

# **Early evaluation of the Integrated Domestic Violence Court, Croydon**

Marianne Hester, Julia Pearce, and Nicole Westmarland

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## Disclaimer

The views expressed in this report are those of the authors and are not necessarily shared by the Ministry of Justice (nor do they represent Government policy).

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## Summary

The study was commissioned to provide an evaluation of the pilot Integrated Domestic Violence Court (IDVC) based in Croydon. It aimed to:

1. Provide a 'snapshot' of the progress of the new court after 12 months.
2. Identify emerging issues and offer recommendations for policy and good practice.

The IDVC was set up as a pilot to bring together cases with a criminal element and concurrent Children Act or civil injunction proceedings at magistrates' and Family Proceedings Court (FPC) level. It built on the existing Specialist Domestic Violence Courts (SDVCs) and American models with the aim of providing a more integrated approach to domestic violence involving 'one family one judge' or 'one family one judicial team'.

The research methods involved:

- Interviews with stakeholders at two points in time.
- Interviews with a further group of potential stakeholders to identify the reasons why so few cases came before the court.
- Observation of the cases proceeding through the IDVC.
- Interviews with court users and legal representatives from the IDVC cases.
- Quantitative analysis of a sample of criminal and civil (Family Law Act and Children Act) cases, originating from the magistrates' court, county court and FPC in Croydon, to ascertain potential overlap.

## Findings

Only five cases proceeded through the court during the first year, while expectations had been of perhaps 75 cases during the 18-month fieldwork period. Given the small number of cases proceeding through the IDVC, it was not possible to assess effectively whether the aims of the court had been fulfilled. On the basis of this early evaluation of the court the findings are as follows:

- The reason for the small number of cases proceeding through the IDVC was unclear. The quantitative evidence suggests that there may not be as many cases with overlapping criminal and civil proceedings as had been assumed. However it may also be that the criteria for the court are too restrictive, or there may be problems in identification of cases.
- For some respondents, the lack of cases for the court clearly demonstrated that there was no need of it. However, most of those interviewed who were most closely involved remained passionately committed to it.
- While some legal professionals had concerns regarding the potential for heightened tension where hearings involved both criminal and family proceedings, court staff were observed in the small number of cases proceeding through the court to be vigilant, prepared and effective in handling of potentially

threatening situations. Special measures were granted when applied for in criminal cases.

- Witness Support provided information and support to victims relating to the criminal proceedings in two cases.
- The central role originally envisaged for advocates, supporting victims in the IDVC, did not transpire in practice and lay advocates provided support in only one of the five cases. Lack of funding was given as the main reason by the Advocacy Service for their limited engagement with the IDVC.
- While the hearing of both criminal and family matters by the same judge has the potential for bias, in practice issues of bias did not arise among the small number of cases handled. Thus this issue did not come to be legally tested.
- Compliance with court orders was monitored via review hearings in two of the five cases, although it was unclear whether parties understood that they were merely 'invited' to attend as there is no firm legal basis for such hearings.
- The process evaluation identified some blurring of partnership working and management of the IDVC, which, combined with the limited input possible from a court-based co-ordinator, appeared to result in the lack of clear leadership for the court.

## Recommendations

The initial findings lead to the following recommendations:

- It needs to be established once and for all whether there are actually sufficient overlapping cases to justify continuing with the court. This would involve tracking of cases through the magistrates', county and Family Proceedings courts, ideally in a number of locations to obtain a national picture, something that was beyond the remit of the current evaluation. Inspired by the work of the courts in America it is difficult to believe there are not cases which should receive the same treatment and there may be cases for the court not finding their way there.
- The requirement relating to the hearing of criminal cases needs to be understood properly, not as meaning that any civil application has to be delayed, but that if a judge has made findings of fact in relation to a civil matter (which is likely to be rare in practice) a second judge would need to take over for the criminal matter.
- There needs to be an advocacy service working in partnership with the court, providing an in-court presence. Ideally this should be included in the Family Justice Centre (FJC)<sup>1</sup> service. A relationship similar to those between the SDVCs in Cardiff - with the Women's Safety Unit (see Robinson, 2007) and West London - with 'Standing Together' (see Jacobs, 2007), may be considered, where these organisations work together with their local courts in partnership to help victims. However, this will involve proper funding and the rebuilding of relationships between the courts and the FJC.
- It would be helpful for lay advocates and magistrates' court personnel to meet so that the courts may receive feedback in the form of victims' views, and lay advocates can understand the underlying purposes of the courts' sentencing policies. Availability of systematic data from the FJC in relation to their work with victims would be useful in this respect.

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<sup>1</sup> FJC is a name which represents the umbrella body of organisations co-located in the centre. It is not a specific agency or department.

- The role of co-ordinator and the linked issue of identification of cases require more resources. This has been found in all jurisdictions (see Plotnikoff, 2005, p. 62).
- The issue as to whether or not the magistrates handle IDVC cases must be tested. This is a difficult issue and the potential resistance of practitioners should not be under-estimated.
- There needs to be a tighter hold on management – also a recommendation of the 2005 evaluation. The Management Group has lost momentum and needs to re-engage. The establishment of a smaller task force to focus on the question of numbers of cases, which could report back to the wider group might be useful. Organisations working with and reporting on parties potentially going through the IDVC should be included in the management partnership, including the Probation Service and Children and Family Court Advisory and Support Service (CAFCASS).
- The use of review hearings in the IDVC should be tested further, with consideration of placing hearings on a proper statutory basis so that perpetrators can be ordered rather than simply invited to attend. The ‘victim’s voice’ should be considered for inclusion in review hearings.



# 1. Context and method

## 1.1 Introduction

The Ministry of Justice (then the Department of Constitutional Affairs (DCA)) commissioned the University of Bristol to conduct an evaluation of the pilot Integrated Domestic Violence Court (IDVC) based in Croydon. The research began in May 2006 and was completed in February 2008.

The pilot IDVC was set up in the context of growing recognition by the Government, the judiciary and researchers, of the particular problems posed to the legal system by domestic violence. Traditionally the legal response to these problems, involving not simply the incidents themselves but the consequences and family dynamics, has been a separation of inter-related issues between the criminal and civil courts. The situation was encapsulated by Thorpe LJ in *Lomas v Parle* [2003] EWCA Civ 1804, a case which involved a history of persistent domestic abuse and multiple legal interventions in both the criminal and civil courts:

“This appeal shows the unsatisfactory nature of the present interface between the criminal and family courts in such cases. It is expensive, wasteful of resources and time-consuming. It is stressful for the victim to move from court to court in order to obtain redress and protection from the perpetrator”.  
(Thorpe LJ in *Lomas v Parle* [2003])

Policy changes aimed at enhancing rates of conviction in domestic violence cases have included Specialist Domestic Violence Courts (SDVCs) in a number of magistrates' courts. The first SDVC was set up in Leeds in 1999, followed by Cardiff, Wolverhampton, West London and Derby in 2002-3, and Croydon and Caerphilly in 2004. These are criminal courts at magistrates' level where cases involving domestic violence are clustered together or fast-tracked, and handled by personnel - court staff, magistrates, the Crown Prosecution Service (CPS), Police, etc. - with special training in domestic violence issues. The evaluation of the first five SDVCs found “notable and positive benefits of SDVCs” (Cook *et al.*, 2004, p. 3). However, the lack of links with civil courts and problems of information sharing and how best to take account of civil/family issues was also noted. Following on from these developments, an **Integrated** Domestic Violence Court can be viewed as a logical extension, in having not only specially trained personnel, but in bringing together both criminal and civil elements relating to the same events, parties and families.

A linked, but separate, study was carried out to provide an early evaluation of the implementation of the Domestic Violence, Crimes and Victims Act 2004 (DVCV Act). The

research focused on the particular measures in the Act aimed at supporting and protecting the victims of domestic violence. The studies were commissioned at the same time, were conducted by the same research team, and involved some of the same research participants. This report represents the findings of the evaluation of the Croydon pilot IDVC. The evaluation of the DVCA Act has been subject to a separate report (Hester *et al.*, 2008).

## 1.2 Why Croydon?

Croydon, one of the largest London boroughs with a population of 330,587 (Office of National Statistics, 2007) has, since the 1990s, been in the forefront of pioneering initiatives to combat domestic violence. There has been development of particular focus and expertise in both the magistrates' and county courts, within the Local Authority and with well established local domestic violence partnerships. In 1999, the Local Authority appointed a new Domestic Violence Policy Advisor with wide expertise in domestic violence and a particular knowledge of domestic violence initiatives in the United States (US). In a Local Authority review of domestic violence services, a fact-finding visit was made to domestic violence courts in the US. The Center for Court Innovation in New York was asked for assistance in developing such a court in Croydon. A local district judge (DJ), police representatives and the local CPS domestic violence co-ordinator were also included on a subsequent visit which, coinciding with the case of *Lomas v Parle* [2003], inspired particular enthusiasm for the development of an integrated court locally. Further local support for the scheme was engendered at a conference of court representatives, relevant agencies and representatives from the American courts.

Domestic violence was already high on the agenda at the magistrates' court under the auspices of the new Legal Bench Manager who had come to the court from West Yorkshire where the first SDVC was pioneered. While sights were set ultimately on an integrated court, it was recognised that this would have to be preceded by an SDVC, which would build up expertise and good practice within the court through the training of magistrates and staff, and among outside agencies - the CPS, Police, Probation Service, etc. Croydon SDVC was launched in January 2004 through a multi-agency Planning Group. Together with Caerphilly, the Croydon SDVC was included in a 'second stage' evaluation within the CPS Review of Domestic Violence (Vallely *et al.*, 2005).

During the same period, Croydon County Court was also pioneering special procedures prioritising domestic violence over other civil matters in its handling of Family Law Act 1996 (FLA) applications. District judges at the county court were available to hear FLA

applications before their main lists commenced, every day at 9.30 am and 2 pm. Regular practice was to grant orders at the first hearing for a full 12 months, with *ex parte* applications being given a return date within one week before the same judge. Where the order was opposed, a full hearing was listed within 14 days, again maintaining judicial continuity. In practice, all FLA applications were made in the county court. These procedures were supported by the provision of an in-court lay advocacy service provided, at that time, by Croydon Domestic Violence Advocacy Service (CDVAS).

### 1.3 Drawing on American models

Specialist and Integrated Domestic Violence Courts in the US have been a major inspiration for the Croydon model. The legal system in the US, like that in the UK, is separated into its civil and criminal jurisdictions. The introduction of SDVCs started in the criminal court system in the US in the mid-1990s and they are now widely established throughout the US. The development of an integrated criminal/civil court model typically built on the foundations of existing SDVCs by adding the civil elements, although in some cases the IDVC model was adopted as the initial response.

Specialist and integrated courts in the US have typically involved not simply the streamlining of court procedures for victims, but also an approach based on the concept of 'therapeutic jurisprudence'. This focuses on the extent to which the legal process promotes the psychological and physiological well being of those it affects. Thus, the court seeks to get to the root of the problem, rather than simply adjudicating on guilt or innocence, with the judge working in partnership with the relevant agencies to provide a holistic and multi-disciplinary approach to the family's problems. These 'problem solving courts' typically involve support for victims in the form of advocacy provision, the treatment of perpetrators, judicial monitoring to make the perpetrator feel accountable, and access to multiple services - often in the form of a 'one-stop-shop'. The 'problem solving' approach is seen as an answer to the problem of repeat appearances in court under the traditional system.

As yet there have been few evaluations of IDVCs in the US, and none are outcome evaluations. There is, however, a growing literature on the setting up of specialist and integrated courts, the problem solving approach and the effectiveness of perpetrator treatment and judicial monitoring (Plotnikoff and Woolfson, 2005; Berman and Feinblatt, 2002 & 2005; Kleinhesselink and Mosher, 2003; Labriola *et al.*, 2005; Levy, 2002; Mansky, 2004; Mazur and Aldrich, 2003; Turgeon, 2005). While there is no single model, IDVCs in the US tend to incorporate a number of common features, typically including:

- a centralised intake system;
- dedicated judiciary: ‘one family one judge’ or ‘one family one judicial team’;
- dedicated courtrooms.

As indicated above, they may also include a specialist co-ordination unit giving victims access to a range of relevant services under one roof.

However, it should be noted that the American courts operate in a different context to the UK. Not only is there no equivalent human rights legislation preventing the hearing of criminal charges after civil findings have been made, but the plea bargaining system means that there are in practice very few trials. Clearly however, the jurisdictions are not merged and concerns have been expressed:

“Another legal issue is concerning a Judge’s requirement to base decisions on a case on evidence in a particular case and not on knowledge gained in prior or concurrent litigation. By having one Judge per family, the Judge can know too much about a family’s history, thus affecting decision-making. Also parties are getting access to a lot more discovery of documents than they would be entitled to in separate courts.”

**(Levy, 2002)**

However, most see the issue as overstated:

“Clearly, if there is a trial, only that information that is introduced at trial can go to the issue of guilt and must be proven beyond a reasonable doubt. Many people were worried about potential bias but as it has played out, there have really not been any issues with this and the defence bar are generally not more concerned about bias in these courts than in others.”

**(Personal communication – Liberty Aldrich – Center for Courts Innovation 2008 - permission obtained for quote)**

IDVCs appear now to have become the preferred model in the US:

“For victims of domestic violence, bringing all related cases before one judge eliminates the potential for conflicting orders, reduces the number of court appearances and maximises available resources. And for the courts, dealing with 900 families instead of more than 3,000 cases in various courts obviously reduced delay and duplication, and fosters effective, cost-efficient case management.”

**(Kaye, 2003, p. 4)**

## 1.4 Setting up the Croydon IDVC

While the IDVC was always seen as the ultimate objective, the first stage was the SDVC. Integration of criminal and civil aspects was postponed pending high level judicial consideration. Her Majesty’s Courts Service (HMCS) became involved as the IDVC was included among a range of initiatives announced in the Government’s national plan on Domestic Violence in March 2005 (Inter-ministerial Group, 2005). A National Implementation Project Board was set up alongside the Croydon Planning Group to monitor its plans for handling technical legal issues such as human rights legislation and the

perception of bias, the power to transfer cases between the county court and FPC, and other matters.

Having adopted the IDVC as a pilot, HMCS provided funding in June 2005 for the services of two consultant Project Managers to bring the scheme to fruition. They worked on the logistics of the identification of cases, created the operational manual, and negotiated protocol agreements with relevant agencies. HMCS lawyers advised on legal ramifications and arranged the necessary legal steps. One of the most important of these was the training and authorisation ('ticketing') of one county court DJ, as a unique case, to allow him to hear criminal cases in the magistrates' court.<sup>2</sup>

Projections were made for at least one new case to come into the court each week which, together with hearings of on-going cases would require the court to operate one day per week. The final step was the appointment of a co-ordinator from existing magistrates' court staff to oversee the intake procedure and running of the court. The court was launched on 5 October 2006.

## **1.5 The Croydon IDVC – principles and aims**

The IDVC brings together domestic violence cases having a criminal element and concurrent Children Act or civil injunction proceedings. The characteristics and procedures of the court are set out in its Resource Manual (DCA, 2006), the executive summary of which appears in appendix 3 of this report, with full details of the criteria for identification of cases in appendix 2.

### **Principles of the IDVC**

The IDVC is based on the following principles:

- "One family, one judge wherever possible, and within the law and fair process
- The criminal case is to be completed, at least to point of conviction or acquittal, before the family case is heard by the same judge
- The process whereby the case is heard within the IDVC should not create delays for those involved
- Effective information sharing will aid safe and effective decisions" (see appendix 3).

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<sup>2</sup> The appointment as Deputy District Judge (Magistrates) in April 2006 was authorised by the Lord Chancellor on the basis of need, experience and training. That process was consequently transferred to the Judicial Appointments Commission. Appointees of this nature would be required to undertake the normal training and professional development in both criminal and civil jurisdictions and to sit in both jurisdictions for an appropriate percentage of their sitting time and must maintain the full range of skills required, not just for the IDVC.

Underlying these principles is the assumption that any action will only be taken if within the law and that judicial decisions will be made upon the unique facts in each case.

It is important to understand that the IDVC, despite the use of the word 'court' involves only new **procedures** and is not a new **jurisdiction**. It should be seen as a response by the criminal and civil courts to cases which involve both elements, intended to ease the process for victims and ensure a clear focus on perpetrators. Cases are to be transferred to the IDVC from whichever of the existing courts they have started (magistrates', Family Proceedings Court (FPC) and county court), if further 'overlapping' proceedings are commenced involving the same parties in another court.

The court operates at magistrates' and FPC level. Criminal cases, which are transferred up to the Crown Court would thereby become ineligible for the IDVC. However, in practice most cases involving domestic violence would not be excluded. Family Law Act and Children Act applications starting in the county court are transferred down to the FPC, where appropriate. Where this is not appropriate, for example on the ground of complexity, or later becomes inappropriate, a transfer back up to the county court takes a case out of the IDVC. The rules by which the separate courts operate continue to apply. Appendix 2 provides details of case identification and progression in the IDVC.

## **Aims of the IDVC**

The IDVC aims to:

- Ensure that all cases are dealt with justly.
- Ensure that the safety of survivors of domestic violence/abuse and their children are considered and addressed at every stage by the court.
- Hold perpetrators of domestic violence/abuse accountable to the court for their actions and to monitor their compliance with court orders.
- Provide an efficient and expeditious response to criminal and family domestic violence proceedings.
- Increase the amount and quality of information available to the court to enable effective decision-making by the court at all stages.
- Demonstrate that domestic violence is taken seriously by the court.
- Increase the confidence in and use of the courts by those experiencing domestic violence.
- Achieve this as part of a co-ordinated partnership response.
- Share information about the workings and impact of the pilot court at a national level.

(DCA, 2006)

## 1.6 Lay advocacy

As indicated earlier, American integrated court models typically incorporate a 'one-stop-shop' facility whereby victims can access information and advice on the variety of problems likely to be associated with domestic violence. In addition to support for victims in the form of a lay advocacy service, these would also include access to legal advice and counselling. Where the IDVC is concerned, interviewees and documentation pertaining to the development phase of the court indicated that it was the intention that the IDVC would be supported by a lay advocacy service. This had already been found to be positive practice in SDVCs, enabling victims to be supported through the judicial process (Cook *et al.*, 2004).

A 'one-stop-shop' facility was also developed in Croydon once it became clear that the IDVC would be some time in coming to fruition. While in the early stages of planning for the Croydon court, it may have been envisaged that such a facility would be incorporated in the overall scheme for the IDVC, this facility came to be developed separately by the Local Authority. Croydon Family Justice Centre (FJC)<sup>3</sup> opened in December 2005, aiming to provide victims with easy access to a comprehensive range of services under one roof. The centre is modelled on a similar facility in San Diego, and incorporates a lay advocacy service, together with other services including access to safe housing, benefits advice, support groups and counselling. There is also a rota for free initial legal advice provided by local family solicitors. The centre receives a mix of public and private sector funding, mainly from the Local Authority and the Police. Building on good practice identified in previous evaluations in the UK (Hester and Westmarland, 2005), the Police Community Safety Unit (CSU) is located in the same building and has close links to the centre. Details of all reported domestic violence incidents are immediately forwarded to the FJC whose lay advocates then contact all victims giving details of the advice, information and services available. The centre currently sees itself primarily as catering for the majority of victims of domestic abuse who do not use the courts.

## 1.7 Evaluation aims

The aims of the evaluation were as follows:

1. To establish baseline data against which to evaluate the IDVC.
2. To provide a 'snapshot' of the progress of the new court after 12 months.
3. To consider any differences between the IDVC and a 'typical' (non-specialist) court in their take-up and implementation of the new measures of the DVCV Act.
4. To identify emerging issues and offer recommendations for policy and good practice.

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<sup>3</sup> FJC is a name which represents the umbrella body of organisations co-located in the centre. It is not a specific agency or department.

In the event, the IDVC handled only five cases during the 18-month evaluation fieldwork period. This meant that it was only possible to carry out a process evaluation of how the court operated in practice against its pre-defined aims, the models on which it was based and the procedures set in place when the court started. A full evaluation of outcomes was not feasible, it was not possible to present a meaningful 'before and after' picture, and it was for the same reason, not possible to carry out a comparison with a 'typical' court (the third aim of the evaluation). This report therefore focuses on aims two and four: providing a 'snapshot' of the progress of the new court after 12 months, and identifying emerging issues of relevance to policy and good practice.

## **1.8 Research methods**

A mixed method approach involving a range of largely qualitative methods was used to carry out the evaluation. This included the following:

- Interviews with stakeholders at two points in time (20 interviewed between June and October 2006, and 18 interviewed 18 months later).
- Interviews with a further group of potential stakeholders to identify the reasons for the low take-up of the court (six interviewed in April 2007).
- Observation of the five cases proceeding through the IDVC (17 hearings between November 2006 and November 2007).
- Interviews with three court users (from two cases) and eight legal representatives from four of the IDVC cases.
- Quantitative analysis of a sample of criminal and civil (Family Law Act and Children Act) cases, originating from the magistrates' court, county court and FPC in Croydon, to ascertain potential overlap.

### **Interviews with stakeholders and potential stakeholders**

The first phase of interviews with stakeholders took place between June and October 2006, and consisted of in-depth face to face interviews with 20 individuals. A 'semi-structured' approach was used involving a loosely structured set of questions to ensure comparability across interviews while allowing further issues to be raised. The purpose was to establish how stakeholders perceived the concept of the court, their expectations of it, and their experience of partnership working, at that stage. The sample included all members of the multi-agency Planning Group for the court, together with one of the consultant Project Managers engaged to work with the local partnership to set up the court, the co-ordinator of the court and a representative from the Children and Family Court Advisory and Support Service (CAFCASS). The Planning Group included judicial and administrative personnel from the county and magistrates' courts, representatives from HMCS, local CPS solicitors, the Police CSU, the Probation Service, the FJC in Croydon and two local family and criminal law solicitors.



The second phase took place 18 months later, following implementation of the IDVC, and with interviewees drawn from the same sample group (acting by then as the Management Group). Interviews were conducted between November 2007 and January 2008 with 14 of the original interviewees and four replacements where staff at agencies had changed. Most of the interviews were carried out by telephone but in the case of those most closely involved in the operation of the court, face to face. The purpose was to capture views as to how the court had operated in practice, how perceptions of the court might have changed, partnership working and views as to the future of the court.

In view of the unexpectedly small number of cases being identified for the court, a mid-term phase of investigation was added six months after the court's launch date. This consisted of a set of interviews with the purpose of exploring knowledge and understanding of the court among potential users at that stage, and of other domestic violence initiatives in Croydon (including the FJC), and to attempt to identify the reasons for the low take-up of the court. Interviews were conducted with a small sample, which included two local solicitors working in family and criminal law (not directly engaged with the IDVC), three CPS solicitors and a DJ from the county court not closely involved in the IDVC.

Interviews were in most instances taped and transcribed. Where this was not possible, because interviewees preferred not to be taped, extensive notes were compiled. In addition, field notes and summaries were produced relating to the interviews.

## **Observations**

It had not been considered feasible under the original scheme to conduct observations of all cases proceeding through the court. However, given the small number of cases handled during the first year of operation, it was decided to focus in greater depth on those which did go through the court, in order to monitor in detail the operation of the planned procedures in practice. We observed a total of 17 hearings among the five cases, between November 2006 and November 2007, and detailed notes were compiled. Some cross-checking of data was possible as two members of the research team observed some of the same sessions. On many occasions we were able also to speak informally to practitioners (DJs, CPS barristers, defence barristers and other legal professionals) most closely involved in the process to discuss their views as to how it was operating in practice as various issues arose.

Extensive field notes and summaries of cases were compiled.

## **Interviews with court users**

Each of the parties appearing in the five cases was contacted by the research team through the magistrates' court in Croydon, requesting their participation in the research. Of the ten parties whose cases were handled by the IDVC, both victim and perpetrator in each of two cases agreed to speak to us. All four were contacted and agreed to be interviewed by telephone at the end of the fieldwork phase. It proved impossible to interview one of the perpetrators, despite numerous contacts with him and attempts to organise a convenient time for the interview. The interviews with the three remaining parties were semi-structured and asked about their views of the concept and practical operation of the IDVC as related to their experience. We also contacted the legal representatives for the parties and spoke to eight of these, including a mix of family and criminal solicitors and barristers, to discuss their views of the concept and practical operation of the IDVC. All interviews with legal representatives were semi-structured.

Most interviews were taped and transcribed, including telephone interviews. Where this was not possible extensive notes of the interviews were compiled.

## **Analysis of interview and observation data**

All interview and observation data were coded to enable a thematic analysis of responses. The data were read and re-read by two members of the team and initially coded using the questions in the interview schedule and main aims of the court to develop broad themes. Following this, data were re-read and further themes developed and coded to allow for a broader and deeper analysis. Framework grids, where the coded data is entered into a grid to identify themes and codes (Ritchie & Lewis, 2003), were used to enable comparisons across the data.

The nature of the research meant that individuals, whether professionals or parties, may easily be identified. Consequently, in the writing of the report, it was decided to keep direct quotes from participants and other reference to sources to a minimum.

## **Quantitative data**

A snapshot sample of 115 cases being considered for the IDVC during the first six months was extracted from the IDVC database for the purpose of examining potential overlaps between cases originating in more than one court. The sample comprised all cases first heard in the magistrates', county or Family Proceedings courts between February 2006 and March 2007, deemed by the courts concerned to have a domestic violence element, and

forwarded to the IDVC co-ordinator for identification of cross matches for consideration for the IDVC. Although the IDVC only started taking cases from October 2006, some of the cases considered for potential overlaps originated prior to this date. These earlier cases might overlap with a further case, involving the same parties, being heard for the first time after October 2006. The data was transferred to a password and fingerprint protected laptop in the court, analysed immediately by searching for matching parties via a range of unique identifiers (name, address, date of birth, case numbers), and then removed to ensure data security. Using a range of identifiers meant that even where some data was missing, or input erroneously, overlapping cases might still be identified. The sample may, however, omit cases with a domestic violence element where this was not identified as such in the originating court.

## 2. Findings: operation of the IDVC

### 2.1 Evaluation

This chapter begins to discuss the findings from the evaluation, examining the operation of the court in relation to its original principles and aims, and by reference to characteristics of the court as set out in the Resource Manual (DCA, 2006, and see appendix 3).

The findings here are based on the interviews with stakeholders and potential stakeholders in phases one, two and mid-phase, on the researchers' observations of the court generally, and of the five cases handled by the IDVC. Reference is made, where applicable, to the 2005 evaluation of SDVCs in England and Wales (Vallely *et al.*, 2005) and to the American model integrated courts. It should be noted that, given the small number of cases handled by the court, views expressed during the planning stage were not always tested in practice. We appreciate that had there been a higher throughput of cases as anticipated, procedures might well have evolved in the light of practical experience.

The chapter concludes with an outline of the experiences of using the IDVC, based on interviews with parties and the legal practitioners related to the cases heard by the IDVC.

Chapter 3 examines in more detail the identification of cases for the IDVC.

### 2.2 Definition

The definition of domestic violence used for identifying cases for the IDVC is that agreed by the Inter-Ministerial Domestic Violence Group:

“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.”  
(House of Commons Library, 2006, p. 1)

This includes family members and intimate partners, but not perpetrators under the age of 18. Interviews with stakeholders confirmed that the definition had been agreed by the Planning Group prior to the launch of the court and differs slightly from that used by some of the agencies represented on the Group. For example, for the CPS, discussion focused on the under 18s who do not fall into the agreed definition, but are included for their internal monitoring purposes. However, interviewees indicated that such distinctions did not pose a problem either in the planning stage or subsequently, and all agencies have been prepared to work to this common definition for the purposes of the IDVC. During the period of the

evaluation, in practice the five cases handled by the IDVC involved intimate opposite sex partners only.

## **2.3 Judiciary – one family/one judge**

As outlined in chapter 1 (and see appendix 3), a key feature of the IDVC is the concept of one family/one judge, which entails complete judicial continuity for every hearing of a case relating to the same family. The concept also involves the judge's specialisation in domestic violence and a personality enabling a very direct engagement with the parties. This principle applies in the New York DV courts and is seen as key in the making of fully informed and consistent decisions and enhancing the court's ability to hold the perpetrator to account (Mazur and Aldrich, 2003).

The IDVC was launched with two professional judges available to hear cases – one from each of the civil and criminal jurisdictions. One had particular interest and experience in family matters (and had been trained and authorised to handle criminal cases in the magistrates' court as described earlier), the other already sat in the Croydon FPC and magistrates' court as a District Judge (Magistrates) having extensive experience in handling both criminal and family matters. One of these judges handled four of the five cases.

During phase one, respondents in Croydon varied in their commitment to the 'one judge' concept in its strictest form. However, these views were not tested by experience of alternative models, due to the small number of cases, and therefore views generally did not change during the evaluation period. The one judge concept tended to be approved of by legal representatives using the court, although concern was expressed that where one party did not like a decision, there might be a lingering perception of bias for the remainder of the case.

### **Magistrates**

In Croydon it was decided by the Planning Group that, in its initial stages, the lay magistrates would not hear IDVC cases, but would be phased in after 6-9 months, following periods of sitting in with the professional judges. It was intended that the handling of cases in the IDVC by magistrates alone would form part of this evaluation, in order to judge applicability in other locations. However, given the paucity of IDVC cases this was not feasible.

The issue as to whether or not magistrates should ultimately handle IDVC cases was subject to considerable debate among the Planning Group, which included local magistrates. This

revolved largely around the 'one family/one judge' concept. Those against the involvement of magistrates suggested that benches of three could not equate to the concept of the single judge being responsible for all the hearings in any individual case, in that it would be logistically impossible for the same three magistrates to be convened for every hearing of the case. However magistrates argued when interviewed that case continuity could be maintained through case files. It was also suggested that efforts would be made to ensure that one of the three magistrates would be available for every hearing of a case. Magistrates pointed out that in any event the one judge concept was potentially impracticable:

*"I think one judge for each family does maintain a continuity for knowledge, certainly the management of the case and the types of reasons, or excuses you may see. But that implies that it is not possible for other people to pick up process and run with it... It does imply that we are trying to establish a system which we're bogging ourselves down potentially in our bureaucracy - which can become immensely difficult to manage. So what do you do when a judge... They may be training, they may be ill. How do you manage that process? And that equally builds in delay... So yes in one respect, one family/one judge is a good and laudable approach to have. However, is it really practical?"*

Further arguments focused on the capacity of magistrates to handle IDVC cases in terms of their 'presence' and ability to act robustly and proactively. Local practitioners reported their preference for the county court for family matters wherever possible, even though the FPC has broadly equivalent jurisdiction.<sup>4</sup> County court procedures were viewed as being more streamlined and effective, with DJs willing to make robust and speedy decisions. On the other hand, magistrates argued that it is their everyday practice to hear both criminal and family matters. They considered that their training and experience<sup>5</sup> of the SDVC made them perfectly capable and they were extremely enthusiastic.

The one judge/one family concept is not followed in all the American DV courts, some considering it feasible to achieve the benefits of the one judge concept through careful case management in the context of a small judicial team. The court in Washington DC, for instance, operates on the basis of a dedicated judicial team. A similar system operates in the Miami Domestic Violence court in Florida.

By the end of the evaluation period, magistrates had not yet started handling IDVC cases. Despite disappointment over not yet having been included, they indicated that they remained

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<sup>4</sup> In 2001, the last year for which there are statistics, only 1.6% of applications for non-molestation orders were made in magistrates' courts (Judicial Statistics, 2001), and 16% of private law Children Act applications were made in FPCs in 2006 (Judicial and Court Statistics, 2006).

<sup>5</sup> Croydon magistrates have a dedicated panel for domestic violence cases (as well as for family cases) and have attended local training using the JSB national training programme 'An Ordinary Crime?' addressing awareness of the dynamics of domestic violence.

highly committed to the IDVC and the perceived benefits of criminal and civil matters being heard by the same panel. A nucleus of six or seven experienced senior magistrates on both the Domestic Violence and Family Panels had been identified in readiness for the court.

Legal advisors sit with the DJs in court with the aim of aiding continuity and ensuring a smooth interface with the magistrates' court. While there were no specific plans to maintain legal advisor continuity, this in fact happened in all but one case, and appeared to contribute to achieving the aims of smooth operation. From observation of cases, it appeared that legal advisors should be considered as a source of case continuity especially in situations where strict judicial continuity may not be possible.

### **Problem solving judge?**

In the American courts there is emphasis on the 'problem solving' aspect of specialist and integrated courts (see chapter 1). Some aspects of the 'problem solving' approach are also evident in approaches to sentencing in the SDVCs, with emphasis more on treatment and holistic consideration of the whole family, than on punishment. This trend was noted with approval with regard to the Croydon SDVC in the 2005 evaluation. It is evident in the IDVC, where in each case the DJs appeared expressly to have avoided financial penalties which would adversely affect the perpetrator's ability to continue to contribute to the family financially, and preferred treatment over prison, as being more likely to effect long-term change.

## **2.4 Safety for victims**

The importance of helping victims to feel safe and supported during court appearances was given serious consideration in planning for the IDVC. As highlighted in the IDVC Resource Manual (DCA, 2006) this was seen in terms of:

- "Physical safety within the court building.
- Information that increases the confidence of the victim/witnesses and applicants in their use of the court.
- Legal powers and procedures that can be used to address risk and safety".

A safety audit was carried out before the court was launched including a 'walk-through' of the court by members of the Planning Group.

### **Physical safety**

The court used for the IDVC is situated on the first floor of the magistrates' court building. It contains a lockable dock and provision for screening of the witness box. There are waiting

areas just outside the courtroom and also in the large ground floor foyer with rows of seats attached to the floor. There is a single entrance to the court manned by security staff. The Witness Service occupies a suite of rooms off the main foyer, which includes a waiting area for victims and witnesses.

In phase one, at the planning stage, views on physical safety at the court premises varied. Some stakeholders suggested that safety arrangements were as good as possible given the public nature of the building, and that security staff and ushers were generally aware and receptive to requests for help. Others criticised the shortcomings of waiting areas and the potential for parties to encounter each other. There are clearly physical and financial constraints limiting what could be achieved in these premises without rebuilding. One respondent from the magistrates' court would ideally prefer separate waiting rooms for the parties, rather than having to handle issues of physical safety case by case.

Concern over the heightening of tensions by holding hearings involving both criminal and family proceedings, where either or both parties might have immediate reasons to feel aggrieved, was expressed by some legal practitioners. They perceived a growing tendency for family members and all parties to be present in court even at the remand stage, and IDVC cases involving both criminal and family elements might create a heightened emotional atmosphere.

It was observed by the research team, that in practice, court staff were vigilant, prepared and effective in their handling of potentially threatening situations where these arose. For instance, before one of the hearings, a verbal altercation between the parties who encountered each other in the foyer was promptly diffused by court staff who then informed the judge of the incident and took steps to ensure that seating arrangements in the courtroom itself placed the parties well apart from each other. In another hearing of the same case, a different usher noticed and assisted the victim when she became distressed at overtures to her from the perpetrator while leaving the courtroom. The presence of a lay advocate to accompany the victim during the progression of the case through the court might have helped to avoid this situation or at least proved a reassuring presence.

### **Information for victims – Family Justice Centre**

Research evidence indicates that advocacy, involving legal advice and support through the court process, is a key intervention enabling victims to engage with the legal system and to improve outcomes (Hester and Westmarland, 2005). Cook *et al.*, (2004, p. 153) recommended the involvement of advocates in all SDVCs for this reason. The 2005



evaluation re-iterated the importance of this with reference to the Croydon SDVC, in supporting the decision of victims to continue with the criminal process. In the planning stage for the Croydon court it had originally been anticipated that advocates would have an in-court presence on each day the IDVC was sitting to accompany victims through the process and to signpost support. This was whether or not victims had previously been known to the service. In the event, this aspiration was modified to provide that all victims would, subject to funding, be accompanied to court by an FJC adviser if the case had been referred to the FJC.

As reported in the 2005 evaluation (Vallely *et al.*, 2005, p. 54), the CDVAS (preceding the FJC Advocacy Service) had cut back their involvement in the SDVC and were no longer attending all court sessions, but only accompanying victims they were already supporting. This was reported as being for resource reasons. A daily in-court service continued to be provided in the county court, where the service considered that support was more cost effective. The inability to provide an in-court service in the SDVC carried over to the IDVC, and CDVAS' commitment to the inter-agency protocol could be made only "*subject to funding*", which meant, according to one respondent, provision of "*a lesser level of service*" than had been ideally envisaged and hence less support to victims as well as less focus on the victim perspective:

"The limitation of CDVAS' attendance has implications for the SDVC, especially in terms of bail decision-making and victim input into cases."  
(Valley *et al.*, p. 55)

During the evaluation period CDVAS was replaced by a Women's Aid advocacy service situated within the FJC, with two full-time and nine part-time trained advocates by the end of the research. This service appeared to have withdrawn further from both courts during the research period. Advocates were reported by court respondents as being seen infrequently in the SDVC and attended at only one IDVC hearing. Respondents from the service blamed funding issues and pointed out that in the US, advocacy services are state funded. The FJC aims to provide support to all victims and not just to the minority who engage with the legal system. In a financially stretched service, priorities have to be set. The situation looked set to improve when central government announced funding for Independent Domestic Violence Advocates to provide advocacy services in areas with SDVCs. However, as reported to researchers by the FJC, this provision never materialised in Croydon because the funding arrived too late to be taken up locally (although in many other areas the provision was effectively implemented - Home Office, 2007).

By the end of the evaluation period, it appeared that FJC advocates had dissociated from the IDVC, on the basis that funding for court related advocacy should come from elsewhere. Local Authority funding was regarded as being confined to the other activities of the advocacy service.

*“...it was assumed that because we had lay advocates in Croydon working with the FJC that they would be able to cover the work of the courts but we pointed out several times that that couldn’t happen because they were so busy. You know the numbers coming through the centre, which is what the local authority pay the grant for them to do, they are FJC lay advocates.”*

**(Advocacy service professional: phase 2)**

As a close partnership between the IDVC and the lay advocacy service was one of the original intentions, given the importance of this in terms of helping victims to engage, the detachment of the advocacy service was therefore a critical disappointment:

*“Everyone probably thought, back in the early days, having that [the FJC] here was going to be a major advantage, with all those people who report incidents being referred to them, then them having the opportunity to explain to those people what’s available in Croydon - that that would have generated a greater amount of work.”*

**(Court professional: phase 2)**

FJC advocates appeared antipathetic to the magistrates’ court, suggesting frequent examples of inappropriate sentencing and an unwillingness to include input from advocates. However, this contrasted starkly with the hopes of those at the FPC as expressed at the planning stage.

From the court side there were suspicions that victims may not be receiving appropriate advice from advocates:

*“It sounds like they are promoting a non-judicial outcome over and above judicial. What I’m worried about is where they place the safety of the victim... I don’t know what risk assessment are done... I think they take the view that it is up to victims to decide - if the victim decides to go down a non-judicial route then they have to respect that - but people have to have proper advice - and you get the impression that the advice is not balanced or impartial as it should be... The reason I say that is also because we don’t get any figures to say what advice was given.”*

**(Court professional: phase 1)**

During the evaluation period there was input from the FJC Advocacy Service in only one of the observed cases. It is not clear what, if any, contact the other cases had had with the FJC. Interviews with parties and legal professionals in other cases suggested there had not been any. In one case the victim was not supported as, although the incident occurred in Croydon, she had fled the area to escape the perpetrator, and thus did not qualify for support.

## Information for victims – Witness Service

The Witness Service aims to provide information and support to all victims and witnesses in the criminal court, although is funded to assist only in criminal hearings. The service would thus not normally be involved in civil proceedings. By virtue of the merging of the Management Groups of the SDVC and IDVC, the service became involved in the IDVC. Representatives attended meetings regularly and in interviews staff appeared to have a clear understanding of the concepts and operation of the IDVC.

Staff indicated that information is routinely provided to victims by the Witness Service, which contacts all parties before their attendances in court, offering the opportunity to visit the court and to discuss what will happen on the day of the hearing. They stated that the service provided a safe space on the court premises for each of the IDVC victims and their families where they were aware of them. As in the 2005 evaluation (Vallely *et al.*, 2005), the Witness Service and staff were fulsomely praised both by users, court staff and other agencies participating in the current research for their welcoming, calming and professional approach.

## Legal powers and procedures

The Youth and Criminal Evidence Act (1999) provides for ‘special measures’ to assist victims of domestic violence in criminal cases where an application has been made to the court in advance. These include the screening of witnesses from the view of the alleged perpetrator when giving evidence.

Applications for special measures were made in two of the observed cases and both were granted relatively readily, given that both applications had been made only at the start of the hearing. In one case, special measures were also granted to another witness, despite opposition from the defence. The 2005 evaluation highlighted that special measures were perceived as not being used enough and that the CPS should be more proactive in exploring this option (Vallely *et al.*, p. 52). With respect to the two cases in the IDVC, it appeared that special measures were being applied for and granted easily and routinely.

In addition to the screening, in both cases the victim was escorted into the court by Witness Service personnel, through an entrance to the courtroom which avoided encountering the perpetrator’s family and supporters in the waiting area. In feedback to the research team, both expressed gratitude for this provision. However, one was disappointed that it did not continue through into the civil part of the hearing where, in complete contrast, she was left to sit at the back of the court on her own.

## 2.5 Ensuring fair hearings

As outlined above, the IDVC does not actually combine the civil and criminal jurisdictions, but is a procedural device for bringing both together where they involve the same parties. While appearing an obvious solution for these parties, there is an inherent incompatibility between criminal and civil law procedures raising complex and delicate legal issues. In family law, the judge seeks to know as much as possible of the background in a quasi-inquisitorial role. In criminal law, the judge acts as neutral arbiter in a strictly adversarial process, ensuring that the focus is narrowly confined to specific allegations to ensure a fair trial. In the IDVC there is a potential conflict between the judge having a full understanding of the family situation, and trying the criminal case without bias or having prejudicial information.

### Dealing with bias

In order to ensure compliance with Article 6 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (entitlement to a fair trial), IDVC procedures require that the same judge can only hear both criminal and civil aspects of the same case where:

- “The criminal case is concluded (i.e. following conviction or acquittal) before consideration of the family matters; or
- The judge, having heard the family matters and the defendant having pleaded guilty to the criminal charge then consents to the same judge continuing to hear the family case.” (DCA, 2006)

Thus contested criminal proceedings must have reached the stage of a finding of guilt or innocence before the same judge can determine family issues. Provision is made for a second judge to take over the case where this order of proceedings is not possible. The same judge, having heard criminal proceedings can go on to hear the civil case, but in order to exclude the potential for any further perception of bias, must apply the test of apparent bias before each case to establish that it is both subjectively and objectively free of bias (*Porter v Magill* [2002] 2 AC 357 per Lord Hope at 103). The test involves that

“The court must first ascertain all the circumstances which have a bearing on the suggestion that the judge was biased. It must then ask whether those circumstances would lead a fair-minded and informed observer to conclude that there was a real possibility that the tribunal was biased.” (ibid)

The requirement to hear criminal charges first was fully endorsed by legal practitioners using the IDVC. One criminal solicitor had assumed that the IDVC would only hear cases where the perpetrator was pleading guilty. Another said that his firm had been “*incredibly nervous*” at the prospect of a ‘combined’ court, given the potential for prejudicial information to come

out in criminal trials. Exactly the same concern was felt by the criminal law defence barrister when the family barrister in another case sought to ask questions of the witnesses in the criminal trial.

In practice, issues of bias did not arise in any of the five IDVC cases. In interviews, those operating the court expressed disappointment that there was no scope for legal challenge and that therefore this issue, crucial to the IDVC, had not been tested. Of particular interest would be a case where the perpetrator had been found not guilty, where the judge then hearing the family case (possibly with additional evidence, and a different burden of proof) could potentially be accused of bias by either party.

The provision to avoid potential bias in criminal trials has caused some confusion, particularly among those most familiar with the procedures of the New York courts. Effectively, IDVC procedures favour anti-delay provisions over the 'one judge' concept, so that if a judge has heard the civil case before the criminal trial, a different judge should then handle the criminal trial. However, this has been interpreted by some respondents to mean simply that in order for a case to be eligible for the IDVC, the criminal process must be completed first, which is perceived as being likely to cause delay. This had been blamed by some respondents both as one reason for the lack of cases for the IDVC, and also a reason why victims do not favour the IDVC. In practice, the number of cases where a civil finding has to be made before a criminal trial is likely to be low. Anecdotal evidence from the Croydon County Court, suggests that in about 90% of cases the perpetrator does not attend court so that very few FLA applications require trials. In Croydon County Court full orders are typically made on application so that even where contested, the victim is protected with immediate effect. Therefore this provision should not in itself be a reason for lack of cases or anxieties on the part of victims.

The case of *Hammerton v Hammerton* [2007] EWCA Civ 248 raises potential issues for the IDVC. The Court of Appeal strongly criticised a judge on the ground of potential double jeopardy, for handling the two issues of committal for breach and child contact in relation to an unrepresented alleged perpetrator of domestic violence, at the same hearing. However, it was not said that this should **never** happen. By the end of the evaluation period, this case had not been discussed by the Management Group.

### Dealing with delay

One of the principles of the IDVC is that the process should not create delays for those involved. All three areas from which IDVC cases may arise - criminal, Children Act, and

FLA, already incorporate anti-delay provisions. The SDVC aims to complete criminal cases within seven weeks and this aim is carried over to the IDVC. Family Law Act proceedings in the county court should, at their longest, where opposed, be completed within four weeks. The Children Act 1989 (section 1(2)) provides that cases concerning children must be resolved without delay and the county court provides an 'Urgent Business List', which operates in the same way as for FLA applications to enable urgent Children Act matters to be heard immediately. However, CAFCASS reports are likely to be required which, according to a respondent from CAFCASS, took 16 weeks in Croydon at the time of the research.

Potential delay in the IDVC where a perpetrator wishes to oppose the making of a FLA order and to plead not guilty to criminal charges is avoided by the use of a second judge to hear criminal proceedings arising after civil findings, which can therefore be handled before the criminal case takes place. In a case involving overlapping criminal and Children Act proceedings, even where the family case has started first, the likelihood is that an interim order would have been made pending a CAFCASS report, by which time the criminal case should have been concluded. This situation occurred in one case, where although the perpetrator's legal representatives complained about delay, in fact the CAFCASS report was not available until two months after the perpetrator's conviction. Delay was not observed as an issue in any of the other cases.

## 2.6 Review hearings

The IDVC Resource Manual (DCA 2006) states that:

"An important development of some existing practice is the use of review hearings. Where possible offenders and respondents or applicants who are perpetrators will be required to return to the IDVC to allow the case Judge to assess their progress following a finding of guilt or the imposition of an interim court order. This will allow for an ongoing assessment of safety and risk, and monitoring of a perpetrators behaviour once the initial findings have been made."  
**(See appendix 3)**

Judicial monitoring of perpetrators beyond sentencing is a core component of the problem solving approach in domestic violence courts in the US. This entails adding the weight of judicial authority to an ongoing review of the perpetrator's progress by regular attendances at court, reinforcing messages given at the point of sentencing. It can be seen as the corollary to the use of 'therapeutic' community sentencing. Croydon SDVC is unique in the UK in having incorporated this element into its procedures and holds 'Compliance Hearings' on a three-monthly basis. The 2005 evaluation found universal agreement as to the benefit of these and good co-operation from the Probation Service (Vallely *et al.*, 2005, p. 57).

Currently there is no firm legal basis for these hearings however, and parties could only be 'invited' rather than ordered to attend. Powers under section 178 of the Criminal Justice Act 2003 through Statutory Instrument for the compelling of court attendance for monitoring had not been obtained by HMCS. Observation in the IDVC indicated that both perpetrators 'invited' to attend for review in the IDVC (two cases) accepted the invitation, although it is unclear whether they appreciated that they had any choice. Given the small number of cases it was not possible to test whether those who are willing to attend voluntarily may include those most in need of ongoing monitoring. Under current circumstances, it will not be possible to compel the attendance of just those most likely to be in need of this. Nor was it possible to ascertain whether bringing back a perpetrator for review might pre-empt the repeated need for the victims to bring further proceedings. Because of the legal position regarding these hearings, their use can be only tentative.

The major focus of review is the perpetrator's compliance and progress on treatment programmes such as the Integrated Domestic Abuse Programme (IDAP) run by the Probation Service. It is unfortunate that the first IDVC cases occurred during a period in which the provision of IDAP was in crisis. The two perpetrators put on the scheme by the IDVC waited 6 and over 7 months for places to become available. This lack of immediacy must seriously undermine the effectiveness of the programme and both perpetrators gave indications of merely going through the motions rather than believing that the programme might have any relevance to them. One stated that he did not in any case think he had been "*in any trouble*", and the other making clear that what would help him most would be to cancel the order. This lack of provision would appear to represent a serious failure in the system, although our interviews with the Probation Service in phase two indicated that new resourcing was by then available and the situation set to improve.

It is impossible to judge the effectiveness of the review hearings on the basis of two cases in which perpetrators had not contested their guilt. However, as already noted, the scheme is reported to work well in the SDVC. The 2005 evaluation noted the absence of the victim's voice in these hearings, strongly recommending that this should be addressed (Vallely *et al.*, 2005, p. 57). There was no indication in the current research that the position had changed and there was no input from victims in any form at the IDVC review hearings. This is a significant omission, in that the court is currently hearing only the perpetrator's view, particularly with regard to family dynamics and is entirely unchallenged for example on child contact, where the victim might have a very different view. The inclusion of up to date information from the victim would give the court the opportunity to review her safety.

Empirical research on the effectiveness of judicial monitoring is divided. A recent study in America (Labriola *et al.*, 2005) reported that mandated judicial monitoring did not affect rates of repeated offending. However, this is, as explained above, different to the UK where there is no mandated monitoring. The views of respondents also differed: from enthusiasm for review hearings to the belief that, unless an order is breached, conviction and sentence should be the end of the matter as far as the court is concerned.

## 2.7 The role of the co-ordinator

The role of the co-ordinator was outlined in the IDVC Resource Manual (DCA, 2006) as follows:

- To manage, maintain and input data onto the database of domestic violence cases to be used for the IDVC
- To proactively ensure that flagging of domestic violence cases happens at each stage in the civil and criminal processes
- To facilitate, co-ordinate and track the progress of all cases coming in to the IDVC
- To monitor progress and procedures against the IDVC protocols and report to the relevant bodies
- To report (monthly at first) to the Planning Group/Judicial Steering Group on data, progress, impact on other Croydon courts, and any issues or concerns raised by any partner agencies
- To co-ordinate information about compliance with civil and criminal sentence/orders post-conviction/at appropriate points in civil/family court process.

A key requirement for the IDVC is thus the smooth running of the process whereby eligible cases are identified, brought to the attention of the relevant courts and listed in the IDVC. This is the major component of the role as conceived in the Croydon model. The role also includes the ongoing updating of cases as they progress in the IDVC or are concluded in their original courts without having become eligible for the court, record keeping and monitoring for evaluation purposes, and general administration of the scheme - that is, listing and communication with the parties.

Although it was universally perceived that this role was crucial, no additional funding was available for it, either from HMCS nor, with the continual stretching of resources, from either court locally, neither of which could find any slack in their administrative operations. Similarly, the Local Authority was also unable to provide any funding specifically for this role. Ultimately the role was taken on, by default, by the Section Head for Court Operations (which includes listing and case progression) at the magistrates' court who agreed to take this on in addition to her other duties. She had not previously had any involvement with the planning of the court.



In practice, although it was suggested by representatives of HMCS that the role should not entail extra work, because it effectively duplicates work which would be done anyway, it proved cumbersome and time-consuming, irrespective of the number of cases actually identified. The co-ordinator described the especially time consuming nature of the process of importing data on domestic violence cases from separate courts and following up potentially overlapping cases to ascertain if it was possible to transfer them to the IDVC (see also chapter 3). All FLA applications and all Children Act applications had to be transferred to the IDVC spreadsheet by manual inputting - a not insignificant job given that between October 2006 and September 2007 there were 1,060 FLA applications and 817 contact applications routed via the IDVC database. The role was not added formally to the remit of the current post-holder and these aspects thus merely added to her existing work-load. At the time of writing the local Courts Service was in the process of restructuring, and the Family Sections of the local county court and FPC were due to be combined within a short period. It is not clear what the implications of this are for the future of the co-ordinator's role.

There are unresolved issues as to the design of the co-ordinator role, who should carry it out and how it should be funded. A key consideration is the extent to which the role should be process or case based. During the research period the role was entirely process-based, identifying cases by checking across existing court systems, which was cumbersome and not entirely reliable. By contrast, many SDVCs use a case-based model for the co-ordination of cases, focusing on victims and needs, independently from the court. There was also some confusion regarding the role. The FJC had expected that it would be a case-based model in the form of an 'Information Resource Co-ordinator' to operate a centralised intake system as in the New York courts, with referral to different agencies as well as legal approaches. However there was no communication either way between the FJC and the IDVC co-ordinator. The co-ordinator considered, when interviewed, that an independent co-ordinator on the model of the West London or Cardiff SDVCs would be more appropriate, noting the limitations she was placed under as a court employee, with a duty of strict neutrality between the two parties. She found it impossible in her position, to fulfil any expectation that she could liaise independently with other agencies or in any way give greater priority to the interests of the victim.

Co-ordination has two distinct and separate aspects. The first is to ensure that victims with overlapping cases are identified to the court, and the second is to provide the necessary court administration. It would be possible to split these tasks - the first to be carried out by an independent co-ordinator on a case basis (as currently happens in many SDVCs) and the second by a court employee.

## 2.8 Partnership working

A multi-agency response is identified as one of the key features of a successful SDVC both in the UK, where Cook *et al.* (2004, pp. 150 & 153) recommended monthly meetings of partnership groups, and the US (Mazur and Aldrich, 2003). The Croydon SDVC was planned and operated on the basis of a local domestic violence partnership. The nucleus of this was judicial and administrative representatives from the two courts, the CPS, and the Police, each of which had staff trained and dedicated to handling domestic violence cases, together with the then DCA. Beyond this nucleus the group included representatives of the Probation Service, CDVAS (lay advocacy service), HMCS, local practitioners and the Local Authority - from the end of 2005 in the form of the FJC. The 2005 evaluation noted issues among the partnership group which the partners had worked to resolve, but not completely successfully (Vallely *et al.*, p. 55).

This situation was reflected, immediately prior to the launch of the IDVC, in a diversity of views about how the group was working together. Working together with the Project Managers to get the court up and running, the genuine passion and commitment of the nucleus of the Planning Group was evident in their phase one interviews. Members enthused and were positive about a *“united problem solving approach”* to the unique and difficult project:

*“I must say most people when they first come onto the idea of the linked domestic violence court, straightaway everyone thinks ‘oh it couldn’t happen because, because, because’. And I must say that it is quite impressive that people have managed to keep an open mind on those subjects and to, you know, think the unthinkable really and it has been quite impressive that they’ve done that and have worked through solutions.”*

**(Solicitor A: phase one)**

However, this was tempered by a recognition that in a multi-agency group there are likely to be misperceptions about the perspective of each agency and what each can realistically contribute:

*“What has also come out is that sometimes there is conflict over what people understand as different people’s roles, different group’s roles and, you don’t just automatically just understand the whole nature of [agency].”*

**(Solicitor B: phase one)**

Interviews with stakeholders in phase one indicated that the planning appeared at times to become bogged down, and some of those more peripherally involved became less engaged, finding the legal technicalities to be worked through esoteric and not something to which they could contribute. There was a perception by some of scepticism and lack of support from the National Implementation Project Board. Leading up to the launch of the court, while aspirations remained firm, phase one interviews indicated that some conflicts and concerns

developed over operational matters such as the input of magistrates, the appointment of a co-ordinator and concerns over the potential number of cases.

A more significant and uncomfortable rift was apparent between the criminal justice agencies and the FJC, with the latter appearing to have ceased any meaningful engagement with the Management Group by the end of the evaluation period. FJC representatives attended only one of the five IDVC Management Group meetings, which took place during the evaluation. Advocates were invited to a pre-launch training session with judges and probation, but did not attend. Both phase one and phase two interviews suggested there to be a number of misunderstandings about the IDVC from FJC staff. One was that the IDVC is actually a new court - a third alternative for victims to consider. Another was an expectation that cases would be heard more quickly. A major misinterpretation was that the IDVC would create delays and prevent victims from getting immediate civil injunctions, because of *“the criminal case having to be heard first”*. These views were expressed to researchers in phase two as being from clients with actual experience of the IDVC. However, since there was only one case in which the FJC had any involvement, and only five overall, FJC clients could not in fact have had personal experience of the IDVC.

Magistrates expressed the desire to understand how victims feel the courts can help, but could obtain no answers from the FJC. Anxious to secure the return of advocates to the SDVC, the CPS reported a similar lack of feedback. During the research, many partnership representatives reported extreme frustration at the apparent lack of data on FJC activities. While the FJC reported ‘take up’ of 70% of their approaches to all reported domestic violence incidents, it was not known what exactly this meant, or exactly what help or support was given.

In assessing the Management Group generally as an example of multi-agency working one respondent remarked by phase two:

*“It’s classic - the bits that are good are really good and the bits that are bad are really bad.”*  
**(Member of Management Group: phase two)**

During the year following the launch of the court, phase two interviews indicated that the Group lost further momentum, with little to discuss other than the lack of cases. The group met only five times during the year having after eight months merged with the multi-agency Management Group for the SDVC. The Criminal Justice Agencies which remained fully engaged perceived others to have ‘gone off the boil’ as attendances from the representatives of other agencies dwindled. It is understandable that impetus was lost due

to the lack of cases. However, recommendations as to a tighter management of the SDVC were not followed or put in place for the IDVC, which allowed the situation to drift. It might be necessary to establish a smaller task force to focus on the question of numbers of cases, which could obtain information from and report back to the wider group.

The lack of input in the Management Group from the Probation Service and CAFCASS seemed anomalous. Given their position as organisations working with and reporting on parties potentially going through the IDVC, their input in the partnership might have been expected. Internal issues within the Service, together with a perceived lack of relevance (given the small number of cases) may explain the lack of engagement from Probation, and it should be noted that in operational terms, reports were provided as agreed, for example for the review hearings. CAFCASS had no representation on the Group, though interviews indicated they were fully supportive of the court. Again, had there been issues to discuss arising out of cases handled by the court, it is likely that engagement would have been higher.

There are clearly limitations to partnership working in a management capacity. While the representatives of agencies in a partnership group may be personally positive and enthusiastic in terms of attending meetings and feeding back to their own organisations, which appeared by and large to be the case in Croydon, this is not the same as individuals having the time, focus or resources, to take on the management functions required to drive the project. Although this was a largely enthusiastic group, there was no-one able to incorporate a full leadership or administrative role into their existing jobs. Even after set up, the running of any new project is bound to require additional resources, even where it is theoretically not handling new additional work. It would only be after some time, when the IDVC started taking so many cases from other courts that resources for the other courts could be reduced, that it could become cost-effective.

## 2.9 How integrated?

The term 'integrated' is perhaps slightly misleading. It does not mean that cases are merged, and indeed, this is not the case in the US. As one of the court staff involved in the New York court explained:

"The judges here handle all aspects of the case but they handle them separately - they may be before the same judge on the same day but the cases are not 'merged'."  
(Aldrich pers com 2008)

In practice, most individual hearings were exclusively either criminal or family, so that from the practitioners' point of view, differences were of a relatively insignificant nature. For example, one Children Act case started in the county court and then moved to the

magistrates', but with the same DJ, continuing much as any other contact case. Criminal cases that would normally have come before magistrates were heard by a DJ. In hearings which did involve more than one element, there was generally a clear demarcation between them, and in most cases, one set of practitioners was replaced by another at that point.

While the judge may remain constant in any one case, practitioners specialise and do not typically handle both criminal and family law. One case demonstrated some confusion over the criminal/family law interface and what, if any, role a family practitioner should play in the criminal element of a hearing, and *vice versa*. Some practitioners indicated that they found it useful to be present in court during elements not actively involving them, though possibly frustrating in not being able to make interjections. One or two others who had not been present for both elements were aware that the judge knew about matters that they did not. The likelihood of a case requiring input from different legal representatives has been seen as an issue in the US also:

“Although the lingo is ‘one family, one Judge’, there can be many attorneys per family, as attorneys usually do not specialise in multiple fields. Therefore a domestic violence victim will have the Prosecutor handling the criminal case and a separate lawyer for the divorce case or support, custody or family offence case.”  
(Levy, 2002)

If separate family and criminal practitioners were to be present for both elements this would obviously increase the level of resource needed, as also indicated by our interviewees.

This is however an issue that practitioners will have to grapple with in the light of the DVCA Act, as observed by Bessant:

“Family solicitors will still need to have a clear understanding and be able to advise fully upon the consequences of a non-molestation order being made, and breached. It is argued that this now entails a need for family solicitors to understand which cases are likely to be dealt with by the criminal courts, be aware of the sentencing options open to both the civil and criminal courts, and to appreciate what sentence might be awarded in any given case. This is clearly expecting much of family solicitors - advice upon criminal procedure and sentencing would more usually be provided by a criminal solicitor.”  
(Bessant, 2005, p. 640)

Similarly, Probation and CAFCASS input into the court was not ‘integrated’ in the sense of information being shared. In one case, the CAFCASS report in the contact application was written without knowledge of the pre-sentence report on the perpetrator. We understand that a protocol is being developed regarding data sharing between Probation and CAFCASS.

## 2.10 Experience of the court - views of parties

On the basis of the very few interviews possible in the circumstances, parties on both sides appeared positive about the concept of the court. However victims, while fully endorsing the idea and appreciating all the benefits intended for victims - the idea that one judge would come to a full understanding of the family background and dynamics - did not feel ultimately that the court had helped in their particular case. It is natural for perceptions of any legal process to be affected by the outcome for that individual, and neither felt that the process had resulted in a full understanding of their position. They felt that the domestic violence had been handled well in itself, but that they had then been expected very rapidly to “*move on*” in the interests of their children. They felt they had been told to “*get over it*” as if it was possible to trust the partner who had abused them, for example not to feed ideas to their children during contact, or to behave “*as an adult*”. They felt not simply that their children might be at risk physically, but more that the effects on their children of the manner of the parental breakdown were not properly appreciated. The imperative to promote contact in these cases came from all quarters, the court, legal practitioners and CAFCASS. As might be expected, the approach was one of focus on the future rather than incorporation of past issues or experience. At the same time it had been thought that the IDVC would have the potential to overcome some of the potential problems associated with such a different focus and also identified through other research and court inspections (HMICA, 2005; FJC, 2006). In particular, that the IDVC would have the possibility of considering the impact of domestic violence issues and dynamics on the safety and wellbeing of both adults and children and across all aspects of the cases.

## 2.11 Experience of the court - views of practitioners

There was general interest in and approval for the concept of the court expressed by legal practitioners, both those with experience of the court and others locally. This was tempered by specific concerns about the potential for bias and delay, and also anxiety about the prospect ultimately of more cases being heard by magistrates. Most court hearings were handled by barristers who had little or no idea, before arriving in court, of the IDVC or its procedures. None of the practitioners representing victims or representatives had experience of more than one case. Therefore views were to some extent speculative.

### **3. Findings: identifying cases**

This chapter examines the practice of the IDVC regarding case criteria and identification. The findings are based on quantitative data regarding identification of cases, phase one and two interviews with stakeholders and mid-term interviews with local practitioners.

#### **3.1 The Croydon IDVC - case criteria and identification**

The criteria by which cases become eligible for the IDVC and the means of identifying these cases are a crucial element of the scheme (DCA, 2006; see appendix 3). The basic criteria for IDVC cases is that there be an overlap in cases involving the same parties between criminal and family elements (mainly proceedings under part IV of the FLA and section 8 of the Children Act involving domestic violence allegations). Current cases in either court remain potentially eligible for the IDVC until concluded by the making of a final order in the civil court, or acquittal or sentence imposed in the criminal court.

As regards identification of cases, a protocol was already in operation prior to establishment of the IDVC to ensure that all charges involving allegations of domestic violence were directed to the SDVC. This is largely a police procedure and the police agreed to extend procedures for the IDVC, including a check with both victims and perpetrators as to whether there are any civil proceedings in progress. The IDVC obviously requires additional procedures to bring in all Children Act cases from the FPC, together with all FLA and Children Act cases from the county court. Since the computer systems used in each court are not compatible, a new system developed for the IDVC provides for details of **all** FLA and Children Act applications in the county court to be passed to the co-ordinator to be incorporated with the SDVC and FPC cases. A spreadsheet designed for this purpose should automatically flag up overlapping cases. Once this occurs, the co-ordinator is then to inform the DJ for a decision on transfer to the IDVC.

#### **3.2 Number of cases**

In the planning stage for the IDVC it had been estimated that the court could expect to handle at least one new case per week. The fact that only five cases went through the IDVC during its first year was expressed by stakeholders generally as a huge disappointment. The low numbers were a major focus for both IDVC and SDVC during the evaluation period. In addition to the five, there were a small number of cases which appeared initially eligible for the court. In one case, criminal proceedings did not proceed, in another one party resisted transfer from the county court and in a third, anticipated FLA proceedings did not materialise.

Where quantitative data is concerned, analysis of a ‘snapshot’ of cases being considered for the IDVC, involving cases originating in the magistrates’, county or Family Proceedings courts between January 2006 and 2007, confirmed the lack of cases that may be deemed eligible for the IDVC. Of the 115 cases, across the three courts, forwarded to the IDVC co-ordinator for inclusion in the IDVC database, only one was potentially an ‘overlapping’ case, in this instance criminal and FLA proceedings (see table 3.1). This case was not considered suitable for the court as both elements did not, in the end, proceed.

It should be borne in mind, however, that other cases may be eligible for the IDVC but not flagged as domestic violence cases in the originating courts, and therefore not forwarded for consideration by the IDVC. For instance, although there has been increasing focus in Children Act cases on ascertaining whether domestic violence is a feature, such identification may not always take place or domestic violence may not be recorded (HMICA, 2005; Aris and Harrison, 2007). Also, as there is no specific criminal offence of ‘domestic violence’ (a range of offences such as common assault, actual bodily harm, etc may instead be applied), cases need to be flagged specifically as domestic violence. This may not always happen (see also section on identification, below). Thus cases otherwise eligible for the IDVC may elude identification via the use of existing data systems.

**Table 3.1: Sample cases assessed for IDVC**

	Cases originating in:			Totals
	Magistrates’ court (MC)	Family Proceedings Court (FPC)	County court (CC)	
Total	76	10	29	115
Overlapping cases	1 CC	0	1 MC	1

The interview data indicated a growing concern among the Management Group over the 18 months of the evaluation as cases failed to materialise, with ensuing focus on a perception of falling numbers of domestic violence cases in each of the courts and as to why this might be. In fact the national picture shows a trend of decreasing numbers of FLA applications, with numbers in 2006 down by 15% from 2002 and 4% from 2005 (Judicial and Court Statistics, 2006, table 5.8). Croydon figures for July and August 2007 showed a large decrease from the previous year, reflecting anecdotal reports of a national trend (see also separate report on evaluation of DVCV Act, Hester *et al.*, 2008). This was attributed by some respondents to the perception that victims were unhappy about applying for civil orders since the implementation of the DVCV Act (part I, section 1.1) criminalising breaches of non-molestation orders in July 2007 (although our interviews with victims indicated the opposite, see Hester *et al.*, 2008). Other respondents linked it to difficulties in obtaining



legal aid - it was widely perceived by the practitioners we spoke to on the basis of their own experience, that where criminal proceedings were in progress, it was impossible to obtain public funding for the costs of a civil application. The county court had noted increasing numbers of applicant litigants in person and minutes from Planning Group meetings indicated that both the IDVC Management Group and FJC planned to set up special procedures and assistance for those unable to afford the costs of legal representation.<sup>6</sup>

Phase two interviews with FJC staff also suggested that a (mis)perception of the IDVC needing criminal cases to be dealt with first meant that cases were not being forwarded. From the victim perspective, the more rapid procedures for civil remedies were needed to ensure their safety, even if criminal cases also went ahead:

*“We haven’t had many clients go through the court, simply because what has happened is that the client will come and say ‘right I want to get a civil injunction done’. We can do that here in about 24 hours. They will go to court, get their injunction and then, if they are taking their partner through the criminal side for abh - whatever it is that they’re going through - they realise that that takes a long time. So they’re saying ‘we feel we are getting what need much quicker going the civil route on its own than going through the Integrated Court’ because they’re looking at the longer case first and shorter case is not kind of being looked at.”*

**(Advisory service professional: phase two)**

There are thus several possible explanations for the smaller than expected number of cases for the IDVC. The quantitative evidence suggests that there are not as many cases with overlapping criminal and civil proceedings as had been assumed. However it may be that the criteria for the court are, or perceived to be, too restrictive, or there may be problems in identification of cases. These issues will be examined further in the sections that follow.

### 3.3 Projected numbers

There appears to be no national data on the number of victims who pursue remedies through both the criminal and civil systems. The 2005 evaluation reported that out of 164 cases in the SDVC, only six had matters pending in the civil court and only four had civil orders in place (Vallely *et al.*, p. 64). Given the different computer systems used by county and magistrates’ courts, it is difficult to identify cases involving the same parties in each court - which is of course the very reason why information on families typically does not flow between the courts. While the IDVC was being developed, projected numbers were calculated on the basis of names provided by the Police of all victims and perpetrators over a period of 2-3 months. The FPC and county courts were asked to check these names for

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<sup>6</sup> Please note: for victims of domestic violence seeking protection from harm there is both an income and capital waiver on the usual financial eligibility test for legal aid funding. This will mean that clients will be eligible for funding in these cases even though they are not eligible in other cases.

any matches in Children Act or civil injunction proceedings. On this basis it was estimated that the IDVC would be likely to see at least one case per week. However, concern was expressed at phase one by some interviewees from the Planning Group, who predicted on the basis of their experience that there were simply not that many overlapping cases. This concern was repeated in interviews with a number of local practitioners. It appears likely that the original projection for the number of overlapping cases may not have been able to take account of the dates of each part of the cases followed through. However, it is very likely that, although these **were** overlapping cases, in practice the overlap did not occur until after the civil proceedings had concluded and the case was therefore taken out of the database of potentially eligible cases.

## Criteria

Some respondents were concerned from phase one that the criteria for the court might prove too restrictive. One perceived stumbling block was the misunderstood requirement for criminal cases to be heard before civil matters which, it was predicted, would result in low take-up of the court. The first five IDVC cases indicated three models of overlap:

1. Application for civil order followed by criminal proceedings commenced **before** final civil order made (three cases). In each of these cases civil orders had been made with return dates pending, during which time criminal proceedings were commenced. In fact none of the civil proceedings were opposed, which is the reality in most cases. However, provision is made, where a finding of fact is required in civil proceedings, for a second judge to take over to handle the criminal case. There is therefore nothing to prevent cases entering the IDVC.

However, a problem does arise in the fact that civil orders are disposed of from application to final order very quickly and there is therefore a likelihood that the criminal case will simply follow on too late. However, given that a case becomes eligible for the IDVC from the point when a criminal charge is made, it does seem surprising that more cases did not qualify through this route. In order to ensure that civil cases remain eligible long enough to coincide with criminal proceedings, it would appear useful if civil cases remain on a database of eligible cases for the **duration** of the civil order, rather than only up until the date the final order is made. Although an application to commit for breach is an event making a case eligible for the IDVC, this appears to have been overlooked - as was one case - which was considered by several respondents to be the paradigm case for the IDVC as the case involving as it did multiple events and hearings.

2. Criminal proceedings started, followed by Children Act application made during progress of the criminal case (one case). The situation whereby 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. In all but one of the five cases contact was agreed between the parties.

3. Series of civil orders and breaches culminating in criminal proceedings (one case). It is likely that cases of this type will become more common since the implementation of part I, section 1.1 of the DVCA Act, making breaching of a non-molestation order a criminal offence.

## Identification

Concerns were raised by some stakeholders within the first few months of the court in relation to the first stage of the identification process - by the Police to the SDVC - with a perception that procedures supposedly agreed and in operation for the SDVC were not being fully operated in practice. Cases were still arriving at the magistrates' court without domestic violence identification, and this situation continued throughout the year of the evaluation fieldwork, despite a number of promises that the situation would be rectified. However, court staff felt confident that their own checks were likely to pick up these cases at listing stage. There were complaints from the FJC that, according to their clients, not all domestic violence cases were being heard in the SDVC, although no specific evidence was provided.

Once in the court, as described earlier, the identification process is unwieldy and prone to human error. Three of the IDVC cases were identified by the system, but the other two were only noticed and picked up by individuals along the way. While allowance should be made for teething troubles, the identification process is clearly not robust.

The problems of identification should not be under-estimated. Information sharing between civil and criminal courts and identification of overlapping cases in other jurisdictions has been recognised as a complex and potentially costly process. As illustrated by the following example from the US:

"We have separate computer systems, separate courthouses, separate files, so it's been a huge operational challenge... We're working with our technology people here in the court system to identify cases in a quicker and more efficient way. Right now it's very labour intensive. It's easier than it was two years ago but it's still basically a daily check of three computer systems."  
(Judge Judy Harris Kluger, in Turgeon, 2005)

Respondents also felt that other opportunities might have been missed. For example that civil proceedings might have begun alongside, or prior to criminal proceedings. This might mean that cases were not picked up because questions about overlap were asked too early:

*"I think we've missed a lot of cases that we should have done just simply by people not asking the right questions... It might be that, when asked the question at that point, that there are no civil proceedings, but then when they get the assistance of the FJC or advocates, they then think yes I will go down and get an injunction, and then we have proceedings running alongside. So the questions have been asked too early. There doesn't seem to be any way*

*for that information to be fed through. ...I really don't want them to say 'Oh it didn't work because there weren't enough cases for it to effect'. That's the whole point of a pilot, to see how we can do it and the fact that we've only had a few cases is sad, but that shouldn't be the determining factor over whether or not IDVC is a good idea. I do think it's a good idea and it could help far more cases than it was able to help because of the teething problems over identification of cases."*

**(Legal professional: phase 2)**

The combining of the county court and FPC administration, due in 2008, should make the collection and collating of data between the courts easier, but if identification is to continue as a court based process, the current system will have to be significantly upgraded.

Even so, despite the enthusiasm of some respondents, it seems unlikely that failure to identify suitable cases could be the only cause of such a substantial difference between the projection and reality.

### **3.4 Local awareness of the IDVC**

The mid-term interviews with a group of legal practitioners not closely involved in the IDVC allowed further questions to be asked about possible reasons for the small number of cases in the IDVC. Practitioners were asked about their knowledge of and understanding about the IDVC.

It is perhaps ironic that while Croydon contains two such unique and pioneering domestic violence initiatives, our interviews with practitioners who were not direct stakeholders, indicated that very little of these are generally known locally. There are local family and criminal solicitors who are unaware of the IDVC, and frustrated not to have been told about it. While it is for the court to direct proceedings into the IDVC, rather than for parties to make direct applications there, it would clearly be beneficial for solicitors to be fully aware of the criteria and procedures of the court. If the scheme could be explained to clients it might even result in a higher take up overall of court options.

Similarly, it was surprising to find solicitors who had never heard of the FJC or had no idea where it was. Comments were made by mid-phase interviewees that there was no publicity and therefore no way for a victim not actually calling the police, to know of the existence of the FJC from which to seek advice or assistance. Among those who have been aware of and involved in the centre, there was a strong perception of under-usage or being 'chronically under-cliented'. More than one of the solicitors interviewed, who had been on the legal advice rota at the centre, had found it difficult to justify the time spent there.

By the time the evaluation finished, a leaflet explaining the IDVC and aimed at local practitioners was in process of completion. It is hoped that this will help to raise awareness of the court and increase the number of referrals.



## 4. Conclusion and recommendations

### 4.1 Summary

The IDVC was set up as a pilot to bring together cases with a criminal element and concurrent Children Act or civil injunction proceedings at magistrates' and FPC level. It built on the existing SDVCs and American models with the aim of providing a more integrated approach involving 'one family one judge' or 'one family one judicial team'.

Only five cases proceeded through the court during the first year, while expectations had been of perhaps 75 cases during the 18-month fieldwork period. Given this small number of cases it was not possible to assess effectively whether the aims of the court had been fulfilled. This should therefore be considered an early evaluation of the court based on its limited operation. The findings are as follows:

- The reason for the small number of cases proceeding through the IDVC was unclear. The quantitative evidence suggests that there may not be as many cases with overlapping criminal and civil proceedings as had been assumed. However it may also be that the criteria for the court are too restrictive, or there may be problems in identification of cases.
- For some respondents, the lack of cases for the court clearly demonstrated that there was no need of it. However, most of those interviewed who were most closely involved remained passionately committed to it.
- While some legal professionals had concerns regarding the potential for heightened tension where hearings involved both criminal and family proceedings, court staff were observed in the small number of cases proceeding through the court to be vigilant, prepared and effective in handling of potentially threatening situations. Special measures were granted when applied for in criminal cases.
- Witness Support provided information and support to victims relating to the criminal proceedings in two cases.
- The central role originally envisaged for lay advocates, supporting victims in the IDVC, did not materialise in practice and they provided support in only one of the five cases. Lack of funding was given as the main reason by the Advocacy Service for their limited engagement with the IDVC.
- While the hearing of both criminal and family matters by the same judge has the potential for bias, in practice issues of bias did not arise. It should be noted, however, that the small number of cases meant that there was no scope for testing this fully.
- Compliance with court orders was monitored via review hearings in two of the five cases, although it was unclear whether parties understood that they were merely 'invited' to attend as there is no firm legal basis for such hearings.
- The process evaluation identified some blurring of partnership working and management of the IDVC, which, combined with the limited input possible from a

court-based co-ordinator, appeared to result in the lack of clear leadership for the court.

- While the judge may remain constant in any one case, practitioners specialise and do not typically handle both criminal and family law. In practice, most individual hearings were exclusively either criminal or family with a clear demarcation involving different sets of practitioners. Similarly input from CAFCASS and the Probation Service was not 'integrated' with each being unaware of the other's involvement.

## 4.2 Recommendations

### Establishing quantitatively a need for the court

- It needs to be established once and for all whether there are actually sufficient overlapping cases to justify continuing with the court. This would involve tracking of cases through the magistrates', county and Family Proceedings courts, ideally in a number of locations to obtain a national picture, something that was beyond the remit of the current evaluation. Inspired by the work of the courts in America it is difficult to believe that there are not cases which should receive the same treatment and there may be cases for the court not finding their way there.

### Improving understanding of the procedures

- The requirement relating to the hearing of criminal cases first needs to be understood properly. Where a judge has already made findings of fact in relation to a civil matter before a criminal trial (which is likely to be rare in practice) a second judge would need to take over for the criminal matter. It does not mean that any civil application has to be delayed.
- It would be helpful for advocates and magistrates' court personnel to meet so that the courts may receive feedback in the form of victims' views, and advocates can understand the underlying purposes of the courts' sentencing policies. Availability of systematic data from the FJC in relation to their work with victims would be useful in this respect.

### Provision of lay advocacy support

- There needs to be an advocacy service working in partnership with the court, providing an in-court presence. Ideally this should be included in the FJC service. A relationship similar to those between the SDVCs in Cardiff - with the Women's Safety Unit (see Robinson, 2007) and West London - with 'Standing Together' (see Jacobs, 2007), may be considered, where these organisations work together with their local courts in partnership to help victims. However, this will involve proper funding and the rebuilding of relationships between the courts and the FJC.

### Management improvements

- The role of co-ordinator and the linked issue of identification of cases require more resources. This has been found in all jurisdictions (see Plotnikoff, 2005, p. 62).
- There needs to be a tighter hold on management - also a recommendation of the 2005 evaluation. The Management Group has lost momentum and needs to re-engage. The establishment of a smaller task force to focus on the question of



number of cases, which could report back to the wider group. Organisations working with and reporting on parties potentially going through the IDVC should be included in the management partnership, including the Probation Service and CAFCASS.

### Practical issues

- The issue as to whether or not the magistrates handle IDVC cases must be tested. This is a difficult issue and the potential resistance of practitioners should not be under-estimated.
- The use of review hearings should be tested further, with consideration of placing hearings on a proper statutory basis so that perpetrators can be ordered rather than simply invited to attend. The 'victim's voice' should be considered for inclusion in review hearings.
- Legal advisors should be considered as a source of case continuity, especially in situations where strict judicial continuity may not be possible.



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## Appendix 1: List of abbreviations

CAFCASS	Children and Family Court Advisory and Support Service
CDVAS	Croydon Domestic Violence Advisory Service
CPS	Crown Prosecution Service
CSU	Police Community Safety Unit
DCA	Department of Constitutional Affairs (now Ministry of Justice)
DJ	District Judge
DVCV Act	Domestic Violence, Crime and Victims Act (2004)
FJC	Family Justice Centre, Croydon
FLA	Family Law Act (1996)
FPC	Family Proceedings Court
HMCS	Her Majesty's Courts Service
IDAP	Integrated Domestic Abuse Programme
IDVC	Integrated Domestic Violence Court
PR	Parental Responsibility
SDVC	Specialist Domestic Violence Court



## Appendix 2: Case identification and progression for the IDVC

### Identifying cases suitable for the IDVC

Criminal matter	Civil matter	To be heard within IDVC?	Comment
DV related charge & perpetrator bailed to future date	<ul style="list-style-type: none"> <li>a) <i>ex parte</i> heard &amp; awaiting full hearing</li> <li>b) hearing fixed for future date but no <i>ex parte</i> proceedings</li> <li>c) criminal charge indicates breach of civil order or civil order in existence but no breach &amp; to include application for injunctive relief or committal under FLA</li> <li>d) civil matter heard previously but no order or proceedings current</li> <li>e) victim indicates they are considering civil proceedings</li> <li>f) no civil proceedings</li> </ul>	<ul style="list-style-type: none"> <li>a) Yes</li> <li>b) Yes</li> <li>c) Yes</li> <li>d) No</li> <li>e) No</li> <li>f) No</li> </ul>	<ul style="list-style-type: none"> <li>• Includes FLA &amp; CA cases where DV is alleged. This will consist mainly of private law cases but where relevant public law cases include elements of DV these could also be considered for inclusion.</li> </ul>
DV related charge & perpetrator held in custody	As above	Yes	<ul style="list-style-type: none"> <li>• Need to provide secure accommodation for prisoners in custody</li> <li>• If no IDVC sitting assume the case is heard in the SDVC and subsequently listed in the IDVC</li> </ul>
DV related charge awaiting hearing	Civil proceedings begin whilst awaiting criminal hearing	Yes	
DV related charge & perpetrator convicted but sentencing hearing awaited	Civil proceedings begin whilst awaiting sentencing for criminal conviction	Yes	
Post-DV related conviction & where compliance hearings (or similar) are ordered	Civil proceedings begin before conclusion of compliance hearings	Yes	
Breaches of criminal sentence (i.e. conditional discharge, suspended sentence) where case has previously been heard in IDVC, any civil order imposed by the IDVC or civil order under new DVCV Act		Yes	
New DV related charge after previous case heard in IDVC		Yes	
	New civil proceedings after previous case heard in IDVC	Yes	
	New civil proceedings where no criminal matters exist	No	

- NB:**
- 1) When referring to the cases heard within the IDVC this does not necessarily mean that the same judge will hear both criminal & civil aspects of the case.
  - 2) This list cannot be definitive & where any DV related matter arises the final decision-making will rest with the judiciary.





## Appendix 3

### Croydon Integrated Domestic Violence Court A Pilot Scheme Executive Summary

#### Introduction

Domestic violence (DV) is a widespread and desperately harmful crime affecting all levels of society. Those experiencing domestic violence (DV) require the court system to provide safety, beneficial outcomes and the most efficient means of concluding all the legal issues relevant to this traumatic series of events in their lives. The growth of Specialist Domestic Violence Courts and changes within the Family Courts are a demonstration of a more focused response to DV in both jurisdictions. The pilot scheme in Croydon attempts to bring together this expertise and these jurisdictions in one location to allow one judge to decide both criminal and family aspects of such cases. This process will be known as the Integrated Domestic Violence Court (IDVC) but this term is for ease of use and will not consist of a new court jurisdiction. The court will, in fact, sit as a Magistrates Court or a Family Proceedings Court, dependent on the case being heard.

#### Principles of the IDVC

These principles assume that any action will only be taken if within the law and that judicial decisions will be made upon the unique facts in each case.

- One family, one judge wherever possible, and within the law and fair process
- The criminal case is to be completed, at least to point of conviction or acquittal, before the family case is heard by the same judge
- The process whereby the case is heard within the IDVC should not create delays for those involved
- Effective information sharing will aid safe and effective decisions.

#### Main Characteristics

##### One Judge

An essential element of such a court process will be the ability of one judge to hear both the criminal and family aspects of the legal proceedings and have experience of the issues involved. This requires that the Judge (initially two DJs will be able to hear these cases) is trained in both criminal and family matters and has an understanding of the dynamics of domestic violence.

##### One Family

The cases to be heard within the IDVC will be those where a criminal prosecution against a family member as defined below is underway for an offence within a DV context and an application is made concurrently by one of the parties involved through the family courts system. Public law cases may also be considered when the court begins to operate.

##### Safety of Victims

It has been well established that those suffering from the impact of DV are more likely to complete the judicial process if they feel safe and are supported during the court elements of the case. Croydon Borough provide an independent domestic violence advisory service (CDVAS, to become known as FJC advisers) and subject to funding all victims will be accompanied to court if the matter has been referred to the Family Justice Centre (FJC). Additionally the Witness Service will support victims in the criminal case in accordance with their policies. Finally procedures will be in place to offer the safest environment possible while at court (within the confines of resourcing and existing structures) and procedures adopted as a result of the previously conducted safety audit.

### **Ensuring Fair Hearings**

Criminal cases will be heard first to reduce the likelihood of the Judge being exposed to information in the family matter that might be perceived as influencing the outcome of the criminal case. They (and Legal Advisers where relevant) will also be expected to apply the “apparent bias test” in any case where there is any question of previous knowledge of any of the participants or facts relating to earlier cases.

### **Defining and Identifying Cases**

The Government definition of DV will be used which includes intimate partners or family members but not perpetrators under 18 years of age. All organisations responsible for processing DV cases, either family or criminal, have developed processes to identify and flag each case which may be suitable for the IDVC.

### **IDVC Co-ordinator and Processes**

Once identified as a case which is current in both jurisdictions the case can either be listed for the IDVC, or in the case of County Court cases be transferred to the IDVC. This remains a judicial function and can be subject to challenge by legal representatives where considered necessary. The IDVC Co-ordinator will be responsible for ensuring appropriate cases are identified, the relevant courts informed and cases listed accordingly. The Co-ordinator will also be responsible for the administration of the pilot scheme, monitoring and record keeping. A simple spreadsheet has been designed to allow for IDVC cases to be identified, managed and recorded. This will also allow the planned evaluation to be conducted efficiently.

### **Judiciary**

Two DJs will sit in the IDVC initially but after sufficient time for evaluation of the more basic model has passed, Magistrates will also be introduced to allow for a wider evaluation of the IDVC and its applicability elsewhere in the country. Legal Advisers will also be present within the court (as they currently are in the FPC) and their continued presence will also be part of the evaluation. The internal process of the court will be reviewed (but not specific decisions) by a Judicial Steering Group who, in turn, will be supported by a court working group consisting largely of the existing Planning Group.

### **Review Hearings**

An important development of some existing practice is the use of review hearings. Where possible offenders and respondents or applicants who are perpetrators will be required to return to the IDVC to allow the case Judge to assess their progress following a finding of guilt or the imposition of an interim court order. This will allow for an ongoing assessment of safety and risk, and monitoring of a perpetrators behaviour once the initial findings have been made.

### **Information Sharing**

The provision of timely and relevant information to the Judge in these cases is a crucial means whereby safe and effective decision making can be achieved. All relevant organisations will be expected to support the process of information sharing within a framework agreed by partners.

### **Training**

Training will be delivered according to need prior to the commencement of the court and as and when further needs are identified.

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