Specialist Domestic Violence Courts for child arrangement cases: Safer courtrooms and safer outcomes?

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Abstract

Child arrangement cases in England and Wales are dealt with in the ordinary family courts. Whilst a special practice direction is applicable to child arrangement proceedings where there are allegations of domestic abuse, there is no specialist domestic violence court in the family justice setting. However, court specialisation is a feature of the criminal justice system and has been demonstrated to have success in domestic violence cases. Some of the potential benefits of specialisation, such as the provision of safer courtrooms, might be transferrable to the family justice setting. Given the well documented problems of ordinary courts dealing with child arrangements in domestic violence cases, this article considers whether court specialisation could provide victims with safer courtrooms and safer outcomes in child arrangement cases.

Introduction

Specialist domestic violence courts (SDVCs) dealing exclusively with domestic violence matters, usually through a method of clustering such cases together, have been operating in England and Wales for almost two decades. They operate only in the criminal justice setting and, apart from an experiment with an integrated SDVC in one location, there have been no attempts to introduce SDVCs into the family justice setting. However, whilst the overall goals of the criminal courts may be very different to those of the family courts, some of the issues that arise with domestic violence cases in the criminal justice setting also arise in the family courts. The need for professionals to be aware of the dynamics of domestic abuse, to keep victims safe within the court proceedings and to contribute to longer term safety through case outcomes, are just as applicable to the family courts as they are to the criminal courts. This article will consider whether the introduction of SDVCs in the family justice setting to deal with child arrangement cases could contribute to safer courtrooms and safer outcomes for the child and adult victims of domestic abuse. It will do this by examining the benefits of specialisation in the criminal justice context and evaluating whether these could be replicated in child arrangement cases involving domestic abuse.

The development and evaluation of SDVCs in the criminal justice setting

The first SDVC in England and Wales was set up in Leeds in 1999. It was closely followed by specialist courts in Cardiff, West London, Wolverhampton and Derby. The history of SDVCs is one of rapid expansion in the criminal justice system around the turn of the last century, followed by more recent contraction due to the magistrates' court closure programme and resourcing issues (Bettinson, 2016). SDVCs are now sometimes referred to as specialist domestic abuse courts (SDACs) to reflect the broader definition of domestic violence, which includes non-physical abuse in addition to physical violence. The terms domestic violence and domestic abuse are often used interchangeably, however there has been a shift towards recognising non-physical abuse in the criminal law through the creation of a new offence of coercive and controlling behaviour under s. 76 of the Serious Crime Act 2015. Whether this will result in the practices of the criminal justice agencies changing significantly, or create fresh issues, is a matter of debate (Bettinson & Bishop, 2015, 2018). Broader definitions do not always result in immediate changes to the practices or cultures of professionals responsible for responding to domestic abuse (Barnett, 2017). Before this new offence was enacted, prosecutors only had the general offences against the person and other established offences to select for domestic violence prosecutions. It is likely that these general offences will still form the bulk of domestic violence prosecutions despite the new offence. The limitations of the general criminal law for domestic violence cases have been well documented, not least in relation to the difficulty in evidencing recognisable psychiatric injury for the purposes of assault (Burton, 2010; Munro and Shah, 2010). SDVCs were therefore introduced in a context were the substantive criminal law offered little in the way of tailored redress. However, the idea behind court specialisation was to make the processes work better in domestic violence cases, even though the law itself was not domestic violence specific.

The expansion of SDVCs in England and Wales was mainly driven by a policy initiative, led by the Crown Prosecution Service (CPS), to try to overcome some of the traditional obstacles to successfully prosecuting domestic violence. For many years both the police and the CPS had been accused of failing victims of domestic violence (Burton, 2008, ch. 6). The CPS traditionally relied very heavily on the evidence of victims and would often drop cases where victims withdrew their complaints rather than consider alternatives (Cretney & Davis, 1997). At a time when police officers were being encouraged to improve their evidence gathering to support prosecutions without victims (Ellison, 2002), the CPS became interested in specialist courts, which it hoped might be a way of decreasing victim retractions and increasing convictions. As such it commissioned an evaluation of the first five courts (Cook, Burton, Robinson, & Vallely, 2004) and subsequently set up a pilot of two further courts operating in Croydon and Gwent (Vallely, Robinson, Burton, & Tredidga, 2005).

Prior to Cook et al.'s (2004) evaluation, all of the first five SDVCs, with the exception of Derby SDVC, had been subject to their own separate reviews. There were reports on Leeds SDVC (Grundy, 2000), West London SDVC (Standing Together, 2002, 2003), Wolverhampton SDVC (Cook, 2003) and Cardiff SDVC (Robinson, 2003), highlighting features that were working well and areas for improvement. However, Cook et al. (2004) were able to compare the operations of the five courts, identifying similarities and differences. In addition they

carried out quantitative analysis of a sample of 216 cases dealt with by all five courts over the same time period at the end of 2003. All of the courts, apart from Cardiff which had a fast track system into the Crown Court (Robinson, 2003), operated in the magistrates' courts only. Although the five courts had different models of specialisation, most shared the features of clustering cases to a particular day of the week. A significant feature of most of the courts, facilitated by clustering, was the presence of an independent domestic violence advocate (IDVA) to support the victim of abuse (Cook et al., 2004).

Cook et al. (2004) found that the success of the courts was heavily dependent upon effective multi-agency working and specialist training for all the practitioners to achieve a better understanding of the dynamics of domestic abuse and the needs of victims. Many of the courts had specialist domestic violence police officers who attended and the aim was also to use only prosecutors or magistrates who had specialist training. However, one of the main reasons why victims felt better supported in the SDVC than in the non-specialist courts, was the presence of a lay advocate, or IDVA, who could keep them informed and be a source of support within the court proceedings and outside. The role of the IDVA has developed over time. Their involvement in Multi Agency Risk Assessment Conferences (MARACs) helping high risk victims of domestic abuse to access support is now well known. For example, Robinson and Payton (2016) observe that lay advocates working in a multi-agency partnership can access support for victims which they may not have had the capacity to achieve alone. They can also bring about positive change in the policies and practices of agencies they are working with. In the first five courts, lay advocate support was at different stages of development at each site (Cook et al., 2004, p. 81). In three of the courts, Leeds, West London and Cardiff, lay advocacy support was well integrated. In Cardiff support was provided through the Women's Safety Unit (Robinson, 2003), in Leeds through the Help and Advice Law Team (HALT) (Grundy, 2000) and in West London through ADVANCE and Eaves (Standing Together, 2003). In the other two courts lay advocacy was not so well embedded, perhaps in Derby this was partly attributable to the fact that the court itself had not been running long at the time of the evaluation. In the early days Derby SDVC was struggling to identify a funded stream of lay advocates, relying on a rota of volunteers from various agencies with an idea to possibly recruit students. This was not ideal given that Cook et al. (2004, p. 82) noted that lay advocates were seen by the victim and criminal justice agencies 'as the trusted links into the system' and that victims felt more confident in attending the SDVC with the support of an IDVA. As Bettinson (2016) has more recently observed, the IDVA is central to a 'victim-centred court', yet identifying and maintaining a funding stream for IDVAs has always been an issue. She concludes that 'it is essential that austerity cuts do not remove the IDVA's presence from the legal process' (Bettinson, 2016, p. 89); a conclusion which is supported by the first five courts evaluation and also by the evaluation of the SDVC pilots at Croydon and Gwent (Vallely et al., 2005). The withdrawal of IDVAs from attending the SDVC at Croydon, which was due at least in part to funding issues, was a feature which threatened to undermine what in many other ways was a 'successful' SDVC pilot (Vallely et al., 2005).

Looking at more traditional measures of 'success' within the criminal justice system, the first five courts and two pilots were evaluated according to their ability to 'narrow the justice

gap' and bring more perpetrators to justice, as well as their ability to speed up the processing of cases and reduce the number of hearings. Whilst some SDVCs were able to speed up the process, this was not always the case and defence lawyers were often blamed for frustrating this objective (Cook et al., 2004, pp. 69-71). One of the rationales of speeding up cases is to try to reduce victim withdrawal; the longer a case goes on and the more hearings there are, the more likely it is thought that the victim will retract. Quantitative evaluation of the cases going through the SDVCs found that victim retraction was not reduced. Approximately half of all victims in the case file sample retracted their complaint at some point in proceedings, supporting the views of practitioners interviewed in the study that specialisation had no impact on victim withdrawal.

However, it has been argued that victim retraction is not an appropriate measure of success for SDVCs (Robinson & Cook, 2006) and that more attention should be paid to whether the victim is appropriately supported through that retraction process. It could also be argued that the focus on maintaining the victim as a witness is misguided, especially given the enhanced evidence policies that the police are supposed to implement to ensure that case files contain other sources of evidence. At the time of the first five courts evaluation, there was little evidence of implementation of enhanced evidence gathering in SDVC cases. For example, less than half the cases in the case file sample where there were recorded injuries included photographic evidence, even though this was the main type of additional evidence on file (Cook et al., 2004, p. 115). These findings suggest that court specialisation itself is not enough to stimulate better evidence gathering. However, the introduction of the pilot SDVC at Croydon did seem to have a positive impact on evidence gathering. Vallely et al. (2005) found that the proportion of cases with case exhibits and medical evidence almost doubled after the SDVC was introduced. The impact of enhanced evidence gathering was reflected in a rise in the proportion of defendants convicted in Croydon SDVC following a not guilty plea and trial. Thus, whilst SDVCs do have the potential to demonstrate success according to traditional criminal measures, caution must be exercised regarding the impact of court specialisation on the police investigation process. There is more recent evidence to suggest that the police continue to miss significant opportunities to gather evidence in domestic violence cases (Her Majesty's Inspectorate of Constabulary, 2014).

If the measures of success of the first SDVCs had rested solely on 'narrowing the justice gap' through reducing retractions and increasing convictions, it is doubtful whether the case outcomes in the five courts or the two further pilots would have provided a strong case for expansion. However, the drive for expansion also rested on evaluating the experiences of victims using the courts. It was because victims of domestic abuse felt safer and better supported within the specialist court setting that the case for expanding SDVCs was made (Cook et al., 2004; Vallely et al., 2005). On the back of this a court specialisation programme and a National Resource Manual for SDVCs was introduced. A review of the first 23 SDVCs within the specialist court programme was carried out with a view to understanding the components to success of SDVCs and keeping the manual up to date (CPS, Her Majesty's Court Service (HMCS), & Home Office, 2008, 2011). The SDVC resource manual is due to be updated following a recent CPS 'deep dive' to identify best practice in the newly termed specialist domestic abuse courts (CPS, 2017). According to the Manual

there are 12 components of a successful SDVC. Some of these components are linked to greater levels of success in achieving the traditional criminal justice target of bringing offenders to justice. Other components are more strongly linked with success in support and safety of the victim. Success in achieving criminal justice targets is strongly linked to effective multi-agency working, correct identification of cases, IDVA support within the court, specially trained and dedicated personnel, court listing to facilitate clustering and ways of managing perpetrators (through appropriate perpetrator programmes for example) to reduce repeat victimisation. Success in supporting the victim and victim safety is more strongly linked to SDVCs where there are safe court facilities and where IDVAs are engaging with victims more generally (as opposed to being focused on court proceedings), including through MARACs, where there is a focus on safety planning (CPS, HMCS, & Home Office, 2011). It will be interesting to see whether the latest CPS 'deep dive' exercise into SDACs supports these earlier findings. It would be surprising if safe court facilities were not an essential component of best practice for all SDACs.

Going to court should not pose a danger to the victim of domestic abuse or her children, yet many victims have stated that going to court is fraught with possibilities of intimidation and abuse. Many court buildings have a single entrance which is used by all the parties in the case. They also often have one waiting area which is shared by all the parties. If the victim of abuse arrives and leaves by the same door as the perpetrator the potential for abuse within the court building or immediate surroundings is heightened. The victim may also be followed by the perpetrator if she leaves the courthouse at the same time. Court specialisation has the potential to improve victim safety in the court building and courtroom, although in the first five SDVCs progress with improving facilities was initially slow (Cook et al., 2004).

Cook et al. (2004) found large variations in the court facilities in the first five SDVCs; at best there were not separate entrances but there were separate waiting rooms, some of which had secured entry, for example with access by a PIN. Once inside the courtroom, again the facilities across the five courts varied. Some had secure docks others did not; those which did were regarded as offering a higher standard of protection. However, a secure dock in itself does not necessarily prevent the victim feeling intimidated; courtroom layout is another factor to be considered. At West London SDVC there was a secure dock in the courtroom used for domestic violence cases but it was in very close proximity to the witness box and the victim had to walk right in front of the dock in order to get into the witness box. Witnesses reported being felt intimidated by the defendant (Standing Together, 2003) and were advised to turn their body away and face the magistrates as they walked past the dock (Cook et al., 2004 p. 62).

The issue of witness intimidation in the courtroom can be addressed, at least partly, by the use of special measures, such as screening the victim or giving evidence by video link from another room in the court or a remotely linked location. The remote link has the additional advantage that the victim does not have to attend the court building, avoiding the potential to be followed on exiting. Most of the first five SDVCs courts had facilities for special measures such as screening of the witness and video links (Cook et al., 2004). However, at

the time of the evaluation, now 15 years ago, these measures were only just being rolled out in England and Wales and so were not being fully utilised. Victims stated that they would have benefited from them. As special measures have become more embedded in the criminal justice system, those SDVCs which utilise those measures have been identified as examples of best practice (CPS, HMCS, & Home Office, 2011).

Recent independent reviews of SDVCs in England and Wales are somewhat sparse. A snapshot review of SDVCs in 2013 noted that 'There is evidence that courts are being made to feel safer for victims of domestic violence' (New Economics Foundation, 2014) However, the report observed that, although the majority of those surveyed thought special measures were being effectively provided, a significant minority did not and commented that the process of obtaining special measures was too 'laborious'. Bettinson (2016), who carried out her own small scale empirical study of an SDVC, highlights the potential impact of magistrates' court closures on the provision of safe court facilities for victims of domestic abuse. Commenting on the court closure programme, she notes that the Ministry of Justice has maintained a commitment to providing alternative venues for magistrates' courts, possibly using other civic buildings. But these locations will not necessarily have the facilities, such as separate entrances and waiting areas that are core to victim safety (Bettinson, 2015, p. 95). Her research also highlights that correct case identification is an ongoing issue in some SDVCs, with non-domestic cases incorrectly being listed into the SDVC and a valuable resource being wasted. As Bettinson observes, in times of 'austerity' SDVCs are under threat, however it is vital that this resource is preserved. A cost-benefit analysis of SDVCs in the criminal justice setting suggests that they are well worth the investment (Cook et al., 2004).

Integrated domestic violence courts: Bridging the gap between criminal and family proceedings

Part of the original inspiration for SDVCs in England and Wales came from looking to other jurisdictions for models of court specialisation, in particular the US (Plotnikoff & Woolfson, 2005). The US provided insights into an alternative 'problem solving' approach (Mazur & Aldrich, 2002), which is used not only for domestic violence but other types of offending that may benefit from more holistic intervention (Donoghue, 2014). Whilst in the domestic violence context nearly all of the court specialisation in England and Wales has focused on criminal matters, Croydon was innovative. Not only did Croydon SDVC attempt to bridge the gap between criminal and family proceedings, it also attempted to adopt elements of the 'problem solving' approach. Whilst still operating only as a criminal court, Croydon SDVC started to hold 'compliance hearings' where convicted perpetrators were brought back three months after their sentence to review progress and provide appropriate encouragement or admonishment (Burton, 2006). Vallely et al. (2005) noted that the introduction of compliance hearings was a significant feature and benefit of the court. It was a feature which Croydon tried to maintain when it introduced an integrated court although there was some concern about the legal basis for the compliance hearing and whether

defendants understood their attendance was voluntary (Hester, Pearce, & Westmarland, 2008).

Whilst Croydon SDVC started life dealing with criminal matters only, it was always intended that the SDVC would be a forerunner of an integrated domestic violence court (IDVC). IDVCs are courts where multiple legal proceedings in different jurisdictions but all relating to domestic violence in the same family can be heard in one specialist court. Domestic violence can involve proceedings in the criminal, civil and family courts simultaneously. This can cause problems because the professionals in each jurisdiction are working in isolation; a problem which Hester (2011) has described as 'three planets', where no one has much idea of what is happening on the other planets and each operates with its own history, culture, laws and professionals. There are obvious limitations to the separate planets, not least the potential for conflicting orders which undermines the ability to achieve coherent and effective remedies for victims of domestic abuse (Burton, 2004). Hester (2011) comments that the tensions and contradictions in the professional discourses on the criminal justice, child protection and child contact planets makes tackling domestic violence more difficult. In some jurisdictions an IDVC approach is preferred, but although Hester (2011) calls for a more 'unified approach' with 'much closer and coherent practices across the three areas of work', she does not explicitly call for an IDVC (Hester, 2011, p. 850).

Croydon SDVC made the evolution from a court operating only in the criminal setting to an IDVC in 2006. The aim of the court was to bring together domestic violence cases in the criminal setting with concurrent proceedings under the Children Act 1989 or civil injunctions under the Family Law Act 1996. The approach of the IDVC was broadly speaking to be the 'one family, one judge' model found in some IDVCs in other countries. The setting up of the IDVC in Croydon was not straightforward as there was concern about human rights legislation preventing criminal matters being heard by the same judge when civil findings have been made (Hester et al., 2008). There was also a question of perceived bias if the criminal trial was held by the same judge who had, for example, granted a non-molestation order or restricted contact with children based on findings of domestic abuse. Eventually it was decided that, at least in the early days, instead of using lay magistrates as in the SDVC, a professional judge (Deputy District Judge) would be authorised to hear cases in both the criminal and civil jurisdiction and undertake the appropriate training and maintain the experience to do so. The judge was to hear the criminal case first, up to the point of acquittal or conviction, before considering the family law matters. It was originally intended that Croydon IDVC would be supported by an independent lay advocacy service however, for funding reasons, the IDVAs that were providing in-court support for the SDVC, cut back on their involvement. This withdrawal of lay advocate presence in the SDVC continued and worsened once the IDVC was introduced, impacting on both (Hester et al., 2008, p. 17).

Hester et al. note that 'the detachment of the advocacy service was a critical disappointment' for those involved in the integrated court at Croydon (2008, p. 18). It might be expected that given the significance of independent advocates for the success of SDVCs, at least in terms of victim satisfaction and safety, the results of the IDVC pilot would be disappointing. However, on top of the lay advocacy issue, the court faced another 'huge

disappointment' in that very few cases materialised during its first year of operations (Hester et al., 2008, p. 31). It had been anticipated that there would be at least one case a week but in fact only five cases went through the IDVC during the evaluation period. The research team evaluating the IDVC observed that the reasons for the low caseload were not entirely clear; it may be that there were more cases with overlapping proceedings but they had not been correctly identified as involving domestic violence in the relevant jurisdiction (Hester et al., 2008, p. 32). In any event, the low numbers prevented the research team from doing any quantitative analysis on case progression or outcomes. Some qualitative analysis was done on the five cases that did go through the court. Only one of these five cases involved criminal proceedings overlapping with child arrangement proceedings. The researchers observed: 'the situation where a father has become detached from his family by bail conditions and then makes application for child contact might be expected as a typical scenario and it is surprising that more such cases did not occur' (Hester et al., 2008, p. 34).

It impossible to evaluate whether integration was a success or a failure on the basis of the small caseload going through the Croydon IDVC. However, the qualitative analysis suggested that there were issues which had the potential to limit the impact of the court, even if more cases where identified. A number of interviewees were concerned about the heightening of tensions where criminal and family proceedings were being held together (Hester et al., 2008, p. 16). The importance of victims feeling safe in the court building and courtroom was considered in the planning for the IDVC. The IDVC courtroom had a lockable dock and provision for witness screening. Although the court building had a single entrance, there were separate waiting areas. Some of the interviewees felt the facilities were as good as they could be within financial and court building constraints. They believed that safety issues could be dealt with on a case by case basis. The research team observed some situations where the court staff did have to intervene; once when there was an 'altercation' in the foyer and on another occasion when the victim became distressed when the perpetrator 'made overtures' as she was leaving the courtroom. The court staff were observed to be 'vigilant, prepared and effective in handling potentially threatening situations where these arose' (Hester et al., 2008, p. 16).

Hester et al. (2008) observed that special measures were readily granted in two of the five cases that were heard in the IDVC during the evaluation period. In both of these cases the victims benefited from screening during the criminal component of the proceedings and were escorted into the courtroom by the witness service by an entrance which avoided the perpetrator and his supporters in the waiting area. However, one of the victims who was assisted and screened during criminal proceedings, was then left to sit at the back of the court on her own when the civil part of the case was being heard (Hester et al., 2008, p. 19). The fact that the protections afforded during the criminal proceedings ended before the whole case was heard is clearly a 'failure' from a victim safety perspective.

None of the five cases that went through the IDVC offered scope to test the issue of bias or perceived breaches of human rights of defendant where the same judge decides criminal and civil matters. There were no cases where the judge found a defendant guilty following criminal trial and then proceeded to civil or family matters. Hester et al. (2008) noted the

disappointment of some interviewees that these issues had not been resolved by a test case. They cite the case of *Hammerton v Hammerton* [2007] EWCA Civ 248, where there was criticism of a judge who heard child arrangement matters together with committal proceedings for breach of an undertaking and a non-molestation order at the same hearing. They observe that the case does not say this should never happen (Hester et al., 2008, p. 21), however it does not bode well. In *Hammerton v Hammerton* the appeal court decided that hearing criminal matters for contempt of court at the same time as child arrangement proceedings placed the defendant in an impossible position. The defendant has a right to silence in criminal proceedings which may be inconsistent with the need to give evidence to support an application for contact with children of the relationship. This point has since been confirmed in the case of *Morris v Morris* [2016] EWCA Civ 812, where it was held that the judge had erred in hearing a judgment summons for a debt relating to unpaid maintenance (a criminal matter) with an application for variation of maintenance (a civil matter). The Court of Appeal decided that 'wrongly' hearing the criminal matters along with the civil matters deprived the defendant of his procedural rights, notably the right to silence in criminal proceedings. Procedural fairness and perceptions of bias might still therefore present an issue for IDVCs in England and Wales should they adopt a 'one family, one judge' approach. There is certainly scope for legal challenges where a judge has made comments on one issue that suggest that they have closed their mind to further evidence or argument when it comes to deciding other matters (Heaton, 2015).

Leaving aside the specific challenges in integrating domestic violence proceedings faced by Croydon IDVC, not everyone believes that integrated domestic violence courts are a good idea. They have been critiqued not only from a practical but also from a normative perspective. MacDowell has argued that the value of court pluralism is often overlooked and 'court fragmentation can be an opportunity' for victims, not least because integration may compromise the 'autonomy enhancing' elements of the civil courts (MacDowell, 2011, p. 96). In arguing this she is not blind to the critiques of the civil justice system in responding to domestic violence but points out that the criminal courts are mainly concerned with the normative functions of the criminal law (holding the perpetrator to account for the benefit of society) rather than the individual needs of the victim. MacDowell also argues that just as court separation is not the source of the problems of lack of information sharing and conflicting orders, integration is not the solution. The problems can be dealt with in other ways. As noted above, one of the traditional concerns about integration has been ensuring fairness to the defendant and avoiding perceptions of bias against the perpetrator but, as MacDowell points out, victims may also perceive that judges are biased against them in an IDVC. She argues that if the judge decides the criminal matters in favour of the defendant (acquitting him or finding the case not proven), the victim may perceive that the judge is predisposed to the defendant in civil and family matters. In this situation another forum for the non-criminal matters may be preferred by the victim. There is also the issue of victims potentially being directed to unwanted services in the IDVC and feeling compelled to take them for fear of being judged negatively in relation to child protection and child arrangement matters. The empirical evidence on IDVCS in other jurisdictions suggests that integration might in fact make matters worse rather than better; resulting in delays in

obtaining civil protection orders and perhaps even pressure to agree to contact even when it is not safe. These findings of these empirical evaluations of IDVCs in the USA and Canada are not discussed here because they are dealt with by Koshan in her article in this issue. There is room for different interpretations of the data but, in the view of this author, the empirical evidence does not yet make a convincing case for integration.

It has been suggested that, instead of aiming for integration, efforts should be focused on improving how each jurisdiction deals with domestic violence to ensure that victims receive 'multi-layer' protection (MacDowell, 2011). It may well be that if each 'planet', to return to Hester's analogy, could be reformed it would be preferable to keep them separate but orbiting in a way that keeps victims safe. A better alternative to developing IDVCs in England and Wales might be to aim for specialisation in the family justice setting to run alongside specialisation in the criminal justice setting. If there were improved information exchange between the two specialised systems it would then not be necessary to fully combine proceedings to ensure the best protection for victims.

The case for specialisation in child arrangement cases?

There are special rules for how the family courts should deal with allegations of domestic abuse contained in Practice Direction 12J (PD12J), as discussed in the Introduction to this special issue. The rules have been recently reviewed to take into account concerns expressed by Women's Aid and others that judges in family law cases are failing adequately to protect women and children in child arrangement cases involving allegations of domestic abuse (Cobb, 2017). The failures relate both to safety at court and unsafe case outcomes, as the Women's Aid review of child homicides in domestic violence cases where there was court ordered contact demonstrates (Women's Aid, 2016).

Evidence to the All Party Parliamentary Group on Domestic Violence (APPG) (APPG & Women's Aid, 2016) suggested that many victims of domestic abuse are being subjected to further abuse in the family court setting as the courts do not have appropriate facilities or use special measures to protect them. Responses to a Women's Aid survey in 2015 showed that 55% of women who had been to the family courts had no access to any special measures and 39% were physically abused by their former partner in the family court (Women's Aid, 2015). Mr Justice Cobb recommended that paragraph 10 of PD12J be amended 'for the courts to consider more carefully the waiting arrangements at court prior to the hearing, and arrangements for entering and exiting the court building' (Cobb, 2017, p. 4). In her foreword to the APPG report, the Chair of the APPG (Jess Phillips MP), noted that over the past 20 years the criminal courts have made 'huge strides' in improving the experiences of victims of domestic abuse through SDVCs and special measures, but that family courts had 'not moved with the times' (APPG & Women's Aid, 2016). The APPG heard evidence that requests for separate waiting rooms were refused and women were frequently forced to enter and leave the courts by the same route and at the same time as their abusive ex-partners, resulting in 'women commonly being followed, stalked, harassed and further traumatised after leaving court' (Cobb, 2017, p. 4). The APPG observed there

should be 'no family court that forces a survivor of domestic abuse to wait in the same room as their perpetrator' or go through the ordeal of leaving the court at the same time in the same way (APPG & Women's Aid, 2016, p. 16). As the family courts have let victims down so badly in terms of ensuring safety at court, there is a case for specialisation. Court specialisation could provide the impetus for providing safer court facilities and ensuring victims have access to special measures, in the same way that is has in the criminal courts.

An urgent problem with the family courts in child arrangement cases involving domestic violence is that they do not appear to be putting the safety of children first. It has been suggested, as documented elsewhere in this issue, that there is a culture of contact at any cost (e.g. Barnett, 2014). This seems to be at least partly based on misunderstandings of the nature of domestic abuse; family judges are wrongly assuming that domestic abuse towards the mother does not impact on the children and wrongly assuming that, once the relationship ends, so does the abuse. These misconceptions are contributing to unsafe outcomes and in extreme cases children are, as Women's Aid (2016) has highlighted, being killed. If judges, and all the professionals, including solicitors and barristers, in child arrangement cases were specially trained then this could help to ensure that family justice professionals have a good understanding of the dynamics of domestic abuse. Specialist courts in the criminal setting have, as a matter of best practice, specially trained and dedicated personnel. This has contributed towards achieving safer outcomes, for example on bail conditions (Vallely et al., 2005), although the impact of this is undermined if a family court orders contact in contradiction to a criminal court which has issued bail with no contact conditions. Better information exchange and trained specialists in the family courts could avoid these conflicts. If only trained specialists could deal with child arrangement cases involving allegations of domestic abuse, then awareness of the PD12J would increase. The APPG heard that there is variable awareness of the Practice Direction throughout the family court judiciary (APPG & Women's Aid, 2016, p. 17), and yet the view is that if it were properly implemented it would provide a sound framework for keeping women and children safe.

In criminal SDVCs, where there is adequate resourcing, the voice of the victim is heard through the IDVA. In the family justice setting, in theory, the victim has her own legal representation. The issue in civil and family justice has been how to fund that representation as legal aid for victims of domestic violence has been under attack. Reforms to legal aid under the Legal Aid Sentencing and Punishment of Offenders Act 2012 (LAPSO), preserved legal aid for victims of domestic abuse in child arrangement cases and those seeking non-molestation orders under the Family Law Act 1996, but only if they could provide specific documentary evidence of domestic violence. Research showed that many victims of domestic abuse had difficulty meeting the evidential requirements (Rights of Women, 2013; Hunter, 2014). Rights of Women brought a successful legal challenge against the rules (*R (on the application of Rights of Women) v Secretary of State for Justice* [2016] EWCA Civ 91), and the rules have been amended so that new types of evidence, including that of refuge workers, will now be accepted. It is to be hoped that these reforms will ensure that victims of domestic abuse do have legal representation in child arrangement proceedings involving domestic abuse. Restrictions in legal aid have resulted in a growth in

litigants in person and it has been convincingly argued that the unavailability of legal aid breaches human rights (Choudhry & Herring, 2017). The difficulties and dangers of direct cross examination by the perpetrator have been highlighted in child arrangement cases involving allegations of domestic abuse (e.g. *Re J* [2018] EWCA Civ 115). It is to be hoped that the practice of direct cross examination of the victim by the perpetrator will be stopped, with or without specialisation. This was to be addressed, at least partially, by a clause in the Prison and Courts Bill, but it never made it onto the statute book due to the election called in 2017. At the time of writing no effective steps have been taken to end the practice. However, leaving aside the problems of securing legal aid and litigants in person, the potential gains to be made from specialisation in family proceedings go beyond due process in the courtroom.

Specialisation in the family justice system could facilitate the provision of IDVAs, which might help victims of domestic abuse both in and outside the courtroom. Inside the courtroom they could help to ensure that victims of domestic abuse are heard and not intimidated in child arrangement proceedings. The impact that the presence of lay advocates might have on outcomes is speculative. However, it is perhaps significant that Croydon has been held up as an example of good practice in so far as the implementation of PD12J is concerned. The reason why Croydon is seen as being so successful in implementing the direction is the existence of the Family Justice Centre (FJC) and the links that the centre has with the family courts (APPG and Women's Aid, 2016, 16). At a time when the FJC was withdrawing its presence and independent advocacy support for the SDVC and IDVC in Croydon, it was focusing its efforts on the family courts and out of court support for victims of domestic abuse. As discussed above, the implications of this for the criminal justice system were negative (Vallely et al, 2005; Hester et al, 2008), but it appears that there are benefits in the family justice system as a result of the independent advocacy resource being deployed there. In addition to potentially stimulating better implementation of PD12J, the advantage of lay advocates is that they can direct victims to a range of support accessible through services not wholly focused on the legal system. Victims should have the option of whether to take up these services. Specialisation within the family justice setting should aim to preserve the autonomy of victims and the choices they make about the services they use in safety planning for themselves and their children.

Conclusion

The development of SDVCs in the criminal courts in England and Wales was driven by the prosecuting authorities and their desire to improve the way that domestic violence cases were handled using criminal justice measures of success, such as reducing victim retractions and increasing convictions. Whilst the first SDVCs showed that prosecutions were not necessarily improved by reference to traditional measures of success, the benefits in terms of victim safety in the courtroom and victim satisfaction with the level of support received, made the case for expansion convincing. Although resources for SDVCs in the criminal context in recent years have been dwindling, there are lessons to be learned about the benefits of specialisation which, it has been argued here, are applicable to the family justice

setting. No victim of domestic abuse attending the family courts in child arrangement proceedings should feel unsafe inside the courtroom. Just as importantly, all the professionals dealing with child arrangement proceedings where domestic abuse is an issue, ought to be aware of the complex nature of the problem and how to help victims plan for a safe future for themselves and their children. Victims of domestic abuse need to have an effective voice in legal proceedings so that their experiences and concerns can be heard. At the moment, the traditional family courts are struggling to meet the safety needs of domestic abuse victims in child arrangement cases.

It seems unlikely that the introduction of IDVCs would provide a solution to the problems in family law cases. Firstly, there may be difficulties in identifying cases where there are overlapping proceedings in the criminal, civil and family courts. Secondly, there are likely to be cases in the family courts where there are no overlapping criminal proceedings, either because these matters have already been concluded, or because the criminal justice agencies or victims have decided not to seek redress in this sphere. The limited empirical evidence from England suggests that an IDVC has practical limitations which mean it is not going to be entirely effective for child arrangement disputes. The empirical evidence on IDVCs in other jurisdictions does not yet make a strong case for this approach to be adopted to resolve difficulties in child arrangement cases involving domestic abuse in England and Wales. However, that does not mean that the idea of a specialisation for child arrangement cases should be abandoned. A model of specialisation within each of the criminal and family justice systems, with improved information exchange between the two, could work to provide victims of domestic abuse with better multi-layered protection. Specialisation in the family court setting might enable the family courts to deal with child arrangement cases involving domestic violence more effectively; providing access to safer courtrooms and, through fuller implementation of PD12J, safer outcomes.

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