontinuances/offering no evidence at trial). A comprehensive study of case progression and sentencing practices for domestic violence cases handled in a particular court would be relevant to a large proportion of work undertaken by the criminal justice system nationally, and would facilitate a deeper understanding of courtroom practices and outcomes than we currently have.

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