

# Specialist Domestic Violence Courts – **How special are they?**

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by

A report of observations of the Northumbria Specialist Domestic Violence Courts by members of Soroptimists North of England and the Northumbria Court Observers Panel of contested domestic abuse trials in the Northumbria Magistrates Courts (June to November 2017).



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# Section 1.

# 1.1 Introduction

Domestic abuse has been widespread in England and Wales for many years. Occurring in the private world of the family, it was either little known about or regarded as not being a public matter. More than four decades ago it first came to the attention of Parliament when, following a Select Committee report, Jo Richardson MP in 1976, gained Government backing for a Private Members Bill to give the right to apply to the family courts for protective orders.<sup>1</sup>

These orders were largely designed to make up for the ineffectuality of the criminal justice system to tackle perpetrators and give victims protection. However, criminalising domestic abuse is an important part of recognising the profound physical and psychological harms it causes and to demonstrate that domestic abuse is no less an offence against the state because it is inflicted in the private sphere.

As has recently been recognised by the Sentencing Council in guidelines coming into force in May 2018, domestic abuse is more serious and more damaging than the equivalent abuse in other aspects of life. Although in the debate on Jo Richardson's Bill there was much reference to police and the criminal courts and the role they should play in this sphere, the actual history of their engagement with domestic abuse continued to be poor. Domestic abuse practitioners and academics have continuously criticised the police response, perceived as weak through reluctance to intervene and uncertainty about their powers in private situations. Prosecutors took only small numbers of offenders to court where even fewer were convicted and magistrates imposed over-lenient sentences.

Complainants were discouraged by all of these failures and often tolerated escalating violent and abusive behaviour for want of a safe and effective alternative. In turn the criminal justice agencies felt thwarted by the failure of complainants to support police action or to attend court to testify.

There are clearly special circumstances where the complainant and the defendant are involved in an intimate relationship which can both make prosecution harder and witnesses less willing to testify.

Courts were used to dealing with individual incidents of criminality, whilst the essence of domestic abuse is a pattern of coercive control, using psychological, emotional and financial abuse as well as sexual and physical assaults. The impact of such abuse is profound, complex and perhaps counter-intuitive but it has to be understood to do justice. It was therefore essential for there to be training in domestic violence and abuse for key court practitioners. It was imperative that victims were made to feel safe and had expert input to manage

the risks they face as well as specialist support to engage with the justice agencies.

In 1999 the Labour government sought to tackle these issues by piloting a version of the problem-solving courts already in existence in the USA, Canada and Australia, which bring specialist focus on issues where a traditional criminal justice approach is less successful. The Specialist Domestic Violence Court (SDVC) model was tested and shaped in half a dozen English and Welsh sites from Leeds to Caerphilly over a five year period, undergoing several positive, independent evaluations. These demonstrated that by adopting particular working practices significant improvements could be made to the outcomes of domestic violence and abuse cases.

As part of the search for better domestic abuse solutions, the Government piloted and evaluated two further, related, policy initiatives, namely the new role of the Independent Domestic Violence Advocate (IDVA) and the Multi-Agency Risk Assessment Conference (MARAC). Both were shown to improve outcomes by enhancing the effectiveness of the court and support services for victims, facilitating information-sharing and improving risk management, victim participation and satisfaction, leading to greater accountability for perpetrators and increasing public confidence in the criminal justice system.

SDVCs, IDVAs and MARACs were rolled out nationally in 2005-6. The important working practices highlighted in the various evaluations became the twelve key components of the SDVC system, set out in detail in the SDVC Programme Resource Manual, last issued in 2006. The first 23 courts were reviewed in 2007-8<sup>2</sup> and in 2013 the Centre for Justice Innovation carried out a brief review, noting that there were at that time 138 accredited domestic violence courts<sup>3</sup>.

In 2015, the CPS did a 'deep dive' and produced best practice guidance<sup>4</sup>. There have been many independent research initiatives in addition, but there has been no shift from the original position that the SDVC system is effective and successful in proportion to the presence of the key components established as integral during the first roll-out period.

<sup>1</sup> Hansard 13.2.76 (vol 905 .857-900) Domestic Violence Bill

<sup>2</sup> Justice with Safety, March 2008 Home Office/CPS/HMCS

<sup>3</sup> Better Courts: A snapshot of domestic violence courts in 2013 which points out that this was a reduction from 143 courts in 2010

<sup>4</sup> Domestic Abuse Deep Dive Exercise. Achieving Success: Domestic Abuse Emerging Best Practice Guide, both October 2015

# The key components of the Special Domestic Violence Courts System

In essence the key components for an effective SDVC system are:

- **Identification of cases:** This is done by trained police officers using a number of markers who ensure that there is a proper risk assessment and flag cases so that they are allocated to appropriate resources, in particular to the SDVC.
- **IDVAs:** Every evaluation has found that the provision of specialist DV support services for complainants at medium to high risk are critical to the effective working of SDVCs and all have recommended that there be professional IDVAs attached to every SDVC. IDVAs, who are independent of any of the agencies which make up the criminal justice system, focus on the complainant's interests, their rights under the Victims Code and their safety throughout the process. They provide a point of contact for the court and aim to involve the complainant in every decision which may affect them or their children, such as whether to remand or grant bail and the terms of bail, changes to charges against the perpetrator, dates and times of attendance at trial, requests for special measures and making a Victim Personal Statement. They will work with the court-based Witness Service on such things as familiarisation visits and will accompany the victim at court.
- **Trained and dedicated criminal justice staff:** This includes police at all levels, CPS, court staff, magistrates and probation staff and is essential for awareness of the dynamics of domestic abuse, the approach needed to support victims and the importance of effective evidence gathering.
- **Court listing practices:** Depending on caseload and specialist staff availability DV cases are either clustered together in a court session or fast-tracked to first hearing/pre-trial review with an abridged trial date. There are other considerations such as the need for cases to be listed at a fixed time and date and not 'floating' over or 'backing' other cases. If practical, the courts should have morning only sessions to accommodate childcare and school issues.
- **Court facilities:** These play an important role in the victim's experience. In particular, separate entrances and exits and separate waiting facilities, inside or outside the courthouse are important. Court familiarisation visits are seen as the most successful non-statutory special measures in supporting victims to give their best evidence.
- **Children's services:** At least 750,000 children a year witness domestic violence and abuse and are thus caused 'significant harm' according to the legal definition since 2005. Research suggests that they can be negatively affected in all aspects of their functioning and that supporting the non-abusing parent is the best way of reducing children's risk. At court there are specific rights to special measures for under 17s and charters and codes protecting their interests.
- **Community based perpetrator programmes:** Community Rehabilitation Companies (CRCs) provide perpetrator programmes, notably Building Better Relationships (BBR) and many Local Authorities and Police and Crime Commissioners fund perpetrator programmes which are voluntary. All programmes incorporate support and safeguarding for the victim.
- **Data collection and monitoring:** Police, Crown Prosecution Service (CPS), Courts, Probation and where possible specialist DV support agencies should collect data on incidents, numbers of crimes, arrests, charges, repeat victimisation, offenders, detailed trial outcomes, guilty and not guilty pleas, non-attendance of witnesses, use of supporting evidence, offering no evidence, sentencing, all to be collated locally forming part of local evaluation.

- Multi-agency partnerships: linked to the SDVCs and local Community Safety Partnerships with the safety of the victim as their over-arching aim.
- Multi-Agency Risk Assessment Conferences (MARACs) and Multi-Agency Public Protection Arrangements (MAPPA): MARACs receive referrals which have been assessed as high risk, by agencies such as the police, and share information to facilitate further systematic assessment and the implementation of a plan for support and risk management. For the MARAC, IDVAs are crucial to represent the victim, to provide fuller information through their relationship to her/him and, in most cases, to action what is agreed there. MAPPA is a statutory process to address the risk management issues of convicted offenders who pose the highest risk of serious harm. It will include but is not specific to domestic abuse offenders in that category.
- Equality and diversity: should be addressed in terms of social cultural and language issues where practical with experienced workers from BAME women's organisations.
- Other services: should also be in place to ensure that the wider needs of victims such as refuge services, housing services, health services etc. are met as part of a co-ordinated community response to domestic violence and abuse.

# Domestic abuse today

The Office for National Statistics reported that 1.9 million adults aged 16-59 experienced domestic abuse in 2017. Police recorded 1.1 million domestic abuse related incidents of which 46% were recorded as domestic abuse crimes; this was 32% of all recorded violent crime. The majority of victims between April 2013 and March 2016 were females. A decision to charge was made for 72% of domestic abuse cases referred to the CPS and of those which proceeded to court, convictions were secured in 76% of cases. These figures are the highest ever recorded and there is no doubt that great improvements have been made in how the criminal justice agencies deal with this issue.

However there is an enormous dropout rate for domestic abuse cases, both whilst they are in the hands of the police or the CPS and when they get to court. That is of those cases about which there is ever a complaint. Women's Aid believe that only between one fifth and one quarter of domestic abuse victims ever report the matter to anyone in authority.



# What is domestic abuse?

The working definition of domestic violence and abuse (which is not a legal definition) is:

*'Any incident or pattern of incidents of controlling, coercive or threatening behaviour, violence or abuse between those aged 16 or over who are or have been intimate partners or family members regardless of gender or sexuality. This can encompass but is not limited to the following types of abuse: psychological, physical, sexual, financial and emotional.'*

This definition also clarifies what is meant by both controlling and coercive behaviour in the following ways:

*'Controlling behaviour is: a range of acts designed to make a person subordinate and/or dependant by isolating them from sources of support, exploiting their resources and capacities for personal gain, depriving them of the means needed for independence, resistance and escape and regulating their everyday behaviour.'*

*'Coercive behaviour is: an act or a pattern of acts of assaults, threats, humiliation and intimidation or other abuse that is used to harm, punish, or frighten their victim.'*

To confirm that, 'family member' could include a mother, father, son, daughter, brother, sister and grandparents whether directly related, in-laws or step-family. The definition was also intended to include so-called 'honour' based violence, female genital mutilation (FGM) and forced marriage.

There is no crime called 'domestic violence' or 'domestic abuse'. The offence charged will depend upon the facts but are likely to include assaults at all levels, criminal damage, stalking and harassment, threatening or abusive behaviour and coercive and controlling behaviour.

A specific offence of coercive and controlling behaviour was introduced on 29th December 2015<sup>5</sup> but has not been used often and was seen only once during these observations.

## Section 76 of the Serious Crime Act 2015

Section 76 of the Serious Crime Act 2015 created a new offence of controlling or coercive behaviour in an intimate or family relationship.

Prior to the introduction of this offence, case law indicated the difficulty in proving a pattern of behaviour amounting to harassment within an intimate relationship (the Statutory Guidance cites the following cases – Curtis [2010] EWCA Crim 123 and Widdows [2011] EWCA Crim 1500).

The new offence, which does not have retrospective effect, came into force on 29 December 2015.

### **An offence is committed by A if:**

- A repeatedly or continuously engages in behaviour towards another person, B, that is controlling or coercive; and
- At time of the behaviour, A and B are personally connected; and
- The behaviour has a serious effect on B; and
- A knows or ought to know that the behaviour will have a serious effect on B.

### **A and B are 'personally connected' if:**

- they are in an intimate personal relationship; or
- they live together and are either
  - (i) Members of the same family; or
  - (ii) Have previously been in an intimate personal relationship with each other.

### **There are two ways in which it can be proved that A's behaviour has a 'serious effect' on B:**

- If it causes B to fear, on at least two occasions, that violence will be used against them - s.76 (4)(a); or
- If it causes B serious alarm or distress which has a substantial adverse effect on their day-to-day activities - s.76 (4) (b).

### **For the purposes of this offence, behaviour must be engaged in 'repeatedly' or 'continuously'.**

### **The phrase 'substantial adverse effect on B's usual day-to-day activities' may include, but is not limited to:**

- Stopping or changing the way someone socialises
- Physical or mental health deterioration
- A change in routine at home including those associated with mealtimes or household chores
- Attendance record at school
- Putting in place measures at home to safeguard themselves or their children
- Changes to work patterns, employment status or routes to work

### **For the purposes of the offence A 'ought to know' that which a reasonable person in possession of the same information would know - s.76 (5).**

Extract taken from the CPS Legal Guidance 'Controlling or Coercive Behaviour in an Intimate or Family Relationship', reviewed 30 June 2017.



National data on the number of prosecutions and convictions under this new legislation is not easy to locate. Under Freedom of Information provisions, a law firm asked all police forces in England to reveal how many people were arrested, and how many people were charged under Section 76 of the Serious Crime Act 2015 for Controlling or Coercive Behaviour during the first 18 months of the new law.

A total of 35 police forces responded indicating that, in the first six months of the new law, 798 people were arrested and 130 were charged. The following six months saw numbers more than double, with 1709 arrests and 287 people charged (between 1st January and 30th June 2017) and increased again in the following six months.

In total, in the first 18 months of the legislation, 3937 arrests were made but only 666 offenders (16.9%) were charged - suggesting that the work involved in gathering enough evidence to meet the demands of the CPS is challenging and that many cases are being dropped because of insufficient evidence or because the victim has withdrawn their support.

In terms of prosecutions and convictions, the CPS Violence Against Women and Girls (VAWG) report for 2016-2017 reported that there had been more than 300 prosecutions for offences of coercive and controlling behaviour, since the law was introduced at the end of December 2015. The Criminal Justice Statistics Bulletin also recorded 59 convictions for controlling or coercive behaviour in the twelve months to December 2016. Both figures need to be compared with the 70,853 convictions for other 'domestic abuse related offences' that were secured between April 2016 and March 2017.

There is a similar picture in Northumbria, with Northumbria Police recording 581 incidents as coercive and controlling behaviour between April 2016 and March 2018 and charging 46 individuals for this offence. To date, however, this work has resulted in just five convictions with just a few cases awaiting trial.

Although the offence has not been used extensively, the definition sets out as a concept the understanding (which women's organisations have known for decades) that domestic abuse is far more than single incidents of violence. It is a course of conduct intended to coerce the other party into subjection to the will of the perpetrator using emotional, economic, psychological and sexual abuse as well as threats and violence. In that way the advent of the offence has served a broader purpose than prosecution. Police, CPS and other criminal justice agencies have had to train to understand the offence and hence to become more familiar with the concept of what domestic abuse really is. The training of judges is the responsibility of the Judicial College and the nature of content of judicial training is not made public however, informal contacts indicate that the judiciary as a whole has not had thorough training to understand this important concept. Magistrates often have local training

either to augment or instead of that delivered by the Judicial College and it is understood that the magistrates in Northumbria took domestic abuse training shortly before these observations commenced.

## The SDVC Courts' role and the process in outline

The SDVC is a special form of the Magistrates Court. This means that it can be presided over either by a Bench of Lay Justices of the Peace, who usually sit in threes, or by a legally qualified District Judge (Crime) who usually sits alone. They deal with adult criminal cases only. Their sentencing powers are limited but they can commit a defendant to the Crown Court for a heavier sentence if they believe their powers to be insufficient. If there is a not guilty plea to a domestic abuse offence which is more serious, the magistrates can send it, or the defendant can elect to be sent to the Crown Court where it will be tried by a Judge and Jury.

Domestic abuse cases start with a First Hearing at the SDVC at which the defendant will be expected to indicate, or preferably to tender, a plea to the charge(s). No witnesses, including the complainant, are required to attend a First Hearing. If there is an indication or guilty plea, at that stage, there will be no need for the attendance of the complainant or other witnesses at any stage of the proceedings. Sometimes defendants indicate that they would plead guilty to a lesser offence but would contest the current charge, whereupon the CPS will consider whether the proposed alternative is sufficient and either accept a guilty plea to that or continue to trial on the original charge. Although all of this is intended to be accomplished in a single hearing, there are sometimes obstacles which mean that cases are returned to court a number of times.

If there is a not guilty plea, the SDVC will hold a preliminary hearing to fix a time and place for the trial and to agree such matters as which witnesses must attend and whether the defendant should be granted bail. Then the case will be adjourned out of the SDVC system to be heard as a contested hearing by an 'ordinary' Magistrates Court.

In every case in which there is a finding of guilty or a plea of guilty, there will have to be a sentencing hearing. Sentencing hearings may be heard immediately after the plea or verdict but on some occasions are adjourned for the bench to receive reports from the probation service or elsewhere, to provide them with a fuller context for the sentencing exercise. Where there has been a finding of guilt in a case which has been adjourned out of the SDVC for trial, the court may similarly sentence immediately or adjourn for reports and in some cases the trial court will adjourn the entire sentencing exercise back to the SDVC in deference to its 'special' understanding of domestic abuse issues.

All of this means that most hearings in the SDVC itself are either to receive guilty or not guilty pleas and/or to prepare cases for trial and therefore, in very few cases, is the complainant's presence required. However, decisions are made at SDVC hearings which, particularly because of the closeness of the parties, are likely to have significant impact on the complainant's wellbeing. They include the decision to accept a guilty plea to a lesser charge; the grant or refusal of bail; which conditions should/should not be put onto any bail, (often including arrangements for child contact) and when, where and with what special measures s/he is to appear in a contested hearing. In the absence of the complainant, the intention is that there should be an IDVA present at every such SDVC hearing. The IDVA will be someone with professional expertise, who has been supporting the complainant, knows their circumstances and can ensure that their interests are represented in all of these decisions. Without an IDVA at court, the best that is likely to be achieved is that the CPS representative might be able to consult the complainant quickly by telephone from the court as decisions are being made however, this is significantly less satisfactory.

## Sentencing for domestic abuse offences

The Sentencing Council is a national body made up of judiciary, lawyers and academics. Its role is to consult the public and draw up guidelines within which the courts are expected to sentence those who appear before them. The only basis on which guidelines can be disregarded is if the court believes that it would not be in the interests of justice to follow them in a particular case.

The current guidelines on sentencing for domestic abuse were drawn up in 2006, at the request of the then Home Secretary<sup>6</sup> and amended in 2018. They are set out in full in appendix A and B and, in summary, include the following provisions:

- A principle that offences in a domestic context should be regarded as being no less serious than similar offences in a non-domestic context.

There are aggravating factors which justify a higher sentence for an offence which include:

- Abuse of trust or power – both of these commonly arise in a domestic context where the defendant has been in a trusting relationship with the victim but has abused it by seeking to control them.
- Any vulnerability which the victim has which, for one of a number of reasons, may have made it almost impossible for the victim to leave.
- Exposure of children to an offence (either directly or indirectly).

- A proven history of domestic violence or threats, recognising that there is a cumulative effect of a series of violent incidents or threats over a prolonged period.

Considerations which may mitigate the severity of an offence for purposes of sentence:

- Evidence of genuine recognition of the need for change, and evidence of obtaining help or treatment to effect that change.
- Positive 'good character'.

There are special conditions around the consideration of good character in domestic abuse cases. In most other kinds of case an offender's positive good character can offer mitigation. However, the Sentencing Council understands that domestic violence and abuse can continue unnoticed for lengthy periods because most perpetrators have two personae, one for their life in the outside world and the abusive persona responsible for their domestic abuse. So an offender's good character in relation to matters outside the home is not mitigation for offences committed during a pattern of domestic abuse, though it is possible for it to have some relevance if the offence in question is an isolated act.

Assertions of provocation by bad behaviour from the victim are to be treated with great care and usually only actual or anticipated violence or bullying will be effective mitigation.

The domestic abuse courts have access to specially designed courses, Perpetrator Programmes, which are tailored to domestic abuse offenders, encouraging insight into their behaviour and providing guidance on how to change. There is research that such programmes can help rehabilitate domestic abuse perpetrators. They are provided by the Community Rehabilitation Companies who deliver a national course called Building Better Relationships (BBR). Courts may order defendants to attend at such a course as a part, or the whole, of their sentence. Usually this would follow a report from the NPS as to the defendant's suitability for BBR.

One feature of the overseas model of problem solving courts which has not been taken up in SDVCs is an enhanced role for the judiciary, in following up and reviewing how the defendant is progressing on their sentence. This enhanced role does feature in other specialist courts in England and Wales and may be particularly appropriate in domestic abuse cases if applied to a defendant sentenced to attend BBR. It is possible that there will be consideration in due course as to whether judicial oversight may improve perpetrator accountability/rehabilitation in domestic abuse courts in the future.

## Victim and witness support in relation to the court

Domestic violence and abuse victims are, in many cases, given support in dealing with their overall situation in a number of ways and often by a range of agencies, ideally co-ordinated by an IDVA.

the statement and in turn CPS must pass it to the court who will then decide if the victim will be allowed to read it in open court and pass that information back in time for any necessary attendance. There is higher judicial guidance to the effect that the court should not adjourn any hearing for the sole purpose of allowing a victim to read their own VPS .

### 1. Special Measures

In their capacity as witnesses and potential witnesses at court they are in a category of people who may be considered to be potentially 'vulnerable or intimidated' and can be considered for special measures to assist them to manage the stress, fear and apprehension to which they may be subject. A recent announcement from the former Home Secretary suggested that domestic abuse complainants may soon get automatic entitlement to special measures. The purpose of special measures is to enable a witness, notwithstanding those pressures, to give the best evidence to the court that they can give. Whether, and which special measures, each complainant/witness should have for this purpose is the decision of the judge following a pre-trial application for special measures made by the prosecution after discussion with the complainant.

Commonly available special measures include giving evidence from behind a screen or from another room or building via a television link and to have the assistance of an intermediary if there is a communications difficulty. These will be of limited effect though unless they are accompanied by such non-statutory arrangements as arranging a familiarisation visit, ensuring the complainant can enter and exit the court building away from the defendant, can wait to go into court in a separate waiting room and to be accompanied, if they wish by an IDVA or a supporter of her choice whilst testifying (the special measures provisions are set out in full in appendix C).

### 2. The Victims Code

Every victim has entitlements under the Victims Code including some which apply to the court hearing. In particular every victim is entitled to make a Victim Personal Statement (VPS) setting out in their own words, the impact that the offence has had on themselves and their family and expressing any concerns they have. The VPS is usually taken down by the police shortly after the offence, although occasionally it may be supplemented with new material as the impact of the offence on a victim or family member changes or develops. There is a related entitlement for the victim to say whether they wish to read the VPS personally to the court, or to play it if it is recorded or to have it read aloud to the court by someone else such as a family member or the CPS. Police are responsible for ensuring that the CPS have





# 1.2. The Northumbria Court Observers Panel

A number of concerns were raised in Northumbria about whether changes to the infrastructure around SDVCs may be making them less effective.

Until approximately 2015, the SDVCs in Northumbria sat regularly in each of the six constituent local authority areas. Hearings were often attended by IDVAs employed by the local authorities to support complainants from their own areas in their local court. It appears that information-sharing issues arose which limited the ability of IDVAs to know in advance what cases were to be heard and made effective attendance more difficult and so it became less frequent. In addition the courts closure programme (MoJ 2015) reduced the SDVCs to two sites, one at Bedlington (on Thursdays) to serve the three local authority areas north of the river and one at Gateshead (on Wednesdays) to serve the three southern local authorities. IDVAs report this to be a further problem. Their responsibilities are broader than the SDVC, in particular embracing the MARAC and they all carry heavy caseloads. If the majority of cases to be heard at the sub-regional court came from the other local authorities, waiting through a sitting in order to support one or two complainants was an inefficient use of time. No arrangement representative arrangement proved workable. Local authorities have funded IDVA provision despite suffering deep funding cuts but the numbers cannot keep up with the increases in reporting. Yet, the presence of an IDVA has been considered vital to the effectiveness of the SDVCs in every evaluation since they began as an institution.

Police and CPS provided specialist staff, trained in the dynamics of domestic abuse and in addition offered training to the magistrates. Both these agencies have similarly suffered deep spending cuts, leading to concerns about the current availability of good quality training both for themselves and for the magistrates.

Historically each SDVC had an oversight Board made up of representatives of the agencies which contribute to the system, with the role of reviewing its operation and problem-solving. In Northumbria, as elsewhere, this board ceased to function as the impact of cuts stretched resources and made the regular attendance of criminal justice agencies difficult.

This multiplicity of concerns raised the question whether the local SDVC was able to continue to work in the way intended. Staff from the Office of Police and Crime Commissioner paid a short visit to a sitting of the Bedlington Court and advised that they had seen some practices which they thought would merit longer, more consistent observation. Therefore the idea emerged, following our observation in 2015-6 of 30 rape trials, of carrying out a short term observation project of how domestic abuse cases are being dealt with by the local courts.

## The Soroptimists

Soroptimists International is a women's global volunteer movement, organised into four Federations, which include Soroptimists International Great Britain and Ireland where there are 352 clubs with over 8,000 members. The movement works for human rights and gender equality and has consultancy status at the United Nations. Local members pursue grassroots projects that help women and girls achieve their individual and collective potential, realise aspirations and have an equal voice in communities.

The PCC for Northumbria is a member of the Newcastle Club and volunteers from Newcastle, Sunderland and Tynemouth/Whitley Bay clubs agreed to carry out the observations of the SDVC. At least one member was also able to observe domestic abuse trials, adjourned from the SDVC upon receipt of a not guilty plea and tried by Magistrates Courts across the sub-region. Observations, on part of the project, were also carried out by experienced trial observers from the Northumbria 'Seeing is Believing' project.

The teams were trained by local CPS who together with HMCTS management devised a questionnaire to promote a consistent approach to the collection of data (annexed at appendix D and E). Initial analysis of the data was carried out by police data analysts assisted by OPCC staff who compiled the final report.

<sup>8</sup>R v Perkins:Bennett:Hall (2013) EWCA Crim 323 and Practice Direction (Oct 2013 amended Dec 2013)

<sup>9</sup>Seeing is Believing. OPCC Northumbria 2017



GATESHEAD LAW COURTS

# Section 2.

## Specialist Domestic Violence Court Observations:

- Guilty pleas
- Preliminary hearings in not guilty plea cases

# 2.1 SDVC Proceedings observations initial overview

- Between July and September 2017, a group of voluntary observers from local Soroptimist Clubs, attended the Northumbria Specialist Domestic Violence Courts, then located on two sites, at Bedlington and Gateshead.
- Trained by CPS, working largely in pairs, these observers sat in on a total of 170 cases, undertaking more than 300 observations using a semi structured questionnaire to ensure consistency in the information gathered. They were also asked to consider whether, in their view, the needs of the complainant, who only attends the SDVC in certain circumstances, were being fully considered and met by the court.
- In total, 76 (45%) cases were observed at the Northern SDVC in Bedlington, 94 (55%) were observed at the Southern SDVC in Gateshead.
- Of these, 79 (46%) were heard by District Judges and 91 (54%) were heard by benches of Lay Magistrates across the two courts.

	Bedlington			Gateshead			All		
	District Judge	Lay Magistrates	Total	District Judge	Lay Magistrates	Total	District Judge	Lay Magistrates	Total
Total observations	27	49	76 (45%)	52	42	94 (55%)	79	91	170 (100%)
Of which:									
Case proceeded based on a guilty plea	15 (56%)	20 (41%)	35 (46%)	27 (52%)	25 (60%)	52 (55%)	42 (53%)	45 (49%)	87 (51%)
Case proceeded based on a not guilty plea	12 (44%)	29 (59%)	41 (54%)	25 (48%)	17 (40%)	42 (45%)	37 (47%)	46 (51%)	83 (49%)

- Of these 170 cases, 159 (93.5 %) involved a male defendant and 11 (6.5%) a female defendant.
- Of these 170 cases, 149 (88%) involved a female complainant, three (2%) involved both a female and male complainant, eight (5%) involved a male complainant and ten (6%) involved a complainant whose gender was not identified by the observer(s).

What follows is an analysis of the 87 (51%) cases where the defendant was pleading guilty, followed by an analysis of the 83 (49%) cases in which there were preparatory hearings in consequence of the defendant pleading not guilty.



## 2.2 SDVC Cases that proceeded on the basis of a guilty plea (87 cases)

### 1. Background data

- Of the 87 (51%) cases which proceeded on the basis of a guilty plea, 35 (40%) took place at Bedlington and 52 (60%) at Gateshead.
- A total of 42 (48%) were heard by a District Judge and 45 (52%) by a bench of Lay Magistrates.
- More cases at Gateshead (52%) were heard by a District Judge compared to the Bedlington Court (43%).

	Bedlington			Gateshead			All		
	District Judge	Lay Magistrates	All	District Judge	Lay Magistrates	All	District Judge	Lay Magistrates	All
Number of cases involving a guilty plea	15 (43%)	20 (57%)	35	27 (52%)	25 (48%)	52	42 (48%)	45 (52%)	87

- In the 87 cases, 82 (94%) involved a male defendant and five (6%) a female defendant.
- In the 87 cases, 78 (89.5%) involved a female complainant, three (3.5%) involved a male complainant, three (3.5%) involved both a female and male complainant and three (3.5%) involved a complainant of unknown gender.

### 2. The nature of the hearings

The 87 observed hearings were a mixture of pre-trial and 1st - 5th hearings, pre-sentencing and sentencing hearings.

There is no criminal offence of domestic violence and a variety of charges were used, of which the majority (73%) were assault, criminal damage and harassment/threatening or abusive behaviour. Some defendants faced more than one charge and some defendants did not plead guilty to all charges.

Observers noted that changes were made to the charges originally alleged during the court hearing in eight (9%) of the 87 cases - two in Bedlington, and six in Gateshead.

The complainant was not seen to have been consulted in either of the Bedlington cases and was only seen to be consulted in two of the six Gateshead cases. Thus only 25% of the cases where the charge was altered involved active consultation with the victim.

In the 87 cases, 62 (71%) defendants were sentenced on the day and 25 (29%) had their cases adjourned.

	Bedlington			Gateshead			All		
	District Judge	Lay Magistrates	All	District Judge	Lay Magistrates	All	District Judge	Lay Magistrates	All
Cases where guilty plea submitted	15	20	35	27	25	52	42	45	87
Cases adjourned for reports	1 (7%)	9 (45%)	10 (29%)	6 (22%)	9 (36%)	15 (29%)	7 (17%)	18 (40%)	25 (29%)
Cases where sentence imposed on day	14 (93%)	11 (55%)	25 (71%)	21 (78%)	16 (64%)	37 (71%)	35 (83%)	27 (60%)	62 (71%)

District Judges were more likely to proceed to sentence than the Lay Magistrates, with the District Judge in Bedlington particularly likely to do so.

### 3. Actions taken by the defence

In some cases, in addition to putting forward mitigation (see later section) the defence disputed an aspect of the prosecution case (in 26% of cases) or sought to excuse the defendant's conduct by referencing the victim's behaviour (in 37% of cases) at some point during their case presentation.

In 24 cases (28%) reference was made to the supposed good character of the defendant.

These strategies were more commonly observed at Bedlington and more commonly before Lay Magistrates.

	Bedlington			Gateshead			All		
	District Judge	Lay Magistrates	All	District Judge	Lay Magistrates	All	District Judge	Lay Magistrates	All
Number of cases involving a guilty plea	15	20	35	27	25	52	42	45	87
Of which:									
The defendant disputed an aspect of the prosecution case at some point during the hearing	4 (27%)	10 (50%)	14 (40%)	8 (30%)	1 (4%)	9 (17%)	12 (29%)	11 (24%)	23 (26%)
The defence referred to the good character of the defendant at some point during the hearing	5 (33%)	29 (59%)	41 (54%)	25 (48%)	17 (40%)	42 (45%)	37 (47%)	46 (51%)	83 (49%)
The defence sought to excuse the defendant's conduct by referencing the victim's behaviour at some point during the hearing	5 (33%)	11 (55%)	16 (46%)	8 (30%)	8 (32%)	16 (31%)	13 (31%)	19 (42%)	32 (37%)

If there is a material dispute by the defence on any essential element of the prosecution case, a process called a Newton Hearing can be held to determine the courts view on the issue however; there was an application for a Newton Hearing in only one case.

## 4. Considering victim needs throughout proceedings

In addition to recording factual observations, observers were asked to record whether they were satisfied that the needs of the complainant had been fully considered by the courts.

In 50 (57%) of the 87 guilty pleas cases the observers were satisfied and in a further four (5%) of these cases, one of two observers was also satisfied.

	Bedlington			Gateshead			All		
	District Judge	Lay Magistrates	All	District Judge	Lay Magistrates	All	District Judge	Lay Magistrates	All
No of Cases involving guilty plea	15	20	35	27	25	52	42	45	87
Cases where the observer(s) was satisfied that the needs of the victim were fully considered during the proceedings	9 (60%)	9 (45%)	18 (51%)	19 (70%)	13 (52%)	32 (62%)	28 (67%)	22 (49%)	50 (57%)
Cases where at least one observer was satisfied that the needs of the victim had been fully considered	1 (7%)	0	1 (3%)	2 (7%)	1 (4%)	3 (6%)	3 (7%)	1 (2%)	4 (5%)
Cases where the observer was not satisfied that the victim's needs were fully considered during the proceedings	2 (13%)	8 (40%)	10 (29%)	2 (7%)	6 (24%)	8 (15%)	4 (10%)	14 (31%)	18 (21%)
Cases where observers felt unable to comment	3 (20%)	3 (15%)	6 (17%)	4 (15%)	5 (20%)	9 (17%)	7 (17%)	8 (18%)	15 (17%)

Satisfaction was more likely to be expressed where proceedings had been heard by a District Judge (67% in Bedlington and 77% in Gateshead).

Where observers provided a reason, most common was CPS having direct contact with the complainant or appearing to pro-actively support their account, or the court imposing a restraining order on the defendant. Where observers provided a reason(s) for a more negative evaluation, the most common were lack of attention to the VPS or apparent disregard for the victim's housing, financial or emotional support needs.

## 5. Considering children's needs throughout proceedings

Throughout the case and the sentencing observers considered whether the needs of associated children were mentioned. In just one in five cases heard by District Judges and one in nine cases heard by Lay Magistrates.

	Bedlington			Gateshead			All		
	District Judge	Lay Magistrates	All	District Judge	Lay Magistrates	All	District Judge	Lay Magistrates	All
No of Cases involving guilty plea	15	20	35	27	25	52	42	45	87
Of which, a reference was made to the needs/risks of associated children at some point during the hearing	3 (20%)	4 (20%)	7 (20%)	5 (19%)	1 (4%)	6 (12%)	8 (19%)	5 (11%)	13 (15%)

## 6. Prior convictions, aggravating and mitigating factors

Of the 87 cases observed, sentencing was only observed in 62. Observers were therefore, in these 62 cases, able to comment on the CPS handling of prior convictions and the use of aggravating and mitigating factors. These finding are therefore representative of these 62 cases only.

### 6.1 Prior Convictions

Where sentence is to be passed, part of the role of CPS is to highlight any previous relevant convictions of the defendant.

In the 62 cases where sentence was passed on the day, the CPS did so in 29 (47%) of these cases.

### 6.2 Aggravating and Mitigating Factors

In addition, taking account of previous relevant convictions, the Sentencing Council Guidelines (2006) highlight a range of aggravating and mitigating factors that can affect sentencing in domestic abuse cases and which should be highlighted respectively by the prosecution and the defence.

#### (i) Aggravating factors highlighted prior to sentencing

Aggravating factors were highlighted by the prosecution in 28 (45%) of the 62 cases that resulted in sentencing on the day of observation.

	Bedlington			Gateshead			All		
	District Judge	Lay Magistrates	All	District Judge	Lay Magistrates	All	District Judge	Lay Magistrates	All
Cases where a sentence was passed	14	11	25	21	16	37	35	27	62
Cases where the CPs set out aggravating factors prior to sentencing	5 (36%)	5 (45%)	10 (40%)	8 (38%)	10 (63%)	18 (49%)	13 (37%)	15 (56%)	28 (45%)

The most common aggravating factor to be identified by the prosecution was alcohol or drug misuse, highlighted in five (20%) of the cases in Bedlington and four (11%) in Gateshead.

(ii) Mitigating factors highlighted prior to sentencing

At least one mitigating factor was highlighted in 50 (81%) of the cases observed by our volunteers.

	Bedlington			Gateshead			All		
	District Judge	Lay Magistrates	All	District Judge	Lay Magistrates	All	District Judge	Lay Magistrates	All
Cases where a sentence was passed	14	11	25	21	16	37	35	27	62
Mitigating factors were highlighted by the defence prior to sentencing	11 (79%)	8 (73%)	19 (76%)	16 (76%)	15 (94%)	31 (84%)	27 (77%)	23 (85%)	50 (81%)

Whilst misusing alcohol or another substance can dis-inhibit an abuser, there is little if any research demonstrating a causal link between misusing substances and domestic abuse. Despite this, it is the most common mitigating factor related to the defendant's substance misuse (24% of cases), their cessation/reduction of substance misuse (a further 5% of cases) or their decision to 'seek help' for this abuse (used in 13% of cases).

In 16% of cases, the defendant was portrayed as having limited responsibility for their behaviour due to their apparent mental illness or cognitive disability (used in some 16% of cases).

The victim's (alleged) behaviour was also used as a mitigating factor: that s/he had provoked the defendant (15% of cases) or caused the defendant to protect themselves (8% of cases). The truth of such allegations is completely unknown and is hard to challenge, given that the complainant's evidence is not needed if there is a guilty plea and so they are rarely at court to comment.



## 7. The victim personal statement

A Victim Personal Statement (VPS) describing the impact of an offence(s) should be referred to prior to an offender being sentenced. CPS can apply to the court for the complainant to read their own statement if that is requested. In practice, it is often read by the CPS, especially since victims are not usually present at guilty plea hearings and there is guidance against adjourning proceedings to afford a victim the chance to read it out. Of the 87 cases observed, sentencing took in 62 of them. Observers were therefore, in these 62 cases able to comment on the VPS.

	Bedlington			Gateshead			All		
	District Judge	Lay Magistrates	All	District Judge	Lay Magistrates	All	District Judge	Lay Magistrates	All
Cases where sentence passed	14	11	25	21	16	37	35	27	62
Of which:									
VPS referred to by CPS prior to sentencing	6 (43%)	2 (18%)	8 (32%)	11 (52%)	6 (37.5%)	17 (46%)	17 (49%)	8 (30%)	23 (26%)
VPS was not referred to by CPS prior to sentencing	5 (36%)	7 (64%)	12 (48%)	8 (38%)	8 (50%)	16 (43%)	13 (37%)	15 (56%)	28 (45%)
Question left blank/ Observations unclear	3 (21%)	2 (18%)	5 (20%)	2 (10%)	2 (12.5%)	4 (11%)	5 (14%)	4 (15%)	9 (15%)
Reference made to victim wishing to read VPS in person	0	0	0	1	0	1	1	0	1

CPS solicitors only made clear reference to the content of a VPS in 25 (40%) of cases whilst in 28 cases (45%) they made no reference to it. That may be of concern since Court of Appeal guidance says that it is 'appropriate in all cases' for the VPS to be referred to in the sentencing hearing or in sentencing remarks.



## 8. Sentencing

### 8.1 Sentencing on the Day

The 62 cases that involved the imposition of a sentence on the day of observation are outlined below. District Judges imposed more orders per case (159 or 4.5 sentences per case) than Lay Magistrates (107 or 2.8 sentences per case). District Judges also imposed more community orders, rehabilitation activities, unpaid work and suspended sentences than Lay Magistrates.

Lay Magistrates were more likely to impose fines, particularly in the Bedlington Court.

	Bedlington			Gateshead			All		
	District Judge	Lay Magistrates	All	District Judge	Lay Magistrates	All	District Judge	Lay Magistrates	All
Cases where sentence passed	14	11	25	21	16	37	35	27	62
Of which:									
Community Order	6 (43%)	4 (36%)	10 (40%)	15 (71%)	7 (44%)	22 (59%)	21 (60%)	11 (41%)	32 (52%)
Rehabilitation Activity	7 (50%)	2 (18%)	9 (36%)	16 (76%)	10 (62.5%)	26 (70%)	23 (66%)	12 (44%)	35 (56%)
Unpaid work	4 (29%)	2 (18%)	6 (24%)	4 (19%)	1 (6%)	5 (14%)	8 (23%)	3 (11%)	11 (18%)
Fines	5 (36%)	7 (64%)	12 (48%)	3 (14%)	9 (56%)	12 (32%)	8 (23%)	16 (59%)	24 (39%)
Victim Surcharge	10 (71%)	7 (64%)	17 (68%)	9 (43%)	11 (69%)	20 (54%)	19 (54%)	18 (67%)	37 (60%)
Victim Compensation	5 (36%)	5 (45%)	10 (40%)	15 (71%)	8 (50%)	23 (62%)	20 (57%)	13 (48%)	33 (53%)
Court Costs	8 (57%)	3 (27%)	11 (44%)	14 (67%)	11 (69%)	25 (68%)	22 (63%)	14 (52%)	36 (58%)
Building Better Relationships/ Anger Management Programme*	4/0 (29%)	0/1 (9%)	4+1=5 (20%)	2/2 (19%)	1/1 (12.5%)	4+2=6 (16%)	4/4 (23%)	1/2 (11%)	8+3 = 11 (18%)
Suspended prison sentence	3 (21%)	0	3 (12%)	4 (19%)	3 (19%)	7 (19%)	7 (20%)	3 (11%)	10 (16%)

\* Analysed together

A Victim Surcharge was more commonly imposed at Bedlington Court (68% of cases) and least used by the District Judge in Gateshead (43% of cases). However, Victim Compensation was imposed more often in Gateshead Court, and in particular in 71% of cases heard there by a District Judge.

Court costs were also imposed more often in Gateshead than Bedlington Court where Lay Magistrates, in particular, imposed court costs in just a quarter of the cases they heard.



Building Better Relationships is a programme specifically designed to tackle domestic abuse perpetration. There are also anger management programmes available and sometimes the two are conflated so in the interests of caution the use of these two programmes as part of a sentence has been aggregated. Such programmes were used more by District Judges than by Lay Magistrates, particularly in the Bedlington Court, but overall were utilised in less than one in five (18%) of the 62 cases sentenced on the day. It is possible that reports, as to suitability, were not available in all cases but there is no obvious reason for a court not to adjourn sentence for that assessment, if it presents as potentially a suitable order.

## 8.2 Adjourned Sentencing

There were 25 cases adjourned for sentencing at a later date. Follow up information is available on 18 of these 25 cases although we are not aware whether the cases were sentenced by a District Judge or Lay Magistrate.

	Bedlington	Gateshead	All
Guilty plea cases where sentence adjourned and passed at a later hearing	10 Results shown are for 9 of the 10 cases	15 Results shown are for 9 of the 15 cases	25 Results shown are for 18 of the 25 cases
Of which:			
Community Order	5 (56%)	4 (44%)	9 (50%)
Rehabilitation Activity	8 (89%)	8 (89%)	16 (89%)
Unpaid work	1 (11%)	2 (22%)	3 (17%)
Fines	2 (22%)	0	2 (11%)
Victim Surcharge	5 (56%)	1 (11%)	6 (33%)
Victim Compensation	3 (33%)	2 (22%)	5 (28%)
Court Costs	5 (56%)	2 (22%)	7 (39%)
Building Relationships/Anger Management programme*	2 (22%)	2 (22%)	4 (22%)
Suspended prison sentence	3 (33%)	4 (44%)	7 (39%)
Custodial Sentence	0	1 (11%)	1 (6%)

## 9. The use of restraining orders to keep victims safe

A restraining order can be used to help keep a victim of domestic abuse safe whenever sentence is being passed or where the defendant has been found not guilty, but the court is sufficiently concerned about their behaviour to believe that future safeguarding is necessary.

### 9.1 Use of Restraining Orders on the Day

Of the 62 guilty cases sentenced on the day, 39 (63%) involved an application for a restraining order, the highest number of applications being made before the Gateshead District Judge (76% of their cases).

	Bedlington			Gateshead			All		
	District Judge	Lay Magistrates	All	District Judge	Lay Magistrates	All	District Judge	Lay Magistrates	All
Cases where sentence passed	14	11	25	21	16	37	35	27	62
Restraining order made at sentence	8 (57%)	7 (64%)	15 (60%)	16 (76%)	8 (50%)	24 (65%)	24 (69%)	15 (56%)	39 (63%)
Of which:									
Reference made to victim being consulted on its content	1 (12.5%)	2 (29%)	3 (20%)	5 (31%)	5 (62.5%)	10 (42%)	6 (25%)	7 (47%)	13 (33%)
The defence requested the order be written in a way that facilitated child contact	4 (50%)	5 (71%)	9 (60%)	3 (19%)	0	3 (12.5%)	7 (29%)	5 (33%)	12 (31%)

It is of concern that where restraining orders were used, reference was made to the victim being consulted on what it should or should not contain in only 13 (33%) of the cases.

In addition, of the 39 cases in which a restraining order was made, defence solicitors requested that the restraining order be written in a way that facilitated contact with children in 12 (31%) of the cases.

### 9.2 Use of Restraining Orders in Sentencing

Information is only available on 18 of the 25 cases that were adjourned for sentencing and indicates a higher number of orders were made following adjournment.

	Bedlington	Gateshead	All
Guilty plea cases where sentence adjourned and passed at a later hearing	10 Results shown are for 9 of the 10 cases	15 Results shown are for 9 of the 15 cases	25 Results shown are for 18 of the 25 cases
Restraining order made at sentence	8 (89%)	7 (78%)	15 (83%)

We do not have information available on the number of cases in which the victim was consulted on the provisions made or on the number in which defence solicitors requested the restraining order be written in a way that facilitated child contact.

## 10. Problems relating to the acquisition of evidence from the police

Problems relating to the acquisition of evidence from the police were noted by our observers in three (3.5%) guilty plea cases, all at Bedlington.

	Bedlington	Gateshead	All
Number of cases involving a guilty plea	35	52	87
Cases where observers noted that problems relating to the acquisition of evidence/documentation from the police were being highlighted	3 (9%)	0	3 (3.5%)

## 11. Evidencing coercive and controlling behaviour

Coercive and controlling behaviours are the essence of domestic abuse but have historically received little attention within the criminal justice system. Legislation was passed at the end of 2015 to specifically create an offence for that behaviour and all criminal justice personnel should have been trained accordingly. For this reason, observers were asked to note any charge of coercive and controlling behaviour and also to note any cases where they felt that the information shared at court showed that such behaviours were a feature of the abusive relationship.

Of the 87 guilty plea cases, only one included a charge for coercive behaviour. However, with just a few hours of training, observers identified a further 11 (13%) cases where such behaviour appeared to be a feature of the relationship, albeit not captured in a charge.

	Bedlington	Gateshead	All
Number of cases involving a guilty plea	35	52	87
Cases where a charge was brought for coercive behaviour	0	1 (2%)	1 (1%)
Cases where information was shared that indicated coercive or controlling behaviour was a feature of the relationship	6 (17%)	5 (10%)	11 (13%)

## 2.3 SDVC Cases that proceeded to preliminary hearings on the basis of not guilty pleas (83 cases)

### 1. Background data

- In total, 83 (49%) of the cases observed proceeded as not guilty pleas – 41 (50%) in Bedlington and 42 (50%) at Gateshead.
- Of the 83 cases, 37 (45%) were heard by a District Judge and 46 (55%) were heard by Lay Magistrates.

	Bedlington			Gateshead			All		
	District Judge	Lay Magistrates	All	District Judge	Lay Magistrates	All	District Judge	Lay Magistrates	All
Number of cases involving a not guilty plea	12 (29%)	29 (71%)	41	25 (60%)	17 (40%)	42	37 (45%)	46 (55%)	83

- Of those 83 cases 77 (93%) involved a male defendant and six (7%) a female defendant.
- Of those 83 cases 71 (86%) involved a female complainant, five (6%) a male complainant and seven (8%) involved a complainant of unknown gender.

## 2. The nature of the hearings

These were a mixture of pre-trial and 1st – 6th hearings, pre-sentencing and sentencing hearings observed, with most not guilty pleas heard at pre-trial (37 cases) and 1st hearing stages (28 cases).

Defendants were charged with a variety of offences of which the majority (85%) were for assault, criminal damage, stalking/harassment (including malicious communications) and threatening or abusive behaviour. Only one charge of controlling behaviour was observed, in the Gateshead court.

	Bedlington			Gateshead			All		
	District Judge	Lay Magistrates	All	District Judge	Lay Magistrates	All	District Judge	Lay Magistrates	All
Number of cases involving a not guilty plea	12	29	41	25	17	42	37	46	83
Of which:									
Assaults (inc. 1 x GBH with Intent)	7 (47%)	24 (60%)	31 (56%)	21 (72%)	15 (58%)	36 (65%)	28 (64%)	39 (59%)	67 (61%)
Criminal Damage	2 (13%)	7 (17.5%)	9 (16%)	2 (7%)	3 (12%)	5 (9%)	4 (9%)	10 (15%)	14 (13%)
Stalking/Harassment (inc malicious comms)	2 (13%)	3 (7.5%)	5 (9%)	2 (7%)	1 (4%)	3 (5%)	4 (9%)	4 (6%)	8 (7%)
Threatening or abusive behaviour	0	3 (7.5%)	3 (5%)	0	1 (4%)	1 (2%)	0	4 (6%)	4 (4%)
Controlling Behaviour	0	0	0	1 (3%)	0	1 (2%)	1 (2%)	0	1 (1%)

\* Cases can involve more than one charge

Observers noted a charge variation in seven cases involving a not guilty plea – three in Bedlington and four in Gateshead.

In all three Bedlington cases, the District Judge ensured consultation with the victim.

In Gateshead, the victim was not consulted on three of the four proposed charge variations.

### 3. Applications to vary bail conditions

There was an application to vary bail conditions in 15 (18%) of the 83 not guilty cases – ten at Bedlington, nine of which were heard by Lay Magistrates and five at Gateshead, where three were heard by Lay Magistrates.

	Bedlington			Gateshead			All		
	District Judge	Lay Magistrates	All	District Judge	Lay Magistrates	All	District Judge	Lay Magistrates	All
Number of cases involving a not guilty plea	12	29	41	25	17	42	37	46	83
An application was made to vary bail conditions	1 (8%)	9 (31%)	10 (24%)	2 (8%)	3 (18%)	5 (12%)	3 (8%)	12 (26%)	15 (18%)
Of which:									
Reference was made in open court to consultation with the alleged victim on these variations	0	3 (33%)	3 (30%)	0	1 (33%)	1 (20%)	0	4 (33%)	4 (27%)

In only three of the ten applications at Bedlington (30%) and one of the five at Gateshead (20%) was any attempt made to consult the victim on the requested changes observed. Thus in three quarters of the applications to vary bail it is not clear how any account could be taken of the risks to/needs of the complainant.

### 4. Issues for trial highlighted by the defence

The defence clearly identified the issues for trial in just under half (39) of the 83 cases observed. The most common defence strategies were to dispute the complainant's account or to claim that the defendant had acted in self-defence.

	Bedlington			Gateshead			All		
	District Judge	Lay Magistrates	All	District Judge	Lay Magistrates	All	District Judge	Lay Magistrates	All
Number of cases involving a not guilty plea	12	29	41	25	17	42	37	46	83
The defence clearly identified the issues for trial	4 (33%)	13 (45%)	17 (41%)	12 (48%)	9 (53%)	21 (50%)	16 (43%)	22 (48%)	38 (46%)
Of which:									
Denies offence – disputes victim or witness account	1 (25%)	5 (38%)	6 (35%)	5 (42%)	4 (44%)	9 (43%)	6 (37.5%)	9 (41%)	15 (39%)
Denies offence – claims self defence	1 (25%)	2 (15%)	3 (18%)	5 (42%)	3 (33%)	8 (38%)	6 (37.5%)	5 (23%)	11 (29%)
Not enough info provided by observer to categorise	2 (50%)	7 (54%)	9 (53%)	4 (33%)	3 (33%)	7 (33%)	6 (37.5%)	10 (45%)	16 (42%)

## 5. The victim's experience

Special measures were requested/ordered to assist the complainant to give their best evidence at trial in 49 (59%) of cases involving a not guilty plea. The most common measure requested was a live link to enable the complainant to give evidence from a separate room in the court building or from a remote evidence suite elsewhere.

Even so, a live link was requested in only 29% of the 83 not guilty cases which is disappointing given the centrality of such a measure to the support of vulnerable and/or intimidated witnesses. Such a request was less likely at Bedlington Court, despite the fact that this court is relatively rural and may be more difficult to access safely, with fewer transport links.

	Bedlington			Gateshead			All		
	District Judge	Lay Magistrates	All	District Judge	Lay Magistrates	All	District Judge	Lay Magistrates	All
Number of cases involving a not guilty plea	12	29	41	25	17	42	37	46	83
Cases where special measures were requested for the complainant*	7 (58%)	15 (52%)	22 (54%)	17 (68%)	10 (59%)	27 (64%)	24 (65%)	25 (54%)	49 (59%)
Of which, a live link was requested	3 (25%)	5 (17%)	8 (20%)	11 (44%)	5 (29%)	16 (38%)	14 (38%)	10 (22%)	24 (29%)

In 15 (18%) of the not guilty cases, issuing a witness summons was discussed to bring an apparently unwilling (and perhaps fearful) complainant to court. There was no apparent discussion of the need for special measures for the complainant, at the same time.

In more than a third of cases (37%) the courts ordered the defendant to have legal assistance to prevent him from personally cross-examining the complainant.

	Bedlington			Gateshead			All		
	District Judge	Lay Magistrates	All	District Judge	Lay Magistrates	All	District Judge	Lay Magistrates	All
Number of cases involving a not guilty plea	12	29	41	25	17	42	37	46	83
No. of cases where issuing a witness summons for the complainant was discussed in court	9 (75%)	2 (7%)	4 (10%)	6 (24%)	5 (29%)	11 (26%)	8 (22%)	7 (15%)	15 (18%)
No. of cases where an application was made to prevent cross examination by the defendant in person	5 (42%)	11 (38%)	16 (39%)	10 (40%)	5 (29%)	15 (36%)	15 (41%)	16 (35%)	31 (37%)



## 6. Considering victims needs throughout proceedings

In 37 (45%) of the 83 cases, those who observed the proceedings were satisfied that the needs of the complainant had been considered. This was especially so for cases heard by a District Judge (57%) rather than those heard by Lay Magistrates (35%).

In a further 14 cases (17%) at least one of the observers was satisfied that the needs of the victim had been fully considered.

	Bedlington			Gateshead			All		
	District Judge	Lay Magistrates	All	District Judge	Lay Magistrates	All	District Judge	Lay Magistrates	All
Number of cases involving a not guilty plea	12	29	41	25	17	42	37	46	83
Cases where observers were satisfied that the needs of the victim(s) were fully considered during the proceedings	7 (58%)	10 (34%)	17 (41%)	14 (56%)	6 (35%)	20 (48%)	21 (57%)	16 (35%)	37 (45%)
Cases where observers were not satisfied that the needs of the victim(s) were fully considered during the proceedings	3 (25%)	6 (21%)	9 (22%)	4 (16%)	7 (41%)	11 (26%)	7 (19%)	13 (28%)	20 (24%)
Cases where observers disagreed in their evaluation	2 (17%)	8 (28%)	10 (24%)	3 (12%)	1 (6%)	4 (10%)	5 (14%)	9 (20%)	14 (17%)
Cases where observers felt unable to comment	0	5 (17%)	5 (12%)	4 (16%)	3 (18%)	7 (17%)	4 (11%)	8 (17%)	12 (14%)

Where observers provided a reason for their satisfaction, they focussed on the court's instructions to the defendant not to contact the complainant whilst the case proceeded and on the availability of special measures, particularly a live link.

In the 24% of cases where observers were NOT satisfied that the needs of the victim(s) had been fully considered, the most common reasons were lack of information heard in court about the needs/circumstances of the complainant and apparent lack of attention to their expressed fears and/or wishes.

	Bedlington			Gateshead			All		
	District Judge	Lay Magistrates	All	District Judge	Lay Magistrates	All	District Judge	Lay Magistrates	All
Cases where the observer(s) were NOT satisfied that the needs of the victim(s) were full considered during the proceedings	3	6	9	4	7	11	7	13	20
Of which:									
Not enough detail given in court/confusing info given in court/unable to contact victim to check info given in court	2 (66%)	4 (66%)	6 (66%)	1 (25%)	5 (71%)	6 (55%)	3 (43%)	9 (69%)	12 (60%)
Victim's retraction not observed/victim afraid to attend court/no support offered to victim	0	1 (17%)	1 (11%)	1 (25%)	1 (14%)	2 (18%)	1 (14%)	2 (15%)	3 (15%)
Other	0	0	0	1 (25%)	3 (18%)	7 (17%)	4 (11%)	8 (17%)	12 (14%)
Reason not given	1 (33%)	1 (17%)	2 (22%)	1 (25%)	1 (14%)	2 (18%)	2 (29%)	2 (15%)	4 (20%)

## 7. Case progression & complainant consultation

Observers were asked to record when the next hearing in the case they were observing was scheduled to be heard. In Gateshead, more than two thirds of hearings (67%) were scheduled to take place within the following eight weeks. In Bedlington, just under half were scheduled to take place within eight weeks, with a third (37%) scheduled to take place within 9-12 weeks and a further 10% scheduled to take place within 13-16 weeks.

	Bedlington		Gateshead		All	
Time until next hearing (weeks)	Total cases	Of which, Complainant consulted on date	Total cases	Of which, Complainant consulted on date	Total cases	Of which, Complainant consulted on date
1-4 weeks	8 (19%)	0	13 (31%)	4 (31%)	21 (25%)	4 (19%)
5-8 weeks	10 (24%)	0	15 (36%)	6 (40%)	25 (30%)	6 (24%)
9-12 weeks	15 (37%)	0	7 (17%)	4 (57%)	22 (27%)	4 (18%)
13-16 weeks	4 (10%)	1	2 (5%)	0	6 (7%)	1 (17%)
Next hearing date unknown	4 (10%)	-	5 (12%)	-	9 (11%)	-
Totals	41 (100%)	1 (2%)	42 (100%)	14 (33%)	83 (100%)	15 (18%)

With the defendant in court it is easy to fix a date and place for the hearing which they can attend. If a complainant is to support a prosecution s/he also needs to be consulted yet consultation on this matter with the complainant was referenced in open court in only 15 (18%) cases, 14 of them in Gateshead and in only one case in Bedlington. This is another area where the presence of an IDVA who has consulted with the complainant before the hearing or who has access to them during proceedings, could have a significant impact, not only on the current hearing but also on the likely success of future hearings.

## 8. Considering children's needs in the proceedings

In only one in five cases was there discussion in open court about the needs of any associated children.

	Bedlington			Gateshead			All		
	District Judge	Lay Magistrates	All	District Judge	Lay Magistrates	All	District Judge	Lay Magistrates	All
Number of cases involving a not guilty plea	12	29	41	25	17	42	37	46	83
Cases where there was open discussion in court about the risks to/needs of any associated children	2 (17%)	8 (28%)	10 (24%)	3 (12%)	3 (18%)	6 (14%)	5 (14%)	11 (24%)	16 (19%)
Cases where there was not open discussion in court about the risks to/needs of any associated children	10 (83%)	17 (59%)	27 (66%)	16 (64%)	10 (59%)	26 (62%)	26 (70%)	27 (59%)	53 (64%)
Of which, observers noted there were no children mentioned in the case	1 (10%)	9 (53%)	10 (37%)	Not noted	Not noted	Not noted	-	-	-
Cases where no observation was provided	0	3 (10%)	3 (7%)	4 (16%)	2 (12%)	6 (14%)	4 (11%)	5 (11%)	9 (11%)
Cases where observers disagreed on this issue in the case	0	1 (3%)	1 (2%)	2 (8%)	2 (12%)	4 (10%)	2 (5%)	3 (6%)	5 (6%)

Not all the remaining cases involved children (as indicated by our observers at the Bedlington court) but even allowing for this, the question is raised whether local SDVCs are actively considering the known impact of living with domestic abuse on the wellbeing of children and also considering whether the perpetrator may be using child contact as a way to further to control their victim.

## 9. Problems relating to the acquisition of evidence from the police

In 14 (17%) of the 83 cases there was a suggestion in open court that problems relating to the acquisition of evidence had impacted on case progress.

The most common problems were delays in receiving evidence, such as witness statements, body worn video material and incomplete or unclear information, including two cases where the defendant's previous convictions were not provided.

	Bedlington	Gateshead	All
Number of cases involving a not guilty plea	41	42	83
Cases where there was a suggestion in open court that problems relating to the acquisition of evidence from the police had impacted on case progress	8 (20%)	6 (14%)	14 (17%)
Of which:			
No body worn video evidence/evidence not received/statements not received or incomplete	7 (87.5%)	4 (67%)	11 (79%)
Previous convictions information not provided	1 (12.5%)	1 (17%)	2 (14%)
Further clarity required on information before the court or reasons for delay in case coming to court	2 (25%)	2 (33%)	4 (29%)

\* More than one problem may be highlighted in a case

## 10. Evidencing coercive and controlling behaviour

Of the 83 cases, one included a charge of coercive and controlling behaviour. However, with just a few hours training on the nature and impact of such behaviour, our observers were able to identify a further six cases where the information shared at court indicated that such behaviour was a feature of the relationship.

	Bedlington	Gateshead	All
Number of cases involving a not guilty plea	41	42	83
Cases where a charge was brought for coercive behaviour	0	1 (2%)	1 (%)
Cases where information was shared that indicated coercive or controlling behaviour was a feature of the relationship	1 (2%)	5 (12%)	6 (7%)



# Section 3.

## Trial Observations



# 3.1 Trial observations initial overview

- In total, 53 domestic abuse trial proceedings were attended by one of our volunteer observers.
- Of the 53 proceedings in which a not guilty plea had been indicated at the preliminary hearing in the SDVC, 21 (40%) in fact proceeded as guilty pleas, 32 (60%) proceeded on the basis of a not guilty plea.
- Of the 32 that proceeded on the basis of a not guilty plea, 13 (41%) were dismissed almost immediately, three (9%) were adjourned for trial at a later date and 16 (50%) proceeded to trial.
- Observations were undertaken at all the magistrate courts in Northumbria, with more in the northern area courts (70%) than in the southern courts (30%), but there were no discernible differences across the courts in terms of process and outcomes.

	North			South			All		
	District Judge	Lay Magistrates	All	District Judge	Lay Magistrates	All	District Judge	Lay Magistrates	All
Total observations	6	31	37	3	13	16	9	44	53
Cases that proceeded based on a guilty plea	2 (33%)	13 (42%)	15 (40%)	2 (67%)	4 (31%)	6 (37.5%)	4	17	21 (40%)
Cases that proceeded based on a not guilty plea	4 (67%)	18 (58%)	22 (60%)	1 (33%)	9 (69%)	10 (62.5%)	5	27	32 (60%)
Of which:									
Case dismissed before trial commenced	1 (25%)	8 (44.5%)	9 (41%)	0	4 (44.5%)	4 (40%)	1 (20%)	12 (44.5%)	13 (41%)
Trial was adjourned to later date	0	2 (11%)	2 (9%)	0	1 (11%)	1 (10%)	0	3 (11%)	3 (9%)
Trial proceeded on the day	3 (75%)	8 (44.5%)		1 (100%)	4 (44.5%)	5 (50%)	4 (80%)	12 (44.5%)	16 (50%)

## 3.2 Trials that proceeded on the basis of a guilty plea (21 cases)

### 1. Background data

- A total of 21 cases proceeded as guilty pleas. Of these, 15 (71%) were in a northern court and six (29%) in a southern court, 17 (81%) were heard by Lay Magistrates and four (19%) were heard by a District Judge.
- Of the 21 cases, 19 (90%) involved a male defendant and two (10%) involved female defendants (one of the latter was later identified by the court, as a victim of domestic abuse who had acted against her abuser).
- Of these 21 cases, 19 (90%) involved a female complainant, one (5%) involved a male complainant and one (5%) involved a complainant whose gender was not noted (the male complainant was later identified by the court as, in fact, the abuser against the female victim mentioned above).

### 2. Complainant attendance

In all of these 21 cases the defendant had submitted a not guilty plea at the preliminary hearing at the SDVC and a date had been fixed for trial.

In 12 (57%) of these cases a guilty plea was submitted on the day of the trial and after the complainant had attended court to give evidence.

Of these 12 cases, four (33%) resulted in a guilty plea despite the lack of any other witnesses or evidence to support the complainant's case.

It would appear that a common defence strategy, in domestic abuse trials, is for the defendant to plead not guilty in the hope that the complainant will not attend court on the day and there will be insufficient evidence to proceed without them:

*'The judge asked why he had waited until the day of his trial to put his plea and had he just been waiting to see if the complainant would turn up and said the defendant could have pleaded guilty at the first chance' (Observation 21)*

	North			South			All		
	District Judge	Lay Magistrates	All	District Judge	Lay Magistrates	All	District Judge	Lay Magistrates	All
Cases where a not guilty plea submitted at earlier SDVC hearing was changed to guilty at trial	2	13	15	2	4	6	4	17	21
Of which:									
The complainant did attend court	0	9 (69%)	9 (60%)	1 (50%)	2 (50%)	3 (50%)	1 (25%)	11 (65%)	12 (57%)
Of which:									
A guilty plea was secured without other evidence to support the complainant's case	-	4 (44%)	4 (44%)	-	-	-	-	-	4 (33%)

Despite this, the defence solicitor in one case sought to offer, in mitigation, their client's decision to plead guilty as a means of protecting the complainant from having to give evidence.

However, complainant attendance can be problematic in domestic abuse trials, where a victim may continue to be controlled by the defendant, be fearful of repercussions or be too vulnerable to attend without considerable support. It is therefore important to support those services, such as local IDVA services, that encourage, prepare and support complainants to attend court to testify in domestic abuse cases. It is also important to support the police and CPS in their growing use of an 'evidence led' approach to these cases, securing other witnesses and/or evidence that can support the case, with or without the complainant to avoid unrealistic over-reliance on a vulnerable cohort.

In this context, 12 (62%) of the 21 cases where a not guilty plea changed to a guilty plea on the day of the trial took place in the context of other witnesses and/or evidence to support the prosecution.

And in more than half (55%) of the nine cases where a guilty plea was secured despite the complainant not attending court, police and CPS had sought to build the case with wider evidence.

	Complainant attended court	Complainant did not attend court	All
Cases where earlier not guilty plea changed to guilty at trial	12	9	21
Of which:			
No other witnesses/evidence available	4 (33%)	0	4 (19%)
Other witnesses/evidence available	8 (66%)	5 (55%)	13 (62%)
Other motivation to plead noted by observer (reconciliation/child contact)	0	2 (22%)	2 (9.5%)
No reason to plead noted by observer	0	2 (22%)	2 (9.5%)

In two further cases where there was a guilty plea without the attendance of the complainant or other evidence, the defendant was apparently motivated by the promise of reconciliation or of ongoing child contact if he admitted to his behaviour and sought help.

The remaining two cases, where no motivation for pleading guilty was identified, involved the only two female defendants (one of whom was identified, by the court, as a victim of abuse retaliating against her abuser – referred to above).

### 3. Meeting complainant needs

Where a complainant in a domestic abuse case agrees to give evidence, they may be within the category of 'vulnerable or intimidated witnesses' who are entitled to a range of statutory 'special measures' to enable them to give their best evidence, despite any pressures they may face. Common special measures include the use of screens to hide the complainant in court and the use of video link facilities that enable them to give their evidence from a separate room within the court or at a remote evidence centre away from the court building.

In addition to special measures, they are entitled to have access to the court-based Witness Service which provides volunteers to attend court to give support to complainants and witnesses.

On the day of observed proceedings, this service was observed to be available to complainants in 16 (76%) of these proceedings, with 100% coverage in the southern courts but only 67% availability in the northern courts.

	North			South			All		
	District Judge	Lay Magistrates	All	District Judge	Lay Magistrates	All	District Judge	Lay Magistrates	All
Cases where guilty plea submitted	2	13	15	2	4	6	4	17	21
Of which, Witness Service was observed to be available	1 (50%)	9 (69%)	10 (67%)	2 (100%)	4 (100%)	6 (100%)	3 (75%)	13 (76%)	16 (76%)

The court-based Witness Service can offer pre-trial familiarisation visits, which are considered to be very reassuring. On the trial date there should be a secure seating area away from the defendant and a separate and safe way to enter and exit the court but it is not known whether any/all of these provisions were made available to these complainants.

However, just six (50%) of the 12 complainants who attended court were observed to have available access to some special measures, of which three (25%) were observed to have had video link facilities organised.

In addition, eleven (92%) of the 12 complainants were observed to have contact with the CPS solicitor prior to proceedings and seven (58%) were observed to have the support of a third party. These supporters were variously identified as family and friends, court ushers, police officers and witness support staff.

It is not known how many, if any, of these supporters were IDVAs, but their apparent absence in at least 42% of proceedings is cause for concern particularly given their central role in advocating for domestic abuse complainants, ensuring they are involved in the decisions (such as bail decisions) which may affect their own safety or that of their children, and ensuring that they are psychologically prepared, and practically supported, to attend court.

	North			South			All		
	District Judge	Lay Magistrates	All	District Judge	Lay Magistrates	All	District Judge	Lay Magistrates	All
Cases where complainant DID attend court	0	9	9	1	2	3	1	11	12
Of which:									
There were special measures	0	4 (44%)	4 (44%)	1 (100%)	1 (50%)	2 (67%)	1 (100%)	5 (45%)	6 (50%)
Video Link had been organised	0	3 (33%)	3 (33%)	0	0	0	0	3 (27%)	3 (25%)
There was contact with the CPS	0	9 (100%)	9 (100%)	1 (100%)	1 (50%)	2 (67%)	1 (100%)	10 (91%)	11 (92%)
There was a third party supporting them	0	5 (56%)	5 (56%)	1 (100%)	1 (50%)	2 (67%)	1 (100%)	6 (54%)	7 (58%)

Asked whether, in their opinion, the needs of the complainants who attended court had been fully met our observers were not in a position to comment on the absence of IDVAs and the likely impact. But they were able to comment (favourably) on the way in which many complainants had been spoken to by the CPS on arrival, had been consulted on any changes in the defendant's plea and had been supported inside and outside the court room by a variety of people.

## 4. Charges & charge variation

The charges brought against the 21 defendants in what had begun as trial proceedings included assault by beating, assault occasioning actual bodily harm, battery, malicious communications and public order offences, criminal damage, theft (from the complainant), harassment without violence and breaching a non-molestation order, a total of 41 charges.

However, the defendants pleaded guilty to considerably fewer charges 29 charges in total (a reduction of 29%).

This reduction in charging was pronounced in the nine cases where the complainant did not attend court, where 20 charges resulted in just ten guilty pleas (a reduction of 50%). In the 12 cases where the complainant did attend court, 21 charges resulted in 19 guilty pleas (a reduction of just 9.5%) and the observers noted consultation with the complainant.

	Complainant attended court	Complainant did not attend court	All
No of cases involving a guilty plea	12	9	21
Number of charges brought against defendant	21	20	41
Number of charges to which defendant submitted a guilty plea	19	10	29
% charge reduction/variation	9.5%	50%	29%

Given the role played by the presence (or absence) of the complainant at court, the work that IDVAs, the police and CPS do in encouraging the use of the criminal justice system is of high value. It seems that persuading a domestic abuse complainant simply to walk through the doors of the court building is capable of greatly improving court performance.

## 5. Case presentation prior to sentencing

Sentencing took place in nine of the 21 cases in which the defendant had submitted a guilty plea on the day of their trial. Once a defendant had submitted a guilty plea, observers were asked to note how the facts of the case were presented to the court by both prosecution and defence.

### 5.1 Previous Convictions

In six of these nine cases (66%) the CPS highlighted relevant previous convictions of the defendant.

### 5.2 Aggravating and Mitigating Factors

In addition to taking account of previous relevant convictions, the Sentencing Council Guidelines also highlight a range of aggravating and mitigating factors that can affect sentencing in domestic abuse cases and which can be highlighted respectively by the prosecution and the defence.

#### (i) Aggravating factors highlighted prior to sentencing

The aggravating factors that can be considered in domestic abuse trials include the abuse of trust or power, any vulnerability of the victim that may have made it difficult for them to leave their abuser, a proven history of domestic violence or threats that may have had a cumulative effect on the victim and/or the exposure of children to a particular offence. Such factors were likely to have been present in some of the nine cases in which sentencing was observed. Beyond outlining the facts of the case, however, and highlighting where the complainant wanted (or did not want) a restraining order, the CPS were only observed to explicitly highlight one or more aggravating factors in one of the nine cases, where the presence of a child was noted to have increased the vulnerability of the complainant.

#### (ii) Mitigating factors highlighted prior to sentencing

A range of mitigating factors were highlighted by the defence prior to sentencing. These included the alleged mental ill health of the defendant (noted by observers in two cases (one of which was adjourned for sentencing), the alleged substance misuse of the defendant (mentioned in a number of defence descriptions, but highlighted as a mitigating factor in just two cases) and the alleged stress the defendant was under due to marital or relationship difficulties (mentioned in two cases). In two cases there was a claim that the defendant had failed to understand what was required of them by an existing restraining orders (which they had breached) and in two cases (one of which was adjourned for sentencing) the observers noted that the defence sought to draw the court's attention to the defendant's previous 'good character'.

	North			South			All		
	District Judge	Lay Magistrates	All	District Judge	Lay Magistrates	All	District Judge	Lay Magistrates	All
Cases where sentence imposed on the day	1	7	8	0	1	1	1	8	9
Of which, defence raised as relevant to sentencing:									
The mental ill-health of the defendant	1 (100%)	-	1 (12.5%)	1* (0%)		1*	1 (+1)* (100%)	0	1 (+1)* (11%)
The alcohol/substance misuse of defendant		1 (14%)	1 (12.5%)		1 (100%)	1 (100%)	0	2 (25%)	2 (22%)
The defendant was under stress due to marital/relationship difficulties		2 (29%)	2 (25%)			-	0	2 (25%)	2 (22%)
The defendant had misunderstood terms of existing order		1 (14%)	1 (12.5%)		1 (100%)	1 (100%)	0	2 (25%)	2 (22%)
The defendant was of previous good character		1 (14%)	1 (12.5%)	1*		1*	0 (+1)*	1 (12.5%)	1(+1*) (11%)

\* Issue raised but case then adjourned for sentence

The observers also noted six cases where the defence depicted the complainant as somehow provoking the defendant to behave as they did by, for example, allegedly pushing the defendant, threatening the defendant's pet, withholding the defendant's property, not letting him in to the house to see the child or by starting a new relationship with another man.

Both the 2006 and the 2018 sentencing guidelines both deal explicitly with the strict limitations on the availability of provocation as mitigation, the irrelevance of previous good character in domestic abuse cases and neither envisage substance misuse as mitigation at all.

It cannot be determined whether, and to what extent, these attempts at mitigation influenced the sentencers.

## 6. The victim personal statement

Reference was made to a VPS in just three (33%) of these cases. Expressing in their own words the impact that an offence has had on the complainant, the VPS should be read to the court by the complainant themselves, if they wish and the court agrees, or by CPS.

## 7. Sentencing

### 7.1 Sentencing on the Day

Sentencing took place in nine of the 21 cases in which the defendant had submitted a guilty plea on the day of their trial.

Of these, three cases resulted in the imposition of a community order, of which only one included a requirement to attend the 'Building Better Relationships' Programme.

A fine was also imposed in one of these cases and in a further four cases where the defendants had been convicted of a malicious communication offence, common assault (x 2) and a racially aggravated behaviour offence.



	North			South			All		
	District Judge	Lay Magistrates	All	District Judge	Lay Magistrates	All	District Judge	Lay Magistrates	All
Cases where sentence imposed on day	1	7	8	0	1	1	1	8	9
Of which:									
Community Order	-	3 (43%)	3 (37.5%)	-	-	-	-	3 (37.5%)	3 (33%)
Rehabilitation Activity	-	2 (29%)	2 (25%)	-	-	-	-	2 (25%)	2 (22%)
Unpaid work	-	2 (29%)	2 (25%)	-	-	-	-	2 (25%)	2 (22%)
Fines	-	4 (57%)	4 (50%)	-	1 (100%)	1 (100%)	-	5 (62.5%)	5 (56%)
Victim Surcharge	1 (100%)	4 (57%)	5 (62.5%)	-	1 (100%)	1 (100%)	1 (100%)	5 (62.5%)	6 (67%)
Victim Compensation	-	2 (29%)	2 (25%)	-	-	-	-	2 (25%)	2 (22%)
Court Costs	-	7 (100%)	7 (87.5%)	-	1 (100%)	1 (100%)	-	8 (100%)	8 (89%)
Building Better Relationships/Anger Management programme*	-	1 (14%)	1 (12.5%)	-	-	-	-	1 (12.5%)	1 (11%)
Suspended prison sentence	-	-	-	-	-	-	-	-	-
Custodial sentence	1 (100%)	-	1 (12.5%)	-	-	-	1 (100%)	-	1 (11%)
Conditional Discharge	-	1 (14%)	1 (12.5%)	-	-	-	-	1 (12.5%)	1 (11%)

The victim surcharge was also levied in six cases and costs imposed in eight cases.

Compensation was awarded to the complainant in just two cases, with a third complainant being denied compensation on the grounds that 'both [are] making a joint benefit claim and have joint monies' (Observation 32). However, this did not prevent a fine of £110 being imposed on the same couple.

In the two cases involving a female defendant, one received 20-weeks imprisonment and the other, a conditional discharge.

## 7.2 Adjourned for Sentencing

Where there is an SDVC, it is regarded as good practice to adjourn sentence back to the SDVC from the 'ordinary' court which has heard the trial or, in these cases, expected to hear a trial but in fact received a guilty plea. Clearly this was not done in the nine cases described here which were sentenced on the day of the guilty plea.

	North			South			All		
	District Judge	Lay Magistrates	All	District Judge	Lay Magistrates	All	District Judge	Lay Magistrates	All
Cases where guilty plea submitted	2	13	15	2	4	6	4	17	21
Of which:									
Cases adjourned for reports	1 (50%)	5 (38%)	6 (40%)	2 (100%)	3 (75%)	5 (83%)	3 (75%)	8 (47%)	11 (52%)
Cases sent to Crown Court for sentencing	0	1 (8%)	1 (7%)	0	0	0	0	1 (6%)	1 (5%)
Cases where sentence imposed on day	1 (50%)	7 (54%)	8 (53%)	0	1 (25%)	1 (17%)	1 (25%)	8 (47%)	9 (43%)

There were adjournments in five out of six (83%) of the trial cases which were heard as guilty pleas in the southern courts, and in six out of 15 (40%) of those heard in the northern courts. It is not known if these adjournments were for reports with the intention of returning the case to the 'ordinary' magistrates' jurisdiction or if the adjournment was in order to return the case for sentence at the SDVC.

District Judges were more likely to adjourn for sentence (75% of the cases they heard) than Lay Magistrates (47% of the cases they heard) with northern court magistrates particularly likely to move straight to sentencing, doing so in more than half of the cases they heard and therefore not adhering to the best practice option of returning cases to the SDVC for sentence.

Of the 11 cases adjourned for pre-sentence report, four involved the request for an 'all options report' indicating that a custodial sentence was possible. A 12th case was also referred to the Crown Court for sentencing, suggesting a custodial sentence was deemed likely.

## 8. The use of restraining orders to keep victims safe

Applications were made for a restraining order in four (44%) of the nine cases sentenced on the day of the trial and in two additional cases the court was told that the complainant had refused a restraining order (22%). This means that a restraining order was not applied for or imposed in a third of these cases.

	North			South			All		
	District Judge	Lay Magistrates	All	District Judge	Lay Magistrates	All	District Judge	Lay Magistrates	All
Cases where sentence imposed on day	1	7	8	0	1	1	1	8	9
Of which:									
Restraining order application made and imposed at sentence	-	4 (57%)	4 (50%)	-	0	-	-	4 (50%)	4 (44%)
Restraining order already in place	-	2 (29%)	2 (25%)	-	0	-	-	2 (25%)	2 (22%)
Restraining order not applied for/granted (reason unknown)	1 (100%)	1 (14%)	2 (25%)	-	1 (100%)	1 (100%)	1 (100%)	2 (25%)	3 (33%)

## 9. Other issues/comments

In addition to addressing a set of pre-prepared questions, the observers were also asked to record any other issues or comments that they wanted to raise about these 21 proceedings:

*'There should have been two items (of evidence), being body-worn evidence and a recording of the interview, but only one piece could be found. Prosecution said that if the complainant had not turned up today at court, the Crown would have had nothing to go on' (Observation 23)*

The greatest level of frustration was expressed about the common defence strategy of supporting a defendant to plead not guilty and then waiting to see if the complainant attends court:

*'It is a pity that an issue on the basis of an agreed plea could not have been raised before the date of the trial' (Observation 8)*

*'Another plea on the day, no doubt the defence were hoping she would not attend for trial' (Observation 27)*

*'The defendant only pleaded guilty on the date of trial. A possible case of waiting to see if she turned up' (Observation 56)*



# 3.3 Trials that proceeded on the basis of a not guilty plea

## 1. Background data

- In total, 32 cases proceeded on the basis of a not guilty plea; 22 (69%) proceeded in a northern court and ten (31%) in a southern court, 27 (84%) were heard by a bench of Lay Magistrates and five (16%) were heard by a District Judge.
- Domestic abuse cases can include violence or abuse against an intimate partner and/or against other family members over the age of 16 and of these cases, 28 (87.5%) involved a current or former intimate partner and four (12.5%) involved a family member.
- Of these 32 cases, 31 (97%) involved a male defendant and one (3%) involved a female defendant who allegedly abused another family member not an intimate partner.
- All 32 cases involved a female complainant.
- Two cases were tried in the absence of the defendant who did not appear at court.
- As outlined below not all 32 cases proceeded to trial. Rather, 13 (41%) were dismissed almost immediately and three (9%) were adjourned for trial at a later date. Only 16 (50%) proceeded to trial on the day of observation.

	North			South			All		
	District Judge	Lay Magistrates	All	District Judge	Lay Magistrates	All	District Judge	Lay Magistrates	All
Cases which proceeded based on a not guilty plea	4	18	22	1	9	10	5	27	32
Of which:									
Case dismissed before trial commenced	1 (25%)	8 (44.5%)	9 (41%)	0	4 (44.5%)	4 (40%)	1 (20%)	12 (44.5%)	13 (41%)
Trial was adjourned to later date	0	2 (11%)	2 (9%)	0	1 (11%)	1 (10%)	0	3 (11%)	3 (9%)
Trial proceeded on the day	3 (75%)	8 (44.5%)	11 (50%)	1 (100%)	4 (44.5%)	5 (50%)	4 (80%)	12 (44.5%)	16 (50%)

## 2. Complainant attendance

As already noted, a common defence strategy appears to be one of pleading not guilty in the hope that the complainant will not attend court on the day and there will be insufficient evidence to proceed without them.

In this context, 12 (92%) of the 13 cases dismissed on the day were cases where the complainant did not attend.

Three of these 13 dismissed cases (23%) involved a previous application for a witness summons which had been ignored (one case) or appeared not to have been served properly (two cases).

In addition, three of the 13 dismissed cases (23%) involved indications that the CPS wished to proceed without the complainant based on wider evidence collected but which the magistrates said was insufficient, problematic or (in one case) was only given to the defence at court on the trial date.

	Complainant attended court	Complainant did not attend court	All
Cases which proceeded based on a not guilty plea	11 (34%)	21 (66%)	32 (100%)
Of which:			
Case dismissed before trial commenced	1 (8%)	12 (92%)	13 (100%)
Trial was adjourned to later date	1 (33%)	2 (66%)	3 (100%)
Trial proceeded on the day	9* (56%)	7 (44%)	16 (100%)

In four of the 13 dismissed cases (31%) where an application for an adjournment to bring the complainant was made and denied, two were made in the cases above after the attempts (to proceed without the complainant) had failed.

One application to adjourn failed when neither the defendant nor the complainant attended and the defence argued that both parties were at fault. This was despite the CPS referring to the defendant going to the complainant's house, shouting at her for money and abusing her while the children were at home, the complainant saying she was fearful and the defendant being at large following arrest.

In the one case which was almost immediately dismissed despite the complainant's attendance at court, the court offered the complainant a restraining order in exchange for a dismissal. She accepted, having little option. Nobody knows whether her evidence would have convicted him but the move certainly guaranteed that he faced no consequences for any abusive behaviour.

Given the numbers of complainants shown in these observations to fail to attend to testify, it is hard to understand why, when a complainant is present and willing, the court does not give them the opportunity of giving evidence.

However, building a wider, evidence-led prosecution can still make a difference.

	Complainant attended court	Complainant did not attend court	All
Number of not guilty cases which proceeded to trial on the day	9	7	16
Of which:			
No other witnesses/evidence	1 (11%)	0	1 (6%)
Other witnesses/evidence available	8 (88%)	7 (100%)	15 (94%)

In the 16 trials which proceeded on the day, 15 (94%) did so in the context of other witnesses and/or evidence to support the prosecution and seven (100%) proceeded despite the complainant not attending court.

## 3. Meeting complainant needs

### 3.1 The Witness Service

Where a complainant in a domestic abuse case agrees to give evidence they are entitled to access to the court-based Witness Service which was available in 26 of the 32 cases involving a not guilty plea, with the remaining six proceedings recorded as service availability unknown or not applicable.

	North			South			All		
	District Judge	Lay Magistrates	All	District Judge	Lay Magistrates	All	District Judge	Lay Magistrates	All
Cases where not guilty plea submitted	4	18	22	1	9	10	5	27	32
Of which:									
Witness Service was observed to be available	2 (50%)	14 (78%)	16 (73%)	1 (100%)	9 (100%)	10 (100%)	3 (60%)	23 (85%)	26 (81%)

### 3.2 Special Measures

A complainant in such a case may also be entitled to the use of statutory 'special measures' As set out above, many of the cases where a not guilty was submitted were dismissed or adjourned before any special measures could be utilised. However, in the 16 cases that proceeded to trial in which eight complainants attended to give evidence, only three (37.5%) made use of any special measures, two of which (25%) used a television link.

### 3.3 Other Support

Seven of the eight (87.5%) complainants had contact with the CPS solicitor prior to proceedings and six (75%) had the support of a third party to attend court. These supporters were variously described as friends and family, witness support staff and court ushers. It is not known how many, if any, were IDVAs or other professionals employed by local specialist services.



	North			South			All		
	District Judge	Lay Magistrates	All	District Judge	Lay Magistrates	All	District Judge	Lay Magistrates	All
Not guilty cases where trial proceeded on the day	3	8	11	1	4	5	4	12	16
No. of cases where the complainant attended	1	5	6	0	2	2	1	7	8
Of which:									
There were special measures	0	2 (40%)	2 (33%)	0	1 (50%)	1 (50%)	0	3 (43%)	3 (37.5)
Video link had been organised	0	1 (20%)	1 (17%)	0	1 (50%)	1 (50%)	0	2 (29%)	2 (25%)
There was contact with CPS	1	4 (80%)	5 (83%)	0	2 (100%)	2 (100%)	1 (100%)	6 (86%)	7 (87.5%)
There was 3rd party support	0	4 (80%)	4 (67%)	0	2 (100%)	2 (100%)	0	6 (86%)	6 (75%)
No. of cases where the complainant did not attend	1	3	4	1	2	3	2	5	7
No. of cases where no answer recorded	1	0	1	0	0	0	1	0	1

Asked whether, in their opinion, the needs of the complainants who attended court had been fully met our observers were not in a position to comment on the absence of IDVAs and the likely impact. But they were, once again, of the opinion that very real efforts had been made by other services. One negative comment related to the use of a male usher to support a female complainant. But even where the complainant had not attended court, there were still positive comments.

*'The officers did everything to assist the victim and even though she declined to take part, her interests were served in the prosecution' (Observation 51)*

However, in another case where the defendant had been found guilty a comment made by the observer illustrates the difficulties the courts can face when the complainant is absent and there is no IDVA available to represent her.

*'In [the complainant's] absence they did quite well – the judge asked about a restraining order, and one was granted... a 'no contact' order was not sought because of ongoing relationships with other family members resident in the same address [but] perhaps more could have been done here, as it was intervention directly by the defendant which seems to have swayed this – had the complainant been present or her needs more robustly put ... a full no contact order could have been considered more fully' (Observation 2)*

Given the central role that is played by IDVAs in advocating for domestic abuse complainants, ensuring they are involved in decisions (such as restraining order decisions) which will affect their safety, and ensuring that they are psychologically prepared, and practically supported, to attend court, their apparent absence from many local trial proceedings needs to generate concern.

## 4. Charges & charge variation

The charges brought against the 16 defendants in these trial proceedings included criminal damage, harassment without violence, breaching a non-molestation order, assault and various public order offences. There was a charge variation in just one case, where an assault was dropped but a criminal damage charge proceeded. The complainant did not attend and there is no suggestion that they were consulted.

## 5. The trial process

Observers were asked to make notes on how the witnesses and evidence were managed by the prosecution and defence.

### 5.1 The Prosecutor's Opening Speech and the Complainant's Evidence

Descriptions suggest that prosecutors offered a summary of the issues to be proven, explained what was known when a complainant had not attended and detailed the evidence available to the court.

Complainants attended court in eight of the 16 cases that proceeded as not guilty pleas.

In one of these cases, the complainant attended because of a witness summons and stated upon her arrival at court that she wished to give evidence on behalf of the defence, rather than the prosecution. That case ended quickly when she told the court that she had lied about the defendant's behaviour.

Amongst the remaining seven cases, there were three positive comments made regarding the prosecutor's handling of the complainant's evidence.

*'The CPS explained the process that would now be followed and pointed out the different people in the court'* (Observation 16)

*'The prosecutor assisted the complainant by dividing her replies into parts for the sake of clarity. Although some of her evidence was confusing at this point it made a more or less coherent version of events'* (Observation 10)

*'She was assisted well by the prosecutor. At one stage the witness became distressed... [and] the prosecutor explained this if she wanted a break or to leave the room to collect herself then there would be no problem'* (Observation 49)

There was one negative comment at this stage:

*'Photographs were shown on the shared screen but they were in black and white and only of the redness on her neck which was very indistinct'* (Observation 16)

## 5.2 Defence Cross Examination of the Complainant

In all eight cases where the complainant attended to give evidence, they were cross examined by a defence solicitor and not the defendant in person.

In the seven cases which did not include the complainant testifying for the defence, cross-examination observations indicate that similar stances are taken as in mitigation following a guilty plea. They include blaming the complainant's behaviour for the defendant's behaviour, such as asking them to take a drug test ('demanding it') 'cheating on the defendant on holiday' and being upset that they were seeing another person.

Observers were also asked to note if the prosecution sought to challenge the defence questioning of the complainant, reporting that in two cases they did so, in one where 'hearsay evidence' was objected to (Observation 9) and in another where a challenge made to the emphasis on the complainant's infidelity:

*'This, a trial for the incident on the 21st July 2017, and not based on morality' (Observation 39)*

In two cases the CPS re-examination of the complainant was also noted, once to confirm that the complainant had been scared at the time of lying to the police (Observation 10) and another re-examining the complainant on the alleged drunkenness of a third party (Observation 31).

## 5.2 Defence Cross Examination of the Complainant

Other evidence was available to the court in 15 of these 16 cases. The witnesses included police officers who had attended individual incidents, the uncle of one complainant who had sought to intervene in an assault and friends/family member who had witnessed an assault or the breach of a non-molestation order, 999 call recordings, body worn video evidence, photographs of injuries, the reports of arresting officers, section nine statements from individual police officers and CCTV evidence.

The mother of a complainant, was asked about the wider context of post separation harassment and abuse throwing light on coercive and controlling behaviour as a continuous backdrop to the individual 'incidents' with which the court was concerned.

The observers were concerned about missing evidence and technical difficulties.

*'The officer had been wearing his body cam...[but] it was not on when the defendant admitted head butting [the complainant] because he was annoyed with her' (Observation 51)*

*'The police officer could not be contacted as was not on shift at the time of the case' (Observation 20)*

*'The CPS produced the recorded 999 call, tried to play it on her lap top but the sound quality was very poor... then tried the Legal Advisor's laptop. The legal advisor asked if there was a CD player in the courthouse – this was eventually found [but wouldn't play]... The judge then asked if there was a transcript of the 999 call' (Observation 44)*

## 5.4 The Overall Strength of the Prosecution's Case

At this stage, observers were asked to comment on the strength of the prosecution case. Of the 16 cases, seven were seen to be strong, five weak and four were neither.

The positive evaluations focussed on clear presentation of the prosecution evidence (noted in five observations), the confidence, clarity and/or credibility of the complainant (noted in four observations) and the strength of the supporting evidence (noted in three observations).

Four cases involved the submission of 'no case to answer'. One was based on the complainant, who attended the proceedings, admitting previously lying to the police to protect her partner, showing her to be unreliable. This submission was accepted and the case dismissed by the District Judge.

A second argued that the testimony of prosecution witnesses was about two incidents (rather than one) in which the defendant had assaulted the two complainants and so was inaccurate. This submission was rejected, and the trial continued.

Two were based on the complainant's absence from the proceedings arguing in one case that it placed the defendant at a disadvantage and in another that her absence was compounded by the lack of any noise of strife in the background of the 999-call recording (Observation 2). Both submissions were rejected.

## 5.5 The Case for the Defence

In presenting the case for the defence a frequent approach particularly prevalent where the complainant had not attended court was to allege bad behaviour against her, although as noted earlier this is a tactic in mitigation too and was used, though less dramatically, even when a complainant did attend.

In seven cases (six of which involved a complainant who did not attend court) there were claims that the complainant's account could not be relied upon because they had been drinking.

*'The defence concentrated on the alleged drunkenness of the complainant and her pattern of drunken behaviour with a view to casting doubt on her interpretation of events...no evidence of alcoholism such as treatment or prior cautions' (observation 2)*

*'The defence focussed on the complainant smelling of alcohol in hospital and, although not heavily intoxicated, admitted having a couple of drinks' (Observation 5)*

*'Defendant said the complainant drinks and gets 'quirky' when she drinks' (Observation 38)*

*'[The defence] pointed out that there had been previous reports to the police [earlier that evening] ... that showed no assault and that she had attended his home at that time in a drunken condition' (Observation 41)*

In five cases (three of which involved a complainant who did not attend court) there were claims that the complainant had used violence against the defendant, had provoked the defendant into using violence against them or had otherwise acted in a way that could be considered unreasonable.

*'The defendant ... said it was the complainant who had argued, shouted and scream, lashed out with her hands when he had been in bed' (Observation 22)*

*'The issue of self-defence was put to her and disputed by the witness. She said she gave the defendant no reason to attack her' (Observation 49)*

*'The defendant said he was wound up by the [complainant's] accusation of taking cocaine... The Injured Party used strong words and said that "if you do not do the drug test or you fail then you will not see your son".' (Observation 16)*

*'The defendant... [was] laying the blame on her and saying she caused the incident, by being drunk' (Observation 2)*

In one further case which also involved (a complainant who did not attend court) there were claims that both the complainant and a witness to the alleged assault had mental health problems that needed to be taken into account.

*'The evidence from the defendant appeared as if he was the calming influence in the family, while his wife was drinking and running about hysterically and he said his step-daughter could 'say things' as she had mental health problems' (Observation 31).*

## 5.6 Cross Examination of the Defendant

Observer comments were generally positive, with individual prosecutors being described as highlighting clear inconsistencies in the evidence of defendants.

*'The defendant was asked why, on the occasion of his arrest, he denied that the complainant had been at this house and had said that he had not seen her for two days but later said that he remembered her being there' (Observation 5)*

And as challenging the defendant's apparent inability to explain how the complainant came by their injuries.

*'It was put to him that if he did not assault her then someone else must have...why did he not try to find out who did it in order to do something about it' (Observation 41)*

Only two prosecutors were observed to directly challenge the attempts made to discredit the complainant, in the case where the complainant had been portrayed as provoking her ex-partner by 'demanding' that he take a drugs test.

*'The CPS asked the defendant 'is it appropriate to take care of a young child when you have taken drugs?'* (Observation 16)

And in a second case where a complainant's fall to the ground (captured on CCTV) was attributed to her 'quirky' behaviour when drinking.

*'The prosecutor asked why the defendant had not asked for help, perhaps an ambulance, when he was saying he was concerned the complainant could not get up' (Observation 38)*

## 5.7 Other Witnesses/Evidence for the Defence

Other witnesses for the defence were available to the court in three of the 16 cases.

In one further case, the complainant brought to court by a witness summons testified for the defendant (her partner) by telling the court that her allegations (captured in a 999 call and body worn video evidence) were untrue and had been made whilst under the influence of alcohol and angry with her partner.

## 5.8 The Overall Strength of the Case

Observers were again asked to comment on the strength of the case. Of the 15 cases that reached this stage, eight were strong, three were weak and four were neither.

In explaining their evaluation, several observers commented on the behaviour of the defendant.

*'The defendant appears to be reluctant to answer some questions as to his role in the story and is not so confident in giving his evidence' (Observation 16).*

*'He [the defendant] was not a convincing witness' (Observation 41).*

*'The defendant is contradicting himself, by saying at first to the police that he could not remember details but now appears to be giving exact details to defend himself in court ...[he] appears to believe that he was the victim of a serious assault, bites and scratches but this was not mentioned before now' (Observation 22).*

## 5.9 Closing Speeches

Closing speeches were used by the defence to focus the court's attention away from the defendant and onto the complainant. Whilst the prosecuting solicitor sought to draw the court's attention back to the evidence and its support for the prosecution case.

## 6. Case outcomes

Of the 16 cases that proceeded to trial, 13 (81%) resulted in the defendant being found guilty with the remaining three cases (19%) being dismissed; one of these was the case of the complainant who gave evidence for the defence. In the other two cases which were dismissed, the complainant had attended court.

All the cases that proceeded without the complainant attending court, and which relied upon wider evidence, produced guilty findings.

	North			South			All		
	District Judge	Lay Magistrates	All	District Judge	Lay Magistrates	All	District Judge	Lay Magistrates	All
Not guilty cases where trial proceeded on day	3	8	11	1	4	5	4	12	16
Defendant found guilty	2 (67%)	6 (75%)	8 (73%)	1 (100%)	4 (100%)	5 (100%)	3 (75%)	10 (83%)	13 (81%)
Case dismissed/no case to answer	1 (33%)	2 (25%)	3 (27%)	0	0	0	1 (25%)	2 (17%)	3 (19%)

## 7. Sentencing

A sentence was imposed on the day of proceedings in five of the 13 cases where the defendant was found guilty.

Of these, the CPS were recorded as mentioning the previous convictions of the defendant prior to sentencing in three cases and as directly referring to the Victim Personal Statement in one case.

### 7.1 Sentencing on the Day

In terms of the sentence imposed in these five cases, one case resulted in a conditional discharge, three cases involved the imposition of a fine and one case resulted in the imposition of a community order (which did NOT include a requirement to attend a programme of work designed to challenge domestic abusers).



	North			South			All		
	District Judge	Lay Magistrates	All	District Judge	Lay Magistrates	All	District Judge	Lay Magistrates	All
Not guilty cases where sentence imposed on the day	1	3	4	0	1	1	1	4	5
Of which, the sentence imposed included:									
Community Order	1 (100%)	-	1 (25%)	-	-	-	1 (100%)	-	1 (20%)
Rehabilitation Activity	-	-	-	-	-	-	-	-	-
Unpaid work	-	-	-	-	-	-	-	-	-
Fines	-	3 (100%)	3 (75%)	-	-	-	-	3 (75%)	3 (60%)
Victim Surcharge	-	3 (100%)	3 (75%)	-	1 (100%)	1 (100%)	-	4 (100%)	4 (80%)
Victim Compensation	-	1 (33%)	1 (25%)	-	1 (100%)	1 (100%)	-	2 (50%)	2 (40%)
Court Costs	1 (100%)	2 (66%)	3 (75%)	-	1 (100%)	1 (100%)	1 (100%)	3 (75%)	4 (80%)
BBR programme	-	-	-	-	-	-	-	-	-
Conditional discharge	-	1 (33%)	1 (25%)	-	-	-	-	1 (25%)	1 (20%)
Curfew order extended	1 (100%)	-	1 (25%)	-	-	-	1 (100%)	-	1 (20%)

In addition, the victim surcharge was levied in four (80%) of the five cases and costs were imposed in four (80%) of the five cases. Compensation was also awarded to the complainant in two (40%) of these cases.

## 7.2 Adjourned for Sentencing

Where there is an SDVC it is generally considered good practice for a case heard in an 'ordinary' magistrate court to be referred back to the SDVC for sentencing.

Adjournment was observed in eight (62%) of the 13 cases in which the defendant was found guilty. The southern courts adjourned all four of their cases, whilst the northern courts adjourned four (50%) of eight cases. It is not known, however, whether this adjournment was to enable the case to be returned to the SDVC for sentencing or for the case to return to 'ordinary' magistrate proceedings once a pre-sentence report had been developed or a warrant had been used to locate and bring a defendant before the court.

	North			South			All		
	District Judge	Lay Magistrates	All	District Judge	Lay Magistrates	All	District Judge	Lay Magistrates	All
Not guilty cases where defendant found guilty	2	6	8	1	4	5	3	10	13
Cases adjourned for reports etc. (inc where warrant issued)	1 (50%)	3 (50%)	4 (50%)	1 (100%)	3 (75%)	4 (80%)	2 (67%)	6 (60%)	8 (62%)
Cases where sentence imposed on day	1 (50%)	3 (50%)	4 (50%)	0	1 (25%)	1 (20%)	1 (33%)	4 (40%)	5 (38%)

## 8. The use of restraining orders to keep victims safe

An application for a restraining order was made in three of the five cases that proceeded to sentence on the day, all of which were granted by the court.

## 9. Other issues/comments

The observers were asked to record any issues or comments that they wanted to raise about the proceedings they had observed. Four observations were recorded.

*'It was good to see that the Witness Service took the injured party back to the separate witness room and make sure that she was emotionally recovered from this experience and that the defendant was out of the way before she left the court with her family' (Observation 16)*

*'The judge informed the defendant and the court that another trial now needed to be heard as the witnesses in that trial had to leave by 16.30 and had a young child with them, so this trial will resume after the other. The case resumed after 25 minutes. The judge informed the defendant he would have to give his evidence from the dock and not the witness box, as there were staffing issues' (Observation 14)*

*'The police black and white photographs were not very good as the red/bruising marks on her neck could hardly be seen. There were apologies made for the quality of these but why use them if they were so bad?' (Observation 16)*

*'I do not know what the normal procedure is for the playing of 999 calls in court. It clearly is not satisfactory to rely on the sound produced by a laptop. What is the point in bringing evidence that cannot be heard?' (Observation 44)*

# Section 4.

## Commentary and Recommendations

As these observations show, the SDVC does not deal with the totality of domestic abuse crime in Northumbria. Not guilty pleas will be adjourned, following a preparatory hearing at the SDVC, to be heard as contested hearings by either the 'ordinary' Magistrates Courts or, in a serious case, by the Crown Court. If there are findings of guilt it is by no means the norm that domestic abuse cases will be adjourned back to the court to be sentenced with the benefit of its 'specialist' approach.

This means that only guilty pleas and preparatory hearings are heard in the SDVC where there ought to be the benefit of the 12 components evaluated as vital in order to make the SDVC system effective.

## Questions

There are two questions. The first is, was what might be called the SDVC 'package' present, fully equipped with the 12 components which innumerable evaluations have determined to be essential to deliver good service? The second question is, whether the 'ordinary' courts which tried and often sentenced domestic abusers were qualified and dealing optimally with what the very existence of a species of special court makes clear is a particularly difficult kind of crime. As will become clear in the commentary below, we answer neither question wholly in the affirmative.

It is believed that all Magistrates (and District Judges) in Northumbria have been trained about domestic abuse at least twice in recent years, in particular on an occasion shortly before these observations commenced. Whilst it is reassuring that there has been such training, magistrates who serve in the SDVC are intended to be particularly trained as 'specialist' magistrates for that purpose, with a fuller understanding of the dynamics of this problematic area of human behaviour.

Benchers who heard contested hearings which had been adjourned from the SDVC, may not be domestic abuse specialists. We understand that the court administration would try to ensure at least one specially trained magistrate on such a court but it is not a qualification as it is for the SDVC.

## Contested hearings and issues

In contested hearings a profound understanding of domestic abuse is equally if not particularly important for all the agencies just as it is when they are dealing with preliminary hearings and with guilty pleas. This is to understand how a defendant exercising coercive control over a victim significantly suborns their self-esteem by constant abuse and renders them fearful and uncertain. A key part of the rationale for the SDVC is precisely that many complainants, in that condition, will find it hard to attend court to give evidence and that allowances need to be made.

That is one reason why IDVAs are seen as one of the 12 components essential for the SDVC to work properly because domestic abuse complainants are likely to be unable to support a prosecution without considerable help. It is also, overwhelmingly the reason why 'trained and dedicated criminal justice staff' including police, CPS, court staff, magistrates and probation are an essential component. (The components are on P6-7)

Without such an understanding there must be a risk that people who regularly organise, practice in and preside over 'ordinary' magistrates trials on non-domestic abuse cases could fall back on criticising a complainant who 'chooses not to attend' or adopting the attitude that if the complainant isn't interested in attending there is

little point in trying the case. Clearly those approaches are significantly less appropriate in the special domestic violence jurisdiction.

Nonetheless, the presence or absence of the complainant played a pivotal role in almost all the cases which were adjourned from the SDVC on the basis that the defendant had tendered a not guilty plea and required a contested hearing. In 21 of the 53 cases in which there had been a not guilty plea, the defendant changed their plea to guilty on the date fixed for trial.

In 12 of the 21 they did so as soon as they could after the complainant entered the court building so that she never needed to give evidence. In 4 of the 12 cases the complainant's was the only evidence for the prosecution. One judge openly challenge the defendant with waiting to see if the complainant came instead of pleading guilty on his first appearance. The other judges and JPs will be likely to see similar plea changes and may well sometimes draw the same conclusion. Certainly the observers thought that all of these 12 plea changes were inexplicable in any other way but that these defendants were playing the system.

Since domestic abuse involves coercive control, these defendants may well act in the expectation that they have sufficient control to ensure that the complainant does not attend. If so, these defendants were wrong but it is an obvious concern that in the many cases, set out below, in which complainants did not attend court, defendants, who are allegedly domestic abusers, may have more effectively exercised control.

Further, as noted on page 11, the Government intends all domestic abuse complainants to be treated as vulnerable or intimidated and therefore entitled to assistance from special measures to help them give their best evidence. Many are treated in that way now. Vulnerability/ feeling intimidated is thus seen as capable of being an inherent part of being a domestic abuse complainant and that understanding should surely feed the SDVC's approach to them holistically, including if they do not come to give evidence. There is no qualitative difference between giving a person, deemed to be vulnerable or intimidated, special measures so that they can give their best evidence and giving them enhanced opportunities to come to court to do the same.

## Disappointing case dismissals

It was therefore disappointing that in 13 of the remaining 32 cases in which there was a not guilty plea - that is in 13 cases at exactly the same point in the process as the cases referred to above when the complainant's attendance caused a guilty plea - the complainants non-attendance led to the dismissal of the case.

The observers noted that in only one of these cases had there been an earlier failure to attend and the service of

a witness summons. In two of them summonses had been issued but apparently not properly served so that it was unclear whether those complainants knew the second hearing date or that they had been ordered to attend. The CPS plainly thought those two cases worth pursuing, since they had applied for summonses and an earlier court had issued them. It is difficult to understand therefore why a second court simply dismissed both cases because of a failure of service.

Another 3 of the 13 dismissals were ordered despite the CPS's wish to proceed without the complainant on the basis of other evidence, which was variously criticised by the court as insufficient, problematic or, in one case, given to the defence too late. The CPS clearly did not agree with that analysis but faced with those views from the fact-finders, in 2 cases went on to apply for an adjournment to bring the complainant to court which was also refused. In two other cases similar adjournment applications were similarly refused. Therefore in 5 out of 13 cases the CPS wished to proceed but the court effectively refused. In a further 2 out of 13 cases the CPS so clearly wished to proceed that they had applied for witness summonses and an earlier court had agreed, yet they too were dismissed. This makes 7 out of 13 cases which were dismissed when CPS considered they should have been allowed to proceed.

For a case to get as far as court a complainant will have called the police, made a statement, agreed to a prosecution, presented a sufficiently strong case for the CPS to lay a charge and indicated their willingness to attend court. Hence s/he will have supported the justice process over a period of months, despite the obvious and innumerable domestic pressures around giving evidence against a partner, whether coercive control is in play or not. For that reason too, complainants deserve to be treated with tolerance on non-attendance.

It is a further concern that there was nothing said in court to indicate that these dismissals were informed by any contextual information, which may have been relevant to risk, for instance whether the defendant had previous convictions for offences against their partner or whether there was a restraining order in place. Given that the complainant's non-attendance meant at least an adjournment and a new Bench there could be no concern about the current magistrates receiving that information. There is abundant research to show that the risk to an abused person usually increases if they try to 'get away' and they can become especially vulnerable if, having made such an attempt, they fail to do so.

The judiciary must of course make independent decisions on every case but it was observed that the large majority of these decisions were made by Lay Magistrates in 'ordinary' magistrates courts for which SDVC training is not a compulsory qualification, and which, through no fault of their own, some magistrates may not have received.

## Cases of concern

In two further not guilty cases there were concerns.

In one, the defendant also did not attend. He was at large after being arrested, the complainant was fearful of him and the CPS read out an account of him abusing her when the children were present. Yet the magistrates agreed with the defence that the parties were 'equally at fault' and the case was dismissed.

In the second, the complainant attended to testify but the judge offered a restraining order instead. She would have had little choice but to accept. Given the number of domestic abuse complainants who do not attend court because of the pressures inherent in their situation it is hard to understand why if complainants do attend, ready to testify, as in this case, they should be denied the opportunity.

## Evidence led prosecutions

In total, 16 cases were actually heard as contested hearings and in 7 of those the complainant did not attend but there were still convictions. In the 9 in which complainants did attend, there were convictions in 6 cases. In every case where the police had gathered supporting evidence there was a conviction, whether the complainant attended or not. It is clear therefore that police and CPS have grasped the need to gather supporting evidence in every case where it is available and the time of over-reliance on the complainant's testimony alone is beginning to end. Indeed it seems increasingly to be the approach of those agencies that cases are prepared in the expectation that the complainant might not attend whilst, nonetheless ensuring that s/he has support and encouragement, in fact, to do so. We welcome this approach and hope that the courts will similarly welcome it and adopt an open mind to prosecutions without the presence of the complainant.

In contrast to the cases which caused concern, the observers were complimentary about some District Judges both in the SDVC and in trial courts, for cutting to the chase with both prosecution and defence, including, in some cases, questioning not guilty pleas where the facts did not disclose an apparent defence.

## CPS lawyers

CPS lawyers who prosecute in the Northumbria SDVC and the follow-on trials are trained specialists. The observers were generally very impressed by those who they saw at work advocating the Crown's case in these proceedings in a skilled and expert way. In the absence of IDVAs, these specialist advocates also attempt to liaise between the complainant and the court in an attempt to get their interests represented in decision-making. There are many observations of CPS lawyers leaving court to try to find a phone number for a complainant and a



number of them were often to be seen making contact while trying to eat their lunch in the short adjournment. There are sometimes telephone arrangements with some IDVA offices which can help, however, the absence from court of IDVAs or other specialist support workers means that this kind of very intelligent and well-meaning but makeshift arrangement is generally all that is available to gather input from complainant.

The observers also related that the CPS lawyers often used argot, suggesting that they understood the concept of coercive control and some of its effects on complainants and the children of the family in a way that was not always reflected in the terminology and approach used by the court or the defence.

## The need for IDVAs at court

There is considerable evidence, including some work to be published imminently<sup>10</sup> that where a domestic abuse complainant has the support of an IDVA or other specialist support worker, s/he is more likely to attend court and is likely to be more confident and to give better evidence. This reflects common sense experience that a vulnerable person is more likely to be resilient if they are being supported through the practical and personal consequences of the offending and its emotional impact. Since 2015, for a range of reasons set out on page 10 of this report, there have rarely been IDVAs present in Northumbria SDVC hearings. The domestic violence strategic sub-committee of the Local Criminal Justice Board (LCJB) carried out a self-assessment two years ago reporting that there were no IDVAs in the courts and in these observations only 3 were seen in a total of 223 cases. SDVCs without an IDVA are sub-optimal in many ways.

## Bail and restraining orders

IDVA presence can ensure that the complainant's voice is heard in all the decisions taken by the court which may be integral to their wellbeing. Important decisions for the complainant include whether to bail the defendant and if so on what conditions and whether those conditions are intended to or do support or limit/terminate child contact. Child contact is widely recognised as a tool with which a coercively controlling perpetrator may seek to regain contact with a victim who has left the relationship to escape abuse. One half of domestic abuse murders occur after separation or following a victim's decision to seek help by for instance calling the police and attending court to testify.

It is probably for such reasons that CPS guidelines make clear, that

*'Arrangements regarding child contact will be managed by the family court and generally will not be a matter considered within a bail hearing'*

Nonetheless, observers saw applications to vary bail in order to facilitate child contact. In some of those cases it seemed doubtful that there had been proper notice of the application since little information was available of the complainant's circumstances and concerns. The defendant's case was put forward, clearly in good faith by their lawyer and, on a number of occasions, apparently accepted by the court in the absence of any other information. The observers concerns about this increased when they noted a case in which the defendant instructed that his mother would be trusted by all sides to supervise contact yet the CPS representative, by chance, remembered having prosecuted him for assaulting his mother. There were similar concerns in some cases where the question was raised of tailoring restraining orders to allow for child contact.

## A significant failure

The absence of IDVAs is a significant failure of the SDVC system in Northumbria and these observations have already led to members of the LCJB and Domestic Abuse co-ordinators from the local authorities meeting to work on a way to remedy the position.

In the meantime the courts will continue to work with seriously limited and/or one-sided information with which to make decisions about families before them and we hope, especially given the appropriateness of the family courts to determine child contact, that an only-order-if-essential approach to decision-making may prevail.

## Special measures

We raise a potential concern about the use of special measures. Although the observers heard discussion about special measures at a number of early hearings, only 3 complainants of the 8 who gave evidence made use of them. This is a surprisingly low number in cases in which myriad pressures including the exercise of coercive control can make complainants feel vulnerable or intimidated and likely to be able to give better evidence with the assistance of special measures. It is not known whether applications had or had not been made. The decision to allow the use of special measures is made by the court and even qualifying to be considered for them is not yet automatic in domestic abuse cases. Many complainants did not attend court and it is not known if all or any of those people had been offered special measures or had their nature and supportive effect explained. In particular they should have been offered access to the safety of remote

<sup>10</sup> Justice, Inequality and Gender Based Violence, Hester and Ors, 2018



evidence centres of which there are four in Northumbria, located across a geographical spread, far from the court and in anonymous locations.

The court based witness service volunteers, who were available for all the observed cases at Gateshead and for two thirds of those at Bedlington, were seen to be caring and supportive, serving the complainants who attended very well and ensuring where possible that they were able to wait in a separate room. We applaud this but it cannot be seen as sufficient support for complainants who are frequently too vulnerable and/or intimidated to make it to court without prior support, reassurance and assistance.

## Mitigations and the Sentencing Guidelines

There were concerns that the most frequent mitigation was that the perpetrator was in drink and that the courts did not, in any hearing, point out that there is no known causative link between the two. Perpetrators of domestic abuse are just as controlling and abusive when they are sober. Indeed some domestic abuse perpetrators are never in drink. Although it is understandable that defence lawyers will seek to use the presence of alcohol to mitigate for their clients, it is a pity that nobody in the court made its irrelevance clear.

The second most frequent mitigation was that the complainant had in some way provoked the defendant to act as s/he did. The 2006 Guidelines describe that this mitigation is 'to be treated with great care' and provide that only actual violence or bullying by the complainant should be taken into account. The 2018 guideline clearly states that 'Provocation is no mitigation to an offence within a domestic context, except in rare circumstances'. Again, the defence must be entitled to follow the client's instructions on this topic, but it surprised the observers that the court showed no indication that a mitigation expressly ruled out of relevance by the guidelines was not playing a role in its consideration of sentence.

There was, in the same way, an apparent acceptance of mitigation that the defendant was of good character outside the home. This is expressly excluded by both the 2006 and 2018 sentencing guidelines in any case where there is a course of domestic abuse conduct. This is because, as the Sentencing Council sets out, domestic abuse remains hidden often for many years due to perpetrators' frequent ability to adopt two personae, one outside and a very different one at home. Good character elsewhere hence cannot mitigate crime which has been committed in the privacy of the home and, through the controlling endeavours of the perpetrator, kept secret.

By not pointing out the irrelevance of such mitigations the judiciary involved are not contributing to an appropriate cultural atmosphere for the court. They may,

of course, be demonstrating limited awareness of the guidelines or that coercive control is not at the forefront of their minds when sentencing as the Sentencing Council clearly intends it to be.

## Our thanks

We put on record our thanks to the Soroptimists who observed the SDVC and the observers who watched the trials, of whom one was a Soroptimist but the others who were veterans of our earlier 'Seeing is Believing' observation project at Newcastle Crown Court. The CPS and HMCTS played key roles in training the observers, structuring the questionnaire they used and in advising and supporting the project throughout. Our thanks to them too.

We extend our sincere thanks to the courts for welcoming this project. Following this innovative programme of work, Angus MacPherson MBE Police and Crime Commissioner for Wiltshire and Swindon has asked his local Soroptimists and others to carry out a similar exercise in local courts and we look forward to the outcome.

The observers were delighted to see some high quality practice across the board but there are concerns that some of the components needed to be present for an efficient and effective special domestic violence court system were not in play during this period. Further, both in preparatory hearings and sentencing within the SDVC and in trials and sentencing outside it, there were indicators which could suggest that the understanding of coercive control and the essential principles which underpin the special court approach to domestic abuse cases was not always present. It is those concerns and the shared desire to ensure better support for future complainants in domestic abuse proceedings that inform the following recommendations.

## Recommendation 1

The LCJB should offer further high quality training to courts' personnel about the SDVC jurisdiction and the essential understanding that domestic abuse is rooted in coercive and controlling behaviour.

We observed some judiciary clearly to have both understanding and experience, as we expected. However, there was only one charge of coercive and controlling behaviour in the 223 cases observed. They are still relatively rare and not all members of these courts are likely to have had experience of them and therefore perhaps not of the concept which underpins the offence.

Apparently uncritical acceptance of alcohol as a mitigation (when perpetrators of domestic abuse are just as controlling when sober) and of provocation and good

character as mitigations were causes of concern as were some of the dismissals of cases on the non-attendance of complainant without any apparent acknowledgement of the pressures upon such a person or the potential for him/her being in the thrall of the defendant.

We feel able to recommend this since the need for trained judiciary is one of the 12 components accepted by everybody, including the judiciary themselves, to be essential for the effective operation of this special jurisdiction.

We have and do acknowledge that some magistrates who dealt with these cases may not have been trained SDVC specialists.

## Recommendation 2

All domestic abuse trials and sentences should be heard in the SDVC, which currently only hears pre-trial hearings and early guilty pleas. This is to avoid them being heard by a less specialist Bench, amongst an ordinary case-list when the special approach which characterises the SDVC may not be observed and follows from our recommendation number 1.

If this presents an impossible task for the courts service we simply reiterate the need for a fully trained bench on every domestic abuse case.

## Recommendation 3

All the criminal justice agencies should aim to optimise the number of guilty pleas at first hearing to discourage gaming of the system, encourage the take up of sentencing discounts and speedy rehabilitation and to protect complainants from the risk of pressure not to attend and the stress of testifying. A further advantage would be that sentencing and offender management issues would be likely to be dealt with in the specialist SDVCs (if our recommendation 2 cannot be accepted or immediately accepted) and not in the 'ordinary' magistrates courts.

## Recommendation 4

All the criminal justice agencies should adopt a cautious approach to the non-appearance of a complainant in a domestic abuse trial. The learning which underpins this jurisdiction would suggest that this is the safest approach even though the judiciary must make individual decisions in each case. Our concerns are that the potential for defendant's playing the system was clearly understood when defendants changed to guilty pleas on the arrival of the complainant but that there was no indication of an understanding that non-attendance may have represented similar, but more successful, game playing.

We strongly applaud the adoption of an evidence led approach to investigating and prosecuting domestic abuse by the police and CPS in an effort to move away from over-reliance on the evidence of a complainant. We further applaud that cases are beginning to be prepared in the expectation that the complainant might not attend whilst, nonetheless ensuring that s/he has support and encouragement, in fact, to do so

## Recommendation 5

The LCJB should urgently remedy the absence of Independent Domestic Violence Advisers (IDVAs)

Observers sometimes saw issues being considered in the absence of the complainant and without an IDVA representing their interests, which would affect their wellbeing and that of the children of the family. The courts clearly need the input of both parties in order to be satisfied that they can make safe decisions. Although attempts are made by CPS, police and others to provide a full picture, all would accept that they are not always able to do so. Additionally complainants are more likely to attend court when required and to understand their entitlement to special measures if they can rely on advice and support from a trusted professional. For these and the other reasons outlined in this report, the presence of IDVAs is key to the just and proper conduct of domestic abuse proceedings.

## Recommendation 6

All the criminal justice agencies should do their best to make sure that complainants are fully apprised of their options to have special measures, to encourage them to attend and to assist them in giving their best evidence. We note that S16 of the Youth Justice and Criminal Evidence Act permits the court of its own motion to raise the question whether a special measures direction should be made.

Although the Government has suggested that domestic abuse complaints will soon be automatically entitled to special measures, that is currently not the case. The observers heard discussion at many pre-trial hearings about special measures but only three complainants used them in the observed trials, principally a television link. We do not know whether the complainants who did not attend had been told of their availability

Special measures enable the complainant to give their best evidence at minimum risk and in a safe environment. In Northumbria there are four Remote Evidence Centres from where complainants can testify without ever approaching the court. Promoting their availability and that of other options should significantly increase the willingness of vulnerable or intimidated complainants to testify.

## Recommendation 7

Where a witness summons is issued for the complainant, police and CPS should encourage/arrange for IDVA or specialist adviser support to optimise the prospects of their attendance and to access measures which might enhance their ability to give their best evidence. That should be the case whether or not that complainant has received professional support before.

## Recommendation 8

All agencies should encourage the use of restraining orders which are fully informed by risk and need and should exercise the utmost caution about such orders or variations of bail which are requested to be tailored to allow the defendant to have child contact.

The 2018 Sentencing Guidelines provide that restraining orders should be used in every case unless there is good reason not to do so. Observers welcomed that they were frequently requested and ordered even before the guidelines came into force. However, there were concerns about the absence of information about complainant circumstances, which reflected similar concerns in respect of some applications to vary bail. We reiterate the need for IDVAs to be present to achieve that input and simply, and with respect, counsel caution from all quarters until that can happen. We would refer again to the CPS guidelines on such cases which make clear that the Family Courts are both available and appropriate to determine questions of child contact.

## Recommendation 9

It goes without saying that the Sentencing Guidelines should be followed. We consider that it would be a strong contribution to the special culture of the courts when dealing with domestic abuse if the prosecution pointed out when mitigation had been put forward which fell outside their provisions and the court made clear that such mitigation would not influence their sentencing exercise.

References to consumption of alcohol as a mitigation were made in 28% of cases, yet there is no known causative link between it and coercive control. Both good character and provocation were also used in cases in which the guidelines expressly exclude them from relevance.

## Recommendation 10

The LCJB should investigate the availability and use of the Building Better Relationships course (BBR) in

the area, for perpetrators who may benefit and are considered to be suitable.

Of the 94 or so perpetrators who either pleaded guilty or were convicted, the observers noted that only 17 were sentenced to community orders which could facilitate attendance at BBRs. We make no point about this save that it was unexpected and may merit a fresh look given that there is evidence that these courses can be instrumental in encouraging some perpetrators of domestic abuse to develop insight into their behaviour and in aiding a change of conduct.

## Recommendation 11

It is proposed that the definition of domestic abuse will change in the current legislation to replace the term 'financial' abuse with the term 'economic' abuse to capture the multiple ways in which resources can be used as a tool of abuse. It seems to follow that the criminal justice agencies should adopt a very cautious approach to the consideration of fines for guilty perpetrators of domestic abuse (when it is not required by law) if they are still sharing a home or otherwise sharing resources with the complainant, lest the fine itself be used in that way and/or further to limit the victim's freedom of action.

## Recommendation 12

Police should encourage it to become the norm for complainants to make a Victim Personal Statement and the CPS should always highlight the availability of a VPS and ensure that its content is heard for consideration by the court.

Observers noted many references to Victim Personal Statements but in a number of cases there was no express reference to whether a VPS was available or to its content, although the making of one and full reference to it are rights under the Victims Code of Practice.

## Recommendation 13

Northumbria Police should address the evidential failings noted by the observers, which impeded the proper and timely functioning of the court in a small number of these cases and ensure that the same errors are not repeated. Police CPS and the courts service should tackle the technological problems noted by observers similarly.



# **Appendix A**

## **Overarching Principles: Domestic Violence**

Definitive Guideline

Sentencing Guidelines Council 2006

# Foreword

In accordance with section 170(9) of the Criminal Justice Act 2003, the Sentencing

Guidelines Council issues this guideline as a definitive guideline. By virtue of section 172 of the Act, every court must have regard to a relevant guideline. This guideline applies to offences sentenced on or after 18 December 2006.

This guideline stems from a reference from the Home Secretary for consideration of sentencing in cases of domestic violence. The referral suggested that “domestic violence” should be described in terms of the Crown Prosecution Service definition (described on page 3) and this suggestion was adopted by the Council.

Consequently this guideline is for use for all cases that fall within the Crown Prosecution Service definition of domestic violence.

There is no specific offence of domestic violence. The definition covers a broad set of circumstances and allows conduct amounting to domestic violence to be covered by a wide range of offences. The guideline identifies the principles relevant to the sentencing of cases involving violence that has occurred in a domestic context and includes details of particular aggravating and mitigating factors.

This guideline makes clear that offences committed in a domestic context should be regarded as being no less serious than offences committed in a non-domestic context. Indeed, because an offence has been committed in a domestic context, there are likely to be aggravating factors present that make it more serious.

In many situations of domestic violence, the circumstances require the sentence to demonstrate clearly that the conduct is unacceptable. However, there will be some situations where all parties genuinely and realistically wish the relationship to continue as long as the violence stops. In those situations, and where the violence is towards the lower end of the scale of seriousness, it is likely to be appropriate for the court to impose a sentence that provides the support necessary.

Advice from the Sentencing Advisory Panel covered both domestic violence and the offences of breach of a restraining order or a non-molestation order. The Council is issuing two guidelines which are published simultaneously.

***The Council has appreciated greatly the work of the Sentencing Advisory Panel in preparing the advice on which this guideline has been based and for those who have responded so thoughtfully to the consultation of both the Panel and the Council. The advice and this guideline are available on [www.sentencing-guidelines.gov.uk](http://www.sentencing-guidelines.gov.uk) or from the Sentencing Guidelines Secretariat at 8–10 Great George Street, London SW1P 3AE. A summary of the responses to the Council’s consultation also appears on the website.***

**Chairman of the Council December 2006**



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# Domestic violence

## A. Definition of Domestic Violence

- 1.1 There is no specific offence of domestic violence and conduct amounting to domestic violence is covered by a number of statutory provisions. For the purposes of this guideline, wherever such offending occurs, domestic violence is:

***“Any incident of threatening behaviour, violence or abuse [psychological, physical, sexual, financial or emotional] between adults who are or have been intimate partners or family members, regardless of gender or sexuality.”<sup>1</sup>***

- 1.2 Most incidents of domestic violence can be charged as one of a wide range of offences including physical assault (with or without a weapon), harassment, threats to cause injury or to kill, destroying or damaging property, false imprisonment (locking the victim in a room or preventing that person from leaving the house), and sexual offences.
- 1.3 This guideline covers issues which are relevant across the range of offences that might be committed in a domestic context. Under the above definition, the domestic context includes relationships involving intimate partners who are living together, intimate partners who do not live together and former intimate partners. It is also wide enough to include relationships between family members, for example between a father and a daughter, or a mother and a daughter, perhaps where the daughter is the mother's carer.

## B. Assessing Seriousness

- 2.1 As a starting point for sentence, offences committed in a domestic context should be regarded as being no less serious than offences committed in a nondomestic context.
- 2.2 Thus, the starting point for sentencing should be the same irrespective of whether the offender and the victim are known to each other (whether by virtue of being current or former intimate partners, family members, friends or acquaintances) or unknown to each other.
- 2.3 A number of aggravating factors may commonly arise by virtue of the offence being committed in a domestic context and these will increase the seriousness of such offences. These are described in more detail in C below.

## C. Aggravating and Mitigating Factors

- 3.1 Since domestic violence takes place within the context of a current or past relationship, the history of the relationship will often be relevant in assessing the gravity of the offence. Therefore, a court is entitled to take into account anything occurring within the relationship as a whole, which may reveal relevant aggravating or mitigating factors.
- 3.2 The following aggravating and mitigating factors (which are not intended to be exhaustive) are of particular relevance to offences committed in a domestic context, and should be read alongside the general factors set out in the Council guideline Overarching Principles: Seriousness.<sup>2</sup>

<sup>1</sup> This is the Government definition of domestic violence agreed in 2004. It is taken from Policy on Prosecuting cases of Domestic Violence, Crown Prosecution Service, 2005.

<sup>2</sup> Published December 2004. The lists of aggravating factors from the guideline are reproduced at Annex A for ease of reference. See also [www.sentencing-guidelines.gov.uk](http://www.sentencing-guidelines.gov.uk)

# Aggravating Factors

## (i) Abuse of trust and abuse of power

3.3 The guideline Overarching Principles: Seriousness identifies abuse of a position of trust and abuse of power as factors that indicate higher culpability. Within the nature of relationship required to meet the definition of domestic violence set out above, trust implies a mutual expectation of conduct that shows consideration, honesty, care and responsibility. In some such relationships, one of the parties will have the power to exert considerable control over the other.

3.4 In the context of domestic violence:

- an abuse of trust, whether through direct violence or emotional abuse, represents a violation of this understanding;
- an abuse of power in a relationship involves restricting another individual's autonomy which is sometimes a specific characteristic of domestic violence. This involves the exercise of control over an individual by means which may be psychological, physical, sexual, financial or emotional.

3.5 Where an abuse of trust or abuse of power is present, it will aggravate the seriousness of an offence. These factors are likely to exist in many offences of violence within a domestic context.

3.6 However, the breadth of the definition of domestic violence (set out in 1.1 above) encompasses offences committed by a former spouse or partner. Accordingly, there will be circumstances where the abuse of trust or abuse of power may be a very minor feature of an offence or may be deemed no longer to exist – for example, where the offender and victim have been separated for a long period of time.

## (ii) Victim is particularly vulnerable

3.7 For cultural, religious, language, financial or any other reasons, some victims of domestic violence may be more vulnerable than others, not least because these issues may make it almost impossible for the victim to leave a violent relationship.

3.8 Where a perpetrator has exploited a victim's vulnerability (for instance, when the circumstances have been used by the perpetrator to prevent the victim from seeking and obtaining help), an offence will warrant a higher penalty.

3.9 Age, disability or the fact that the victim was pregnant or had recently given birth at the time of the offence may make a victim particularly vulnerable.

3.10 Any steps taken to prevent the victim reporting an incident or obtaining assistance will usually aggravate the offence.

## (iii) Impact on children

3.11 Exposure of children to an offence (either directly or indirectly) is an aggravating factor.

3.12 Children are likely to be adversely affected by directly witnessing violence or other abuse and by being aware of it taking place while they are elsewhere in the home.<sup>3</sup>

## (iv) Using contact arrangements with a child to instigate an offence

3.13 An offence will be aggravated where an offender exploits contact arrangements with a child in order to commit an offence.

## (v) A proven history of violence or threats by the offender in a domestic setting

3.14 It is important that an assessment of the seriousness of an offence recognises the cumulative effect of a series of violent incidents or threats over a prolonged period, where such conduct has been proved or accepted.

3.15 Where an offender has previously been convicted of an offence involving domestic violence either against the same or a different partner, this is likely to be a statutory aggravating factor.<sup>4</sup>

## (vi) A history of disobedience to court orders

3.16 A breach of an order that has been imposed for the purpose of protecting a victim can cause significant harm or anxiety. Where an offender's history of disobedience has had this effect, it will be an aggravating factor.

<sup>3</sup> The definition of "harm" in s.31(9) of the Children Act 1989 as amended by s.120 of the Adoption and Children Act 2002 includes "impairment suffered from seeing or hearing the ill-treatment of another".

<sup>4</sup> Criminal Justice Act 2003, s.143(2)

- 3.17 Commission of the offence in breach of a non-molestation order imposed in civil proceedings, in breach of a sentence (such as a conditional discharge) imposed for similar offending, or while subject to an ancillary order, such as a restraining order, will aggravate the seriousness of the offence.
- 3.18 The appropriate response to breach of a civil order is dealt with in a separate guideline Breach of a Protective Order.

#### **(vii) Victim forced to leave home**

- 3.19 An offence will be aggravated if, as a consequence, the victim is forced to leave home.

### Mitigating Factors

#### **(i) Positive good character**

- 3.20 As a general principle of sentencing, a court will take account of an offender's positive good character. However, it is recognised that one of the factors that can allow domestic violence to continue unnoticed for lengthy periods is the ability of the perpetrator to have two personae. In respect of an offence of violence in a domestic context, an offender's good character in relation to conduct outside the home should generally be of no relevance where there is a proven pattern of behaviour.
- 3.21 Positive good character is of greater relevance in the rare case where the court is satisfied that the offence was an isolated incident.

#### **(ii) Provocation**

- 3.22 It may be asserted that the offence, at least in part, has been provoked by the conduct of the victim. Such assertions need to be treated with great care, both in determining whether they have a factual basis and in considering whether in the circumstances the alleged conduct amounts to provocation sufficient to mitigate the seriousness of the offence.
- 3.23 For provocation to be a mitigating factor, it will usually involve actual or anticipated violence including psychological bullying. Provocation is likely to have more of an effect as mitigation if it has taken place over a significant period of time.

## D. Other factors influencing sentence

### Wishes of the victim and effect of the sentence

- 4.1 As a matter of general principle, a sentence imposed for an offence of violence should be determined by the seriousness of the offence, not by the expressed wishes of the victim.
- 4.2 There are a number of reasons why it may be particularly important that this principle is observed in a case of domestic violence:
- it is undesirable that a victim should feel a responsibility for the sentence imposed;
  - there is a risk that a plea for mercy made by a victim will be induced by threats made by, or by a fear of, the offender;
  - the risk of such threats will be increased if it is generally believed that the severity of the sentence may be affected by the wishes of the victim.
- 4.3 Nonetheless, there may be circumstances in which the court can properly mitigate a sentence to give effect to the expressed wish of the victim that the relationship be permitted to continue. The court must, however, be confident that such a wish is genuine, and that giving effect to it will not expose the victim to a real risk of further violence. Critical conditions are likely to be the seriousness of the offence and the history of the relationship. It is vitally important that the court has up-to-date information in a pre-sentence report and victim personal statement.
- 4.4 Either the offender or the victim (or both) may ask the court to take into consideration the interests of any children and to impose a less severe sentence. The court will wish to have regard not only to the effect on the children if the relationship is disrupted but also to the likely effect on the children of any further incidents of domestic violence.

## E. Factors to Take into Consideration

The following points of principle should be considered by a court when imposing sentence for any offence of violence committed in domestic context.

1. Offences committed in a domestic context should be regarded as being no less serious than offences committed in a non-domestic context.
2. Many offences of violence in a domestic context are dealt with in a magistrates' court as an offence of common assault or assault occasioning actual bodily harm because the injuries sustained are relatively minor. Offences involving serious violence will warrant a custodial sentence in the majority of cases.
3. Some offences will be specified offences for the purposes of the dangerous offender provisions.<sup>5</sup> In such circumstances, consideration will need to be given to whether there is a significant risk of serious harm to members of the public, which include, of course, family members. If so, the court will be required to impose a life sentence, imprisonment for public protection or an extended sentence.
4. Where the custody threshold is only just crossed, so that if a custodial sentence is imposed it will be a short sentence, the court will wish to consider whether the better option is a suspended sentence order or a community order, including in either case a requirement to attend an accredited domestic violence programme. Such an option will only be appropriate where the court is satisfied that the offender genuinely intends to reform his or her behaviour and that there is a real prospect of rehabilitation being successful. Such a situation is unlikely to arise where there has been a pattern of abuse.

## Annex A

### Extracts from Guideline Overarching Principles: Seriousness

This is a general list which is included here for ease of reference. Not every factor will apply to an offence committed in a domestic context.

#### (i) Aggravating factors

##### 1.22 Factors indicating higher culpability:

- Offence committed whilst on bail for other offences
- Failure to respond to previous sentences
- Offence was racially or religiously aggravated
- Offence motivated by, or demonstrating, hostility to the victim based on his or her sexual orientation (or presumed sexual orientation)
- Offence motivated by, or demonstrating, hostility based on the victim's disability (or presumed disability)
- Previous conviction(s), particularly where a pattern of repeat offending is disclosed
- Planning of an offence
- An intention to commit more serious harm than actually resulted from the offence
- Offenders operating in groups or gangs
- 'Professional' offending
- Commission of the offence for financial gain (where this is not inherent in the offence itself)
- High level of profit from the offence
- An attempt to conceal or dispose of evidence
- Failure to respond to warnings or concerns expressed by others about the offender's behaviour
- Offence committed whilst on licence
- Offence motivated by hostility towards a minority group, or a member or members of it
- Deliberate targeting of vulnerable victim(s)
- Commission of an offence while under the influence of alcohol or drugs
- Use of a weapon to frighten or injure victim
- Deliberate and gratuitous violence or damage to property, over and above what is needed to carry out the offence
- Abuse of power
- Abuse of a position of trust

### 1.23 Factors indicating a more than usually serious degree of harm:

- Multiple victims
- An especially serious physical or psychological effect on the victim, even if unintended
- A sustained assault or repeated assaults on the same victim
- Victim is particularly vulnerable
- Location of the offence (for example, in an isolated place)
- Offence is committed against those working in the public sector or providing a service to the public
- Presence of others e.g. relatives, especially children or partner of the victim
- Additional degradation of the victim (e.g. taking photographs of a victim as part of a sexual offence)
- In property offences, high value (including sentimental value) of property to the victim, or substantial consequential loss (e.g. where the theft of equipment causes serious disruption to a victim's life or business).

### **(ii) Mitigating factors**

1.24 Some factors may indicate that an offender's culpability is unusually low, or that the harm caused by an offence is less than usually serious.

1.25 Factors indicating significantly lower culpability:

- A greater degree of provocation than normally expected
- Mental illness or disability
- Youth or age, where it affects the responsibility of the individual defendant
- The fact that the offender played only a minor role in the offence

### **(iii) Personal mitigation**

1.26 Section 166(1) Criminal Justice Act 2003 makes provision for a sentencer to take account of any matters that 'in the opinion of the court, are relevant in mitigation of sentence'.

1.27 When the court has formed an initial assessment of the seriousness of the offence, then it should consider any offender mitigation. The issue of remorse should be taken into account at this point along with other mitigating features such as admissions to the police in interview.

Extracted from Guideline Overarching Principles: Seriousness, Sentencing Guidelines Council, December 2004



# Appendix B

## Overarching Principles: Domestic Abuse

Definitive Guideline

Sentencing Guidelines Council 2018

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## Applicability of guideline

In accordance with section 120 of the Coroners and Justice Act 2009, the Sentencing Council issues this definitive guideline. It applies to all offenders aged 16 and older, who are sentenced on or after 24 May 2018, regardless of the date of the offence.

For offenders aged 16 - 18 refer also to the Sentencing Children and Young People Overarching Principles Definitive Guideline; however the general principles of this guideline will still apply.

Section 125(1) of the Coroners and Justice Act 2009 provides that when sentencing offences committed after 6 April 2010:

“Every court –

- (a) must, in sentencing an offender, follow any sentencing guidelines which are relevant to the offender's case, and
- (b) must, in exercising any other function relating to the sentencing of offenders, follow any sentencing guidelines which are relevant to the exercise of the function.

unless the court is satisfied that it would be contrary to the interests of justice to do so.”

## Scope of the guideline

1. This guideline identifies the principles relevant to the sentencing of cases involving domestic abuse. There is no specific offence of domestic abuse. It is a general term describing a range of violent and/or controlling or coercive behaviour.
2. A useful, but not statutory, definition of domestic abuse presently used by the Government is set out below. The Government definition includes so-called ‘honour’ based abuse, female genital mutilation (FGM) and forced marriage.

**Any incident or pattern of incidents of controlling, coercive, threatening behaviour, violence or abuse between those aged 16 or over who are, or have been, intimate partners or family members regardless of gender or sexuality. The abuse can encompass, but is not limited to: psychological, physical, sexual, financial, or emotional.**

3. Controlling behaviour is a range of acts designed to make a person subordinate and/or dependent by isolating them from sources of support, exploiting their resources and capabilities for personal gain, depriving them of the means needed for independence, resistance and escape and/or regulating their everyday behaviour.
4. Coercive behaviour is an act or pattern of acts of assault, threats, humiliation (whether public or private) and intimidation or other abuse that is used to harm, punish, or frighten the victim. Abuse may take place through person to person contact, or through other methods, including but not limited to, telephone calls, text, email, social networking sites or use of GPS tracking devices.
5. Care should be taken to avoid stereotypical assumptions regarding domestic abuse. Irrespective of gender, domestic abuse occurs amongst people of all ethnicities, sexualities, ages, disabilities, religion or beliefs, immigration status or socio-economic backgrounds. Domestic abuse can occur between family members as well as between intimate partners.
6. Many different criminal offences can involve domestic abuse and, where they do, the court should ensure that the sentence reflects that an offence has been committed within this context.

## Assessing seriousness

7. The domestic context of the offending behaviour makes the offending more serious because it represents a violation of the trust and security that normally exists between people in an intimate or family relationship. Additionally, there may be a continuing threat to the victim's safety, and in the worst cases a threat to their life or the lives of others around them.

8. Domestic abuse offences are regarded as particularly serious within the criminal justice system. Domestic abuse is likely to become increasingly frequent and more serious the longer it continues, and may result in death. Domestic abuse can inflict lasting trauma on victims and their extended families, especially children and young people who either witness the abuse or are aware of it having occurred. Domestic abuse is rarely a one-off incident and it is the cumulative and interlinked physical, psychological, sexual, emotional or financial abuse that has a particularly damaging effect on the victims and those around them.
9. Cases in which the victim has withdrawn from the prosecution do not indicate a lack of seriousness and no inference should be made regarding the lack of involvement of the victim in a case.

## Aggravating and mitigating factors

The following list of non-exhaustive aggravating and mitigating factors are of particular relevance to offences committed in a domestic context, and should be considered alongside offence specific factors.

### Aggravating Factors

- Abuse of trust and abuse of power
- Victim is particularly vulnerable (all victims of domestic abuse are potentially vulnerable due to the nature of the abuse, but some victims of domestic abuse may be more vulnerable than others, and not all vulnerabilities are immediately apparent)
- Steps taken to prevent the victim reporting an incident
- Steps taken to prevent the victim obtaining assistance
- Victim forced to leave home, or steps have to be taken to exclude the offender from the home to ensure the victim's safety
- Impact on children (children can be adversely impacted by both direct and indirect exposure to domestic abuse)
- Using contact arrangements with a child to instigate an offence
- A proven history of violence or threats by the offender in a domestic context
- A history of disobedience to court orders (such as, but not limited to, Domestic Violence Protection Orders, non-molestation orders, restraining orders)

### Mitigating Factors

- Positive good character – as a general principle of sentencing, a court will take account of an offender's positive good character. However, it is recognised that one of the factors that can allow domestic abuse to continue unnoticed for lengthy periods is the ability of the perpetrator to have a public and a private face. In respect of offences committed within a domestic context, an offender's good character in relation to conduct outside these offences should generally be of no relevance where there is a proven pattern of behaviour
- Evidence of genuine recognition of the need for change, and evidence of obtaining help or treatment to effect that change

## Other factors influencing sentence

The following points of principle should be considered by a court when imposing sentence for any offences committed in a domestic context:

10. A sentence imposed for an offence committed within a domestic context should be determined by the seriousness of the offence, not by any expressed wishes of the victim. There are a number of reasons why it may be particularly important that this principle is observed within this context:
  - The court is sentencing on behalf of the wider public
  - No victim is responsible for the sentence imposed
  - There is a risk that a plea for mercy made by a victim will be induced by threats made by, or by a fear of, the offender
  - The risk of such threats will be increased if it is generally believed that the severity of the sentence may be affected by the wishes of the victim.

11. Provocation is no mitigation to an offence within a domestic context, except in rare circumstances.
12. The offender or the victim may ask the court to consider the interests of any children by imposing a less severe sentence. The court should consider not only the effect on the children if the relationship is disrupted but also the likely effect of any further incidents of domestic abuse. The court should take great care with such requests, as the sentence should primarily be determined by the seriousness of the offence.
13. Offences involving serious violence, or where the emotional/psychological harm caused is severe, will warrant a custodial sentence in the majority of cases.
14. Some offences will be specified offences for the purposes of the dangerous offender provisions. In such circumstances, consideration will need to be given to whether there is significant risk of serious harm to members of the public by the commission of further specified offences. The 'public' includes family members and if this test is met, the court will be required to impose a life sentence, or an extended sentence in appropriate cases.
15. Passing the custody threshold does not mean that a custodial sentence should be deemed inevitable. Where the custody threshold is only just crossed, the court will wish to consider whether the better option is instead to impose a community order, including a requirement to attend an accredited domestic abuse programme or domestic abuse specific intervention. Such an option will normally only be appropriate where the court is satisfied that the offender genuinely intends to reform his or her behaviour and that there is a real prospect of rehabilitation being successful.
16. The court should also consider whether it is appropriate to make a restraining order, and if doing so, should ensure that it has all relevant up to date information. The court may also wish to consider making other orders, such as a European protection order, sexual harm prevention order, criminal behaviour order (this is not an exhaustive list). Further details for restraining orders are set out below.

## Restraining order

17. Where an offender is convicted of any offence, the court may make a restraining order (Protection from Harassment Act 1997, section 5).
18. Orders can be made on the initiative of the court; the views of the victim should be sought, but their consent is not required.
19. The order may prohibit the offender from doing anything for the purpose of protecting the victim of the offence, or any other person mentioned in the order, from further conduct which amounts to harassment or will cause a fear of violence.
20. If the parties are to continue or resume a relationship, courts may consider a prohibition within the restraining order not to molest the victim (as opposed to a prohibition on contacting the victim).
21. The order may have effect for a specified period or until further order.
22. A court before which a person is acquitted of an offence may make a restraining order if the court considers that it is necessary to protect a person from harassment by the defendant (Protection from Harassment Act 1997, section 5A).

## Victim personal statements

23. The absence of a Victim Personal Statement (VPS) should not be taken to indicate the absence of harm. A court should consider, where available, a VPS which will help it assess the immediate and possible long-term effects of the offence on the victim (and any children, where relevant) as well as the harm caused, whether physical or psychological.

# **Appendix C**

**Section 16-33 (Special Measures) - Youth Justice and Criminal Evidence Act 1999.**

## 16 Witnesses eligible for assistance on grounds of age or incapacity.

- (1) For the purposes of this Chapter a witness in criminal proceedings (other than the accused) is eligible for assistance by virtue of this section—
  - (a) if under the age of 17 at the time of the hearing; or
  - (b) if the court considers that the quality of evidence given by the witness is likely to be diminished by reason of any circumstances falling within subsection (2).
- (2) The circumstances falling within this subsection are—
  - (a) that the witness—
    - (i) suffers from mental disorder within the meaning of the M1Mental Health Act 1983, or
    - (ii) otherwise has a significant impairment of intelligence and social functioning;
  - (b) that the witness has a physical disability or is suffering from a physical disorder.
- (3) In subsection (1)(a) “the time of the hearing”, in relation to a witness, means the time when it falls to the court to make a determination for the purposes of section 19(2) in relation to the witness.
- (4) In determining whether a witness falls within subsection (1)(b) the court must consider any views expressed by the witness.
- (5) In this Chapter references to the quality of a witness’s evidence are to its quality in terms of completeness, coherence and accuracy; and for this purpose “coherence” refers to a witness’s ability in giving evidence to give answers which address the questions put to the witness and can be understood both individually and collectively.

## 17 Witnesses eligible for assistance on grounds of fear or distress about testifying.

- (1) For the purposes of this Chapter a witness in criminal proceedings (other than the accused) is eligible for assistance by virtue of this subsection if the court is satisfied that the quality of evidence given by the witness is likely to be diminished by reason of fear or distress on the part of the witness in connection with testifying in the proceedings.
- (2) In determining whether a witness falls within subsection (1) the court must take into account, in particular—
  - (a) the nature and alleged circumstances of the offence to which the proceedings relate;
  - (b) the age of the witness;
  - (c) such of the following matters as appear to the court to be relevant, namely—
    - (i) the social and cultural background and ethnic origins of the witness,
    - (ii) the domestic and employment circumstances of the witness, and
    - (iii) any religious beliefs or political opinions of the witness;
  - (d) any behaviour towards the witness on the part of—
    - (i) the accused,
    - (ii) members of the family or associates of the accused, or
    - (iii) any other person who is likely to be an accused or a witness in the proceedings.
- (3) In determining that question the court must in addition consider any views expressed by the witness.
- (4) Where the complainant in respect of a sexual offence is a witness in proceedings relating to that offence (or to that offence and any other offences), the witness is eligible for assistance in relation to those proceedings by virtue of this subsection unless the witness has informed the court of the witness’ wish not to be so eligible by virtue of this subsection.



## 18 Special measures available to eligible witnesses.

- (1) For the purposes of this Chapter—
  - (a) the provision which may be made by a special measures direction by virtue of each of sections 23 to 30 is a special measure available in relation to a witness eligible for assistance by virtue of section 16; and
  - (b) the provision which may be made by such a direction by virtue of each of sections 23 to 28 is a special measure available in relation to a witness eligible for assistance by virtue of section 17;but this subsection has effect subject to subsection (2).
- (2) Where (apart from this subsection) a special measure would, in accordance with subsection (1)(a) or (b), be available in relation to a witness in any proceedings, it shall not be taken by a court to be available in relation to the witness unless—
  - (a) the court has been notified by the Secretary of State that relevant arrangements may be made available in the area in which it appears to the court that the proceedings will take place, and
  - (b) the notice has not been withdrawn.
- (3) In subsection (2) “relevant arrangements” means arrangements for implementing the measure in question which cover the witness and the proceedings in question.
- (4) The withdrawal of a notice under that subsection relating to a special measure shall not affect the availability of that measure in relation to a witness if a special measures direction providing for that measure to apply to the witness’s evidence has been made by the court before the notice is withdrawn.
- (5) The Secretary of State may by order make such amendments of this Chapter as he considers appropriate for altering the special measures which, in accordance with subsection (1)(a) or (b), are available in relation to a witness eligible for assistance by virtue of section 16 or (as the case may be) section 17, whether—
  - (a) by modifying the provisions relating to any measure for the time being available in relation to such a witness,
  - (b) by the addition—
    - (i) (with or without modifications) of any measure which is for the time being available in relation to a witness eligible for assistance by virtue of the other of those sections, or
    - (ii) of any new measure, or
  - (c) by the removal of any measure.

## 19 Special measures direction relating to eligible witness.

- (1) This section applies where in any criminal proceedings—
  - (a) a party to the proceedings makes an application for the court to give a direction under this section in relation to a witness in the proceedings other than the accused, or
  - (b) the court of its own motion raises the issue whether such a direction should be given.
- (2) Where the court determines that the witness is eligible for assistance by virtue of section 16 or 17, the court must then—
  - (a) determine whether any of the special measures available in relation to the witness (or any combination of them) would, in its opinion, be likely to improve the quality of evidence given by the witness; and
  - (b) if so—
    - (i) determine which of those measures (or combination of them) would, in its opinion, be likely to maximise so far as practicable the quality of such evidence; and
    - (ii) give a direction under this section providing for the measure or measures so determined to apply to evidence given by the witness.
- (3) In determining for the purposes of this Chapter whether any special measure or measures would or would not be likely to improve, or to maximise so far as practicable, the quality of evidence given by the witness, the court

must consider all the circumstances of the case, including in particular—

- (a) any views expressed by the witness; and
  - (b) whether the measure or measures might tend to inhibit such evidence being effectively tested by a party to the proceedings.
- (4) A special measures direction must specify particulars of the provision made by the direction in respect of each special measure which is to apply to the witness's evidence.
- (5) In this Chapter “special measures direction” means a direction under this section.
- (6) Nothing in this Chapter is to be regarded as affecting any power of a court to make an order or give leave of any description (in the exercise of its inherent jurisdiction or otherwise)—
- (a) in relation to a witness who is not an eligible witness, or
  - (b) in relation to an eligible witness where (as, for example, in a case where a foreign language interpreter is to be provided) the order is made or the leave is given otherwise than by reason of the fact that the witness is an eligible witness.

## 20 Further provisions about directions: general.

- (1) Subject to subsection (221.) and section 21(8), a special measures direction has binding effect from the time it is made until the proceedings for the purposes of which it is made are either—
- (a) determined (by acquittal, conviction or otherwise), or
  - (b) abandoned,
- in relation to the accused or (if there is more than one) in relation to each of the accused.
- (2) The court may discharge or vary (or further vary) a special measures direction if it appears to the court to be in the interests of justice to do so, and may do so either—
- (a) on an application made by a party to the proceedings, if there has been a material change of circumstances since the relevant time, or
  - (b) of its own motion.
- (3) In subsection (2) “the relevant time” means—
- (a) the time when the direction was given, or
  - (b) if a previous application has been made under that subsection, the time when the application (or last application) was made.
- (4) Nothing in section 24(2) and (3), 27(4) to (7) or 28(4) to (6) is to be regarded as affecting the power of the court to vary or discharge a special measures direction under subsection (2).
- (5) The court must state in open court its reasons for—
- (a) giving or varying,
  - (b) refusing an application for, or for the variation or discharge of, or
  - (c) discharging,
- a special measures direction and, if it is a magistrates' court, must cause them to be entered in the register of its proceedings.
- (6) Rules of court may make provision—
- (a) for uncontested applications to be determined by the court without a hearing;
  - (b) for preventing the renewal of an unsuccessful application for a special measures direction except where there has been a material change of circumstances;

(c) for expert evidence to be given in connection with an application for, or for varying or discharging, such a direction;

(d) for the manner in which confidential or sensitive information is to be treated in connection with such an application and in particular as to its being disclosed to, or withheld from, a party to the proceedings.

## 21 Special provisions relating to child witnesses.

(1) For the purposes of this section—

(a) a witness in criminal proceedings is a “child witness” if he is an eligible witness by reason of section 16(1)(a) (whether or not he is an eligible witness by reason of any other provision of section 16 or 17);

(b) a child witness is “in need of special protection” if the offence (or any of the offences) to which the proceedings relate is—

(i) an offence falling within section 35(3)(a) (sexual offences etc.), or

(ii) an offence falling within section 35(3)(b), (c) or (d) (kidnapping, assaults etc.); and

(c) a “relevant recording”, in relation to a child witness, is a video recording of an interview of the witness made with a view to its admission as evidence in chief of the witness.

(2) Where the court, in making a determination for the purposes of section 19(2), determines that a witness in criminal proceedings is a child witness, the court must—

(a) first have regard to subsections (3) to (7) below; and

(b) then have regard to section 19(2);

and for the purposes of section 19(2), as it then applies to the witness, any special measures required to be applied in relation to him by virtue of this section shall be treated as if they were measures determined by the court, pursuant to section 19(2)(a) and (b)(i), to be ones that (whether on their own or with any other special measures) would be likely to maximise, so far as practicable, the quality of his evidence.

(3) The primary rule in the case of a child witness is that the court must give a special measures direction in relation to the witness which complies with the following requirements—

(a) it must provide for any relevant recording to be admitted under section 27 (video recorded evidence in chief); and

(b) it must provide for any evidence given by the witness in the proceedings which is not given by means of a video recording (whether in chief or otherwise) to be given by means of a live link in accordance with section 24.

(4) The primary rule is subject to the following limitations—

(a) the requirement contained in subsection (3)(a) or (b) has effect subject to the availability (within the meaning of section 18(2)) of the special measure in question in relation to the witness;

(b) the requirement contained in subsection (3)(a) also has effect subject to section 27(2); and

(c) the rule does not apply to the extent that the court is satisfied that compliance with it would not be likely to maximise the quality of the witness’s evidence so far as practicable (whether because the application to that evidence of one or more other special measures available in relation to the witness would have that result or for any other reason).

(5) However, subsection (4)(c) does not apply in relation to a child witness in need of special protection.

(6) Where a child witness is in need of special protection by virtue of subsection (1)(b)(i), any special measures direction given by the court which complies with the requirement contained in subsection (3)(a) must in addition provide for the special measure available under section 28 (video recorded cross-examination or re-examination) to apply in relation to—

(a) any cross-examination of the witness otherwise than by the accused in person, and

(b) any subsequent re-examination.

- (7) The requirement contained in subsection (6) has effect subject to the following limitations—
- (a) it has effect subject to the availability (within the meaning of section 18(2)) of that special measure in relation to the witness; and
  - (b) it does not apply if the witness has informed the court that he does not want that special measure to apply in relation to him.
- (8) Where a special measures direction is given in relation to a child witness who is an eligible witness by reason only of section 16(1)(a), then—
- (a) subject to subsection (9) below, and
  - (b) except where the witness has already begun to give evidence in the proceedings,
- the direction shall cease to have effect at the time when the witness attains the age of 17.
- (9) Where a special measures direction is given in relation to a child witness who is an eligible witness by reason only of section 16(1)(a) and—
- (a) the direction provides—
    - (i) for any relevant recording to be admitted under section 27 as evidence in chief of the witness, or
    - (ii) for the special measure available under section 28 to apply in relation to the witness, and
  - (b) if it provides for that special measure to so apply, the witness is still under the age of 17 when the video recording is made for the purposes of section 28,
- then, so far as it provides as mentioned in paragraph (a)(i) or (ii) above, the direction shall continue to have effect in accordance with section 20(1) even though the witness subsequently attains that age.

## 22 Extension of provisions of section 21 to certain witnesses over 17.

- (1) For the purposes of this section—
- (a) a witness in criminal proceedings (other than the accused) is a “qualifying witness” if he—
    - (i) is not an eligible witness at the time of the hearing (as defined by section 16(3)), but
    - (ii) was under the age of 17 when a relevant recording was made;
  - (b) a qualifying witness is “in need of special protection” if the offence (or any of the offences) to which the proceedings relate is—
    - (i) an offence falling within section 35(3)(a) (sexual offences etc.), or
    - (ii) an offence falling within section 35(3)(b), (c) or (d) (kidnapping, assaults etc.); and
  - (c) a “relevant recording”, in relation to a witness, is a video recording of an interview of the witness made with a view to its admission as evidence in chief of the witness.
- (2) Subsections (2) to (7) of section 21 shall apply as follows in relation to a qualifying witness—
- (a) subsections (2) to (4), so far as relating to the giving of a direction complying with the requirement contained in subsection (3)(a), shall apply to a qualifying witness in respect of the relevant recording as they apply to a child witness (within the meaning of that section);
  - (b) subsection (5), so far as relating to the giving of such a direction, shall apply to a qualifying witness in need of special protection as it applies to a child witness in need of special protection (within the meaning of that section); and
  - (c) subsections (6) and (7) shall apply to a qualifying witness in need of special protection by virtue of subsection (1)(b)(i) above as they apply to such a child witness as is mentioned in subsection (6).

## 23 Screening witness from accused.

- (1) A special measures direction may provide for the witness, while giving testimony or being sworn in court, to be prevented by means of a screen or other arrangement from seeing the accused.
- (2) But the screen or other arrangement must not prevent the witness from being able to see, and to be seen by—
  - (a) the judge or justices (or both) and the jury (if there is one);
  - (b) legal representatives acting in the proceedings; and
  - (c) any interpreter or other person appointed (in pursuance of the direction or otherwise) to assist the witness.
- (3) Where two or more legal representatives are acting for a party to the proceedings, subsection (2)(b) is to be regarded as satisfied in relation to those representatives if the witness is able at all material times to see and be seen by at least one of them.

## 25 Evidence given in private.

- (1) A special measures direction may provide for the exclusion from the court, during the giving of the witness's evidence, of persons of any description specified in the direction.
- (2) The persons who may be so excluded do not include—
  - (a) the accused,
  - (b) legal representatives acting in the proceedings, or
  - (c) any interpreter or other person appointed (in pursuance of the direction or otherwise) to assist the witness.
- (3) A special measures direction providing for representatives of news gathering or reporting organisations to be so excluded shall be expressed not to apply to one named person who—
  - (a) is a representative of such an organisation, and
  - (b) has been nominated for the purpose by one or more such organisations,unless it appears to the court that no such nomination has been made.
- (4) A special measures direction may only provide for the exclusion of persons under this section where—
  - (a) the proceedings relate to a sexual offence; or
  - (b) it appears to the court that there are reasonable grounds for believing that any person other than the accused has sought, or will seek, to intimidate the witness in connection with testifying in the proceedings.
- (5) Any proceedings from which persons are excluded under this section (whether or not those persons include representatives of news gathering or reporting organisations) shall nevertheless be taken to be held in public for the purposes of any privilege or exemption from liability available in respect of fair, accurate and contemporaneous reports of legal proceedings held in public.

## 26 Removal of wigs and gowns.

A special measures direction may provide for the wearing of wigs or gowns to be dispensed with during the giving of the witness's evidence.

## 27 Video recorded evidence in chief.

- (1) A special measures direction may provide for a video recording of an interview of the witness to be admitted as evidence in chief of the witness.
- (2) A special measures direction may, however, not provide for a video recording, or a part of such a recording, to be admitted under this section if the court is of the opinion, having regard to all the circumstances of the case,

that in the interests of justice the recording, or that part of it, should not be so admitted.

- (3) In considering for the purposes of subsection (2) whether any part of a recording should not be admitted under this section, the court must consider whether any prejudice to the accused which might result from that part being so admitted is outweighed by the desirability of showing the whole, or substantially the whole, of the recorded interview.
- (4) Where a special measures direction provides for a recording to be admitted under this section, the court may nevertheless subsequently direct that it is not to be so admitted if—
  - (a) it appears to the court that—
    - (i) the witness will not be available for cross-examination (whether conducted in the ordinary way or in accordance with any such direction), and
    - (ii) the parties to the proceedings have not agreed that there is no need for the witness to be so available; or
  - (b) any rules of court requiring disclosure of the circumstances in which the recording was made have not been complied with to the satisfaction of the court.
- (5) Where a recording is admitted under this section—
  - (a) the witness must be called by the party tendering it in evidence, unless—
    - (i) a special measures direction provides for the witness's evidence on cross-examination to be given otherwise than by testimony in court, or
    - (ii) the parties to the proceedings have agreed as mentioned in subsection (4)(a)(ii); and
  - (b) the witness may not give evidence in chief otherwise than by means of the recording—
    - (i) as to any matter which, in the opinion of the court, has been dealt with adequately in the witness's recorded testimony, or
    - (ii) without the permission of the court, as to any other matter which, in the opinion of the court, is dealt with in that testimony.
- (6) Where in accordance with subsection (2) a special measures direction provides for part only of a recording to be admitted under this section, references in subsections (4) and (5) to the recording or to the witness's recorded testimony are references to the part of the recording or testimony which is to be so admitted.
- (7) The court may give permission for the purposes of subsection (5)(b)(ii) if it appears to the court to be in the interests of justice to do so, and may do so either—
  - (a) on an application by a party to the proceedings, if there has been a material change of circumstances since the relevant time, or
  - (b) of its own motion.
- (8) In subsection (7) "the relevant time" means—
  - (a) the time when the direction was given, or
  - (b) if a previous application has been made under that subsection, the time when the application (or last application) was made.
- (9) The court may, in giving permission for the purposes of subsection (5)(b)(ii), direct that the evidence in question is to be given by the witness by means of a live link; and, if the court so directs, subsections (5) to (7) of section 24 shall apply in relation to that evidence as they apply in relation to evidence which is to be given in accordance with a special measures direction.
- (10) A magistrates' court inquiring into an offence as examining justices under section 6 of the M1 Magistrates' Courts Act 1980 may consider any video recording in relation to which it is proposed to apply for a special measures direction providing for it to be admitted at the trial in accordance with this section.
- (11) Nothing in this section affects the admissibility of any video recording which would be admissible apart from this section.



## 28 Video recorded cross-examination or re-examination.

- (1) Where a special measures direction provides for a video recording to be admitted under section 27 as evidence in chief of the witness, the direction may also provide—
  - (a) for any cross-examination of the witness, and any re-examination, to be recorded by means of a video recording; and
  - (b) for such a recording to be admitted, so far as it relates to any such cross-examination or re-examination, as evidence of the witness under cross-examination or on re-examination, as the case may be.
- (2) Such a recording must be made in the presence of such persons as rules of court or the direction may provide and in the absence of the accused, but in circumstances in which—
  - (a) the judge or justices (or both) and legal representatives acting in the proceedings are able to see and hear the examination of the witness and to communicate with the persons in whose presence the recording is being made, and
  - (b) the accused is able to see and hear any such examination and to communicate with any legal representative acting for him.
- (3) Where two or more legal representatives are acting for a party to the proceedings, subsection (2)(a) and (b) are to be regarded as satisfied in relation to those representatives if at all material times they are satisfied in relation to at least one of them.
- (4) Where a special measures direction provides for a recording to be admitted under this section, the court may nevertheless subsequently direct that it is not to be so admitted if any requirement of subsection (2) or rules of court or the direction has not been complied with to the satisfaction of the court.
- (5) Where in pursuance of subsection (1) a recording has been made of any examination of the witness, the witness may not be subsequently cross-examined or re-examined in respect of any evidence given by the witness in the proceedings (whether in any recording admissible under section 27 or this section or otherwise than in such a recording) unless the court gives a further special measures direction making such provision as is mentioned in subsection (1)(a) and (b) in relation to any subsequent cross-examination, and re-examination, of the witness.
- (6) The court may only give such a further direction if it appears to the court—
  - (a) that the proposed cross-examination is sought by a party to the proceedings as a result of that party having become aware, since the time when the original recording was made in pursuance of subsection (1), of a matter which that party could not with reasonable diligence have ascertained by then, or
  - (b) that for any other reason it is in the interests of justice to give the further direction.
- (7) Nothing in this section shall be read as applying in relation to any cross-examination of the witness by the accused in person (in a case where the accused is to be able to conduct any such cross-examination).

## 29 Examination of witness through intermediary.

- (1) A special measures direction may provide for any examination of the witness (however and wherever conducted) to be conducted through an interpreter or other person approved by the court for the purposes of this section ("an intermediary").
- (2) The function of an intermediary is to communicate—
  - (a) to the witness, questions put to the witness, and
  - (b) to any person asking such questions, the answers given by the witness in reply to them,and to explain such questions or answers so far as necessary to enable them to be understood by the witness or person in question.
- (3) Any examination of the witness in pursuance of subsection (1) must take place in the presence of such persons as rules of court or the direction may provide, but in circumstances in which—
  - (a) the judge or justices (or both) and legal representatives acting in the proceedings are able to see and hear

the examination of the witness and to communicate with the intermediary, and

(b)(except in the case of a video recorded examination) the jury (if there is one) are able to see and hear the examination of the witness.

- (4) Where two or more legal representatives are acting for a party to the proceedings, subsection (3)(a) is to be regarded as satisfied in relation to those representatives if at all material times it is satisfied in relation to at least one of them.
- (5) A person may not act as an intermediary in a particular case except after making a declaration, in such form as may be prescribed by rules of court, that he will faithfully perform his function as intermediary.
- (6) Subsection (1) does not apply to an interview of the witness which is recorded by means of a video recording with a view to its admission as evidence in chief of the witness; but a special measures direction may provide for such a recording to be admitted under section 27 if the interview was conducted through an intermediary and—
  - (a) that person complied with subsection (5) before the interview began, and
  - (b) the court's approval for the purposes of this section is given before the direction is given.
- (7) Section 1 of the M1Perjury Act 1911 (perjury) shall apply in relation to a person acting as an intermediary as it applies in relation to a person lawfully sworn as an interpreter in a judicial proceeding; and for this purpose, where a person acts as an intermediary in any proceeding which is not a judicial proceeding for the purposes of that section, that proceeding shall be taken to be part of the judicial proceeding in which the witness's evidence is given.

### 30 Aids to communication.

A special measures direction may provide for the witness, while giving evidence (whether by testimony in court or otherwise), to be provided with such device as the court considers appropriate with a view to enabling questions or answers to be communicated to or by the witness despite any disability or disorder or other impairment which the witness has or suffers from.

### 31 Status of evidence given under Chapter I.

- (1) Subsections (2) to (4) apply to a statement made by a witness in criminal proceedings which, in accordance with a special measures direction, is not made by the witness in direct oral testimony in court but forms part of the witness's evidence in those proceedings.
- (2) The statement shall be treated as if made by the witness in direct oral testimony in court; and accordingly—
  - (a) it is admissible evidence of any fact of which such testimony from the witness would be admissible;
  - (b) it is not capable of corroborating any other evidence given by the witness.
- (3) Subsection (2) applies to a statement admitted under section 27 or 28 which is not made by the witness on oath even though it would have been required to be made on oath if made by the witness in direct oral testimony in court.
- (4) In estimating the weight (if any) to be attached to the statement, the court must have regard to all the circumstances from which an inference can reasonably be drawn (as to the accuracy of the statement or otherwise).
- (5) Nothing in this Chapter (apart from subsection (3)) affects the operation of any rule of law relating to evidence in criminal proceedings.
- (6) Where any statement made by a person on oath in any proceeding which is not a judicial proceeding for the purposes of section 1 of the M1Perjury Act 1911 (perjury) is received in evidence in pursuance of a special measures direction, that proceeding shall be taken for the purposes of that section to be part of the judicial proceeding in which the statement is so received in evidence.

- (7) Where in any proceeding which is not a judicial proceeding for the purposes of that Act—
- (a) a person wilfully makes a false statement otherwise than on oath which is subsequently received in evidence in pursuance of a special measures direction, and
  - (b) the statement is made in such circumstances that had it been given on oath in any such judicial proceeding that person would have been guilty of perjury,
- he shall be guilty of an offence and liable to any punishment which might be imposed on conviction of an offence under section 57(2) (giving of false unsworn evidence in criminal proceedings).
- (8) In this section “statement” includes any representation of fact, whether made in words or otherwise.

## 32 Warning to jury.

Where on a trial on indictment evidence has been given in accordance with a special measures direction, the judge must give the jury such warning (if any) as the judge considers necessary to ensure that the fact that the direction was given in relation to the witness does not prejudice the accused.

## 33 Interpretation etc. of Chapter I.

- (1) In this Chapter—
- “eligible witness” means a witness eligible for assistance by virtue of section 16 or 17;
  - “live link” has the meaning given by section 24(8);
  - “quality”, in relation to the evidence of a witness, shall be construed in accordance with section 16(5);
  - “special measures direction” means (in accordance with section 19(5)) a direction under section 19.
- (2) In this Chapter references to the special measures available in relation to a witness shall be construed in accordance with section 18.
- (3) In this Chapter references to a person being able to see or hear, or be seen or heard by, another person are to be read as not applying to the extent that either of them is unable to see or hear by reason of any impairment of eyesight or hearing.
- (4) In the case of any proceedings in which there is more than one accused—
- (a) any reference to the accused in sections 23 to 28 may be taken by a court, in connection with the giving of a special measures direction, as a reference to all or any of the accused, as the court may determine, and
  - (b) any such direction may be given on the basis of any such determination.

# Appendix D

## BACKGROUND INFORMATION

- Your Name
- Court Name
- Observation Date
- Is the case being heard by lay magistrates or a district judge?  
Lay magistrates ☐ District judge ☐

## BASIC CASE INFORMATION

- Defendant's Name:
- Case type (Intimate partner violence, family violence etc.)
- Case stage (Pre-trial hearing, sentencing hearing)
- Date of alleged offence(s)
- The charge(s)
- Is the charge(s) being varied in any significant way today? (If yes, please give details)  
Yes ☐ No ☐
- Was there any reference in open court to consultation about this charge variation with the victim?  
(If yes, please give details)  
Yes ☐ No ☐
- Is the defendant pleading guilty or not guilty?  
Guilty ☐ Not Guilty ☐

## IF THE DEFENDANT IS PLEADING NOT GUILTY

1. What was the basic description of the case, as presented by the CPS?
2. Did the defence clearly identify the issues for trial? (If yes, what were these)  
Yes ☐ No ☐
3. Is the prosecution seeking to rely on evidence of the defendant's bad character in the trial?  
(If yes, please give details)  
Yes ☐ No ☐
4. Were special measures requested to assist the alleged victim? (If yes, what were these?)  
Yes ☐ No ☐

5. Was there any discussion about issuing a witnesses summons for the alleged victim?

(If yes, what reasons were given?)

Yes ☐ No ☐

6. Was an application made to prevent cross-examination of the alleged victim by the defendant in person?

Yes ☐ No ☐

7. Was there an application to vary bail conditions? (If yes, what reasons were given?)

Yes ☐ No ☐

8. Was there any reference made in open court to consultation with the alleged victim on these variations?

(If yes, please give details)

Yes ☐ No ☐

9. Was there any discussion in open court about the risk to/needs of any associated children?

(If yes, please describe)

Yes ☐ No ☐

10. Were you satisfied that the needs of the alleged victim(s) were fully considered during the course of these proceedings? (Please give reasons for your answer)

Yes ☐ No ☐

11. What is the date/time/location of the next hearing?

12. Was there any reference in open court to the alleged victim being consulted on these trial arrangements?

Yes ☐ No ☐

## IF THE DEFENDANT IS PLEADING (OR HAS BEEN FOUND) GUILTY

1. What was the basic description of the case, as presented by the CPS?

2. Was a Victim Personal Statement referred to by the CPS prior to sentencing?

(If yes, please summarise the issues raised)

Yes ☐ No ☐

3. Was any reference made to the victim wanting to attend court to read their VPS in person?

(If yes, what arrangements were made for this to happen?)

Yes ☐ No ☐



4. Did the CPS seek to highlight any previous convictions of the offender that might be relevant prior to sentencing?  
(If yes, please give details)
- Yes ☐ No ☐
- 
5. Were any other aggravating factors highlighted by the CPS? (If yes, please give details)
- Yes ☐ No ☐
- 
6. Did the defence make reference to any mitigating factors prior to sentencing? (If yes, please give details)
- Yes ☐ No ☐
- 
7. Did the defence dispute any aspect of the prosecution case? (If yes, did the court consider a Newton Hearing?)
- Yes ☐ No ☐
- 
8. Did the defence refer to the defendant's previous good character and its relevance to sentencing?  
(If yes, how did the court respond?)
- Yes ☐ No ☐
- 
9. Did the defence seek to excuse the defendant's conduct by reference to the victim's behaviour before,  
during or after the incident? (If yes, were these comments addressed? By Whom?)
- Yes ☐ No ☐
- 
10. Did the defence appear to use/reinforce any common myths or stereotypes about domestic abuse?  
(If yes, please give details)
- Yes ☐ No ☐
- 
11. What was the sentence imposed?
- 
12. Was compensation awarded to the victim? (If not, why not?)
- Yes ☐ No ☐
- 
13. Was a restraining order sought/imposed? (If yes, please give details)
- Yes ☐ No ☐
- 
14. Did the defence ask for the Restraining Order to be written in a way that facilitated child contact?
- Yes ☐ No ☐
15. Was there any reference in open court to the victim being consulted on these issues prior to the order  
being made?
- Yes ☐ No ☐

16. Was there any discussion in open court about the risk to/needs of any associated children?

(If yes, please describe)

Yes ☐ No ☐

17. Were you satisfied that the needs of the victim(s) were fully considered during the course of these proceedings?

(Give reasons for your answer)

Yes ☐ No ☐

## OTHER QUESTIONS

- Was an IDVA present in court during this case?

Yes ☐ No ☐

- Did their presence/absence appear to have any impact on proceedings?

(Please give reasons for your answer)

Yes ☐ No ☐

- Was there any suggestion in open court that problems relating to the acquisition of evidence/documentation from the police had impacted on case progress in any way? (If yes, please give details)

Yes ☐ No ☐

- Was any information shared that indicated coercive or controlling behaviour was a feature of the relationship between offender and victim? (If yes, please describe what was shared, by whom and for what purpose)

Yes ☐ No ☐

- Any other comments?

# Appendix E

## 1. BACKGROUND INFORMATION

- Your Name
- Court Name
- Observation Date
- Was a separate waiting area available for complainants today?
- Was the Witnesses Service available today?
- Is the case being heard by magistrates or a district judge? (Please circle)

## 2. INITIAL CASE INFORMATION

- Case Number (URL)
- Defendant's Name/Gender
- Complainant's Gender
- Case type (Intimate partner violence, family violence etc.)
- Case stage (Trial, Newton Hearing)
- Date of alleged offence(s)
- The charge(s)
- Was the charge changed in any way today? (If yes, please give details and reasons given)
- Was there any mention of the complainant being consulted on this change(s)? (If yes, please give details)
- Is the defendant pleading guilty or not guilty?
- Did the complainant attend court today? (If not, what impact did this have?)
- Were any special measures organised for them? (If yes, please give details)
- Did the complainant have anyone with them to offer support? (If yes, do you know who they were? Was any reference made to support being offered by an IDVA?)
- Did the prosecutor appear to have any contact with the complainant after their arrival at court? (If yes, please give details)

## 3. CASE OBSERVATIONS – THE PROSECUTION CASE

- What is the prosecution's opening speech like? Does it offer a clear description of what the case is about?
- Does the prosecution support the complainant to give their evidence well? Does the evidence make a coherent story?
- How was cross examination of the complainant handled by the defence? Were steps taken to ensure that the defendant did not question the complainant directly?
- Was the defendant's case put fairly during cross-examination? Or did the manner in which the complainant was addressed appear overly aggressive, harassing or bullying?
- Did anyone seek to challenge or intervene in any way when this happened? (If yes, who intervened? How did they intervene?)
- Were there any DA myths or stereotypes used at this stage of the case? (If yes, please describe)
- How long did the cross examination last?
- Did the prosecution re-examine the complainant to counter any claims made by the defence? (If yes, did they appear to do this effectively?)
- Were any other witnesses called by the prosecution? Who were they? How was their evidence handled by the prosecution? By the defence?
- Was any other evidence presented by the prosecution? If so, what? How well was this evidence handled by the prosecution? By the defence?
- How strong does the case seem at this point? (Please comment on both strengths and weaknesses)

## 4. CASE OBSERVATIONS – THE CASE FOR THE DEFENCE

- What is the defence description of the case? Does it include any reference to common myths or stereotypes about DA?
- How does the defence handle the defendant's evidence? Have they stuck to the facts of the case or sought to offer generalisations and/or attack the complainant in way that is not relevant to the case?
- How was cross examination of the defendant handled by the prosecution? Were steps taken to challenge any attacks on the complainant?
- Were there any DA myths or stereotypes used at this stage of the case? (If yes, please describe)
- Were any other witnesses called by the defence? If so, who? How was their evidence handled by the defence? By the prosecution?
- Was any other evidence presented by the defence? If so, what? How well was this evidence handled by the defence? By the prosecution?
- How strong does the case seem at this point? Please comment on both strengths and weaknesses.

## 5. CASE OBSERVATIONS: SUMMING UP & VERDICT

- What is the defence closing speech like? Does it attempt to reinforce any myths or to discredit the complainant in any way?
- What is the prosecution closing speech like? Does it attempt to counter any myths used or any attempts to discredit the complainant?
- How long did it take for the bench/district judge to reach a verdict?
- What was the verdict?
- If the case was heard by magistrates: what reasons did they give for their verdict?
- Were arrangements made for the case to return to a specialist DV court for sentencing? Or was a sentence imposed today (If yes, please go to Section 7 before returning to section 6)

## 6. CASE OBSERVATIONS: YOUR FINAL THOUGHTS

- Were you satisfied that the needs of the complainant were fully considered during the course of these proceedings? (Please give reasons for your answer)
- Were you satisfied that any coercive or controlling behaviour in this relationship was recognised and/or fully considered during the course of these proceedings? (Please give reasons for your answer)
- Any other issues or comments? (Please feel free to highlight or comment on anything that drew your attention, made you feel uncomfortable for the complainant etc.)

## 7. OPTIONAL (to be used where sentencing occurs on day of trial)

- Did the CPS refer to a Victim Personal Statement prior to sentencing? (If yes, summarise the issues raised)
- Did the victim attend court to read this statement in person? (If yes, what arrangements were made for this to happen safely?)
- Did the CPS mention that the defendant had any previous convictions? (If yes, give details)
- Did the CPS highlight any other issues as relevant to sentencing? (If yes, give details)
- What issues did the defence raise as relevant to sentencing? (Please describe)
- Did anyone suggest that substance misuse or mental ill health were relevant to sentencing? (If yes, give details)
- Did the defence refer to the defendant's previous good character and its relevance to sentencing? (If yes, how did the court respond?)
- Did the defence seek to blame the victim in any way? (If yes, were these comments challenged? By whom?)
- Did the defence appear to use/reinforce any common myths or stereotypes about domestic abuse? (If yes, give details)

- What was the sentence? What reference, if any, were made when the sentence was handed down?
- Was any reference made to coercive or controlling behaviour being taken into account when sentencing? (If yes, please give details)
- Was compensation awarded to the victim? (Please give details)
- Was a restraining order applied for/granted? (Please give details)
- Did the defence ask for the Restraining Order to be written in a way that would help the defendant have contact with their children? (If yes, give details)
- Was there any mention of the complainant being consulted on this issue? (If yes, give details)
- Was there any discussion about the risk to/needs of any children? (If yes, please describe)







