

SPECIALIST DOMESTIC VIOLENCE COURTS: HOW SPECIAL ARE THEY?

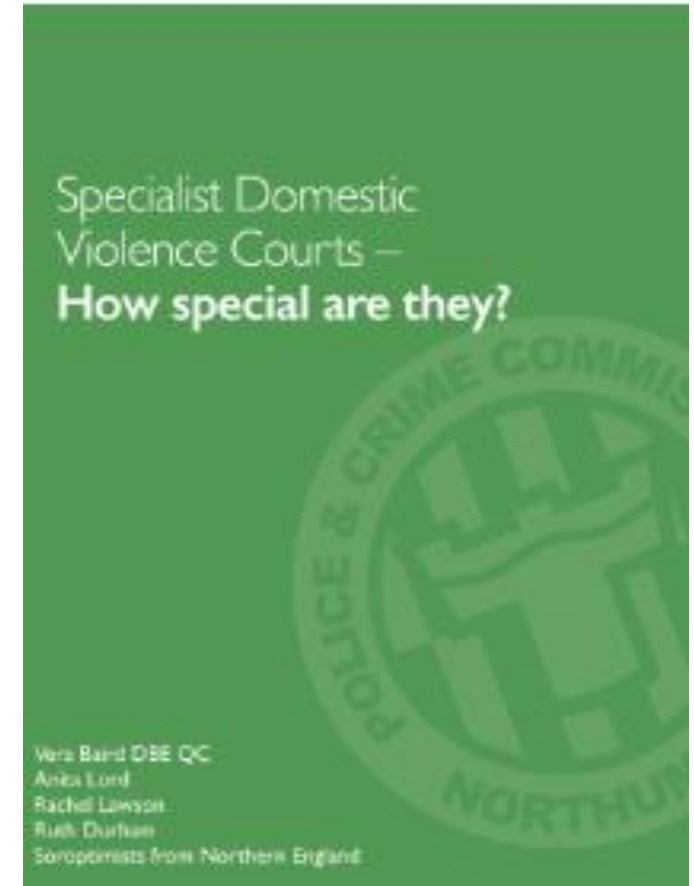
Dame Vera Baird QC
National Victims Commissioner

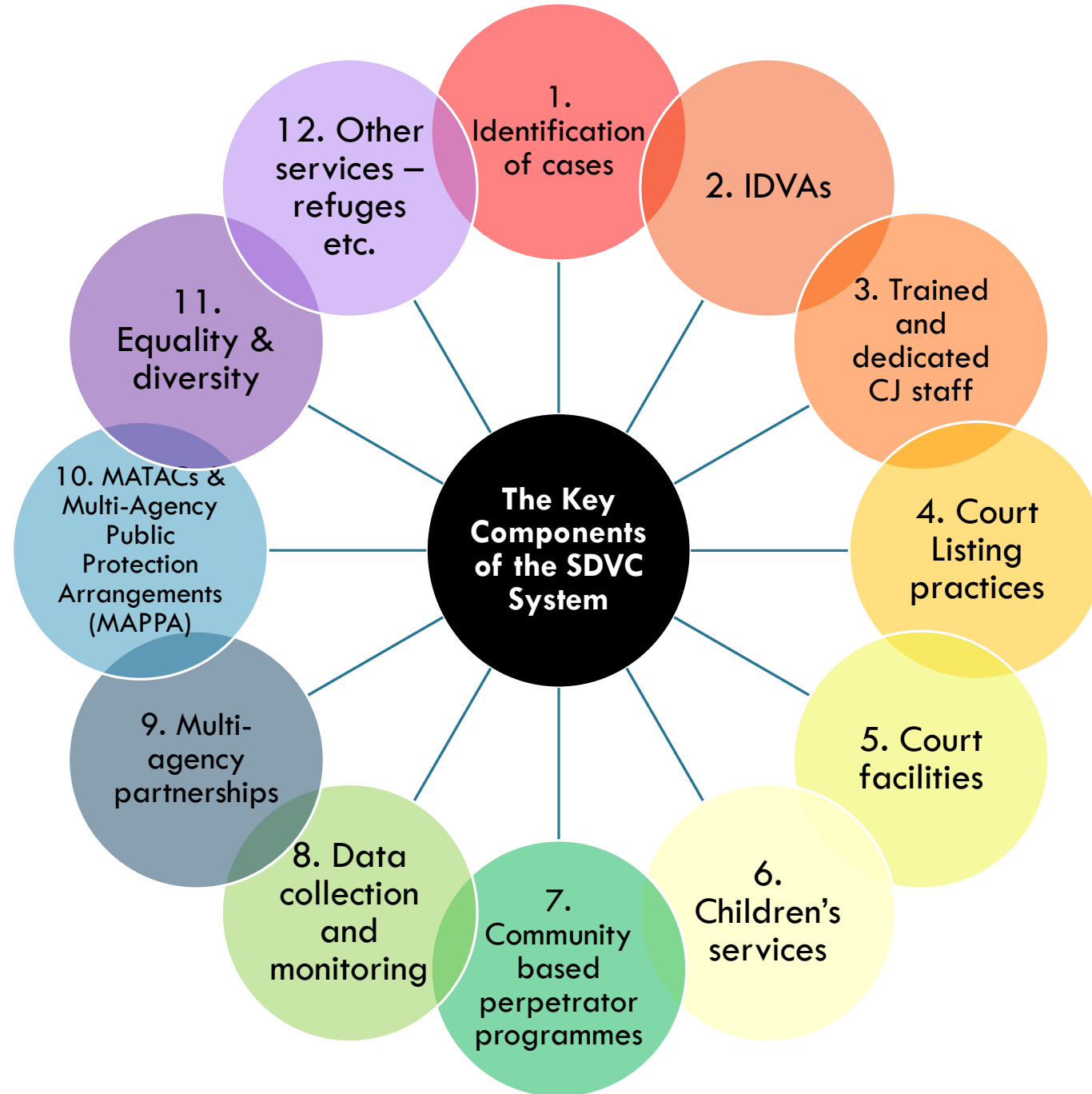
1. BACKGROUND & CONTEXT



INTRODUCTION: DOMESTIC ABUSE AND THE JUSTICE SYSTEM

- DA historically seen as a private matter.
- 1976 Private Members Bill to give the right to apply to the family court for protective orders.
- Complainants have long been discouraged by failures of police and courts to take DA as a serious public matter.
- 1999 Labour government sought to tackle issues, piloting problem-solving courts, and later, Independent Domestic Violence Advocates (IDVAs) and Multi-Agency Risk Assessment Conferences (MARACs).
- Specialist Domestic Violence Courts (SDVCs), IDVAs and MARACs rolled out nationally 2005/6.





WHAT IS DOMESTIC ABUSE?

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

Controlling behaviour

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

Coercive behaviour:

‘An act or a pattern of acts of assaults, threats, humiliation and intimidation or other abuse that is used to harm, punish, or frighten their victim.’

- There is no crime called ‘domestic violence’ or ‘domestic abuse’.
- A specific offence of coercive and controlling behaviour was introduced in 2015.

SPECIALIST DOMESTIC VIOLENCE COURTS: ROLE & PROCESS

- SDVCs are specialist Magistrates Courts, for adult criminal DA-related cases only.
- **First hearing** in the SDVC → the defendant must indicate/plead guilty or not guilty. No witnesses, or the complainant, are required to attend. From here, several things can happen:
 1. **Guilty plea** – SDVC attempt to deal with everything in the first hearing. No witnesses, or the complainant, are required to attend.
 2. **Not guilty plea** → **preliminary hearing** at the SDVC, to fix a time and place for trial and agree case details, e.g. which witnesses should attend → Case then **adjourned out of SDVC** into ‘ordinary’ Magistrates Court OR Crown Court (if the charge is serious, or the defendant opts for a jury trial).
 3. **Not guilty plea to the charges stated**, but guilt admitted for a lesser charge – CPS will consider whether to accept lesser plea or pursue the original charge with a not guilty plea (as at 2).
- After every guilty plea or finding of guilt, there will be a **sentencing hearing** & sometimes this is adjourned back to the SDVC to deal with, with its ‘specialist’ understanding of DA issues.

VICTIM & WITNESS SUPPORT IN COURT

IDVAs

- Most hearings in the SDVC itself do not require a complainant's presence. However, decisions are made at SDVC hearings which can have significant impact on the complainant's wellbeing.
- The intention is that there should be an IDVA present at every such SDVC hearing, who can ensure that their interests are represented.
- IDVAs can also support complainants in hearings in other courts.

Special Measures

- Victims of DA can be considered as 'vulnerable or intimidated' and therefore eligible for 'special measures' to assist them in giving evidence.
- Special measures can include: giving evidence behind a screen, or via a TV link from another room and a separate waiting room to the defendant.

The Victims Code

- Every victim of crime has entitlements under this.
- E.g. the right to give a Victim Personal Statement about the impact of the crime; the right to be kept up to date with case progress.

NORTHUMBRIA SDVCS

Pre-2015, Northumbria had 6 SDVC sites, for each of the 6 local authority areas, attended by IDVAs employed by each of the 6 areas.

Various reported issues from 2015 onwards:

1. Information sharing issues, preventing IDVAs from knowing which cases were to be heard, and to attend.
2. Courts closure programme reduced the SDVCs to 2 sites, serving 3 areas each.
3. IDVAs could not effectively manage their workload.
4. Cuts to LA budgets and therefore IDVA provision.
5. Cuts to all other agencies, and therefore to training on DA issues & SDVC Oversight Boards.



THE NORTHUMBRIA COURT OBSERVERS PANEL

- Concerns raised after OPCC staff observed a number of SDVC proceedings.
- Soroptimists volunteers from the North East, OPCC staff and experienced observers from a previous project were trained by local CPS.
- 2 questionnaires devised with HMCTS for consistent data collection in SDVC hearings & trials.
- July – September 2017: observations of 170 cases across 2 SDVC sites (Gateshead & Bedlington).



2. SDVC OBSERVATIONS



SDVC OBSERVATIONS: AN OVERVIEW

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

93.5% of cases involved a male defendant.

90% of cases involved a female complainant (in 6% of cases the gender of the complainant(s) was unknown).

GUILTY PLEA CASES: OBSERVATIONS



- 87 cases observed in the SDVCs proceeded on a guilty plea.

ACTIONS OF THE DEFENCE

- In 26% of cases the defence disputed an aspect of the prosecution's case after guilty plea submitted.
- In 37% of cases, the defence sought to excuse the defendant's conduct by referencing the victim's behaviour.
- In 28% of cases, reference was made to the supposed good character of the defendant.

CONSIDERING CHILDREN'S NEEDS

- In just 15% of cases observed, reference was made to the needs/risks of associated children.

NOT GUILTY PLEA CASES: OBSERVATIONS

- 83 cases in the SDVCs proceeded on a not-guilty plea.
- Defendants were charged with a variety of offences – predominantly for assault, criminal damage, stalking/harassment and threatening or abusive behaviour.
- The most common defence strategies were to dispute the complainant's account or to claim that the defendant acted in self-defence.
- In 18% of cases observed, there was discussion about summoning an apparently unwilling (and perhaps fearful) complainant to court, without any apparent discussion of special measures.
- In only 1 in 5 cases observed was there any discussion about the needs of associated children.



3. TRIAL OBSERVATIONS: KEY FINDINGS



DA TRIAL OBSERVATIONS: OVERVIEW

- 53 DA trial proceedings were observed, in which a not guilty plea had been indicated at the SDVC preliminary hearing. Of these:
- 21 (40%) actually proceeded as guilty pleas
- 32 (60%) went ahead as not guilty pleas. Of which:
 - 13 (41%) were dismissed before the trial commenced
 - 3 (9%) trial was adjourned to a later date
 - 16 (50%) trial proceeded on the day



KEY FINDINGS: COMPLAINANT ATTENDANCE & 'GAMING THE SYSTEM'

- In 21 cases the defendant had submitted a not guilty plea at the preliminary hearing at the SDVC and a date had been fixed for trial.
- In 12 of these cases a guilty plea was submitted on the day of the trial, as soon as the complainant entered the court building, without giving evidence.
- 4 of these 12 guilty plea cases this happened, despite the lack of any other witnesses or evidence to support the complainant's case.
- One judge openly challenged a defendant with 'waiting to see' if the complainant came before pleading guilty.



KEY FINDINGS: DISAPPOINTING CASE DISMISSALS

- In 13 of the 53 cases in which there had been a not guilty plea, the non-attendance of the complainant led to the case being dismissed before the trial had commenced.
- In 2 of these 13 cases a witness summons had been issued but apparently not properly served – so the complainant may not have known if/when they were required to attend court.
- In 5 cases the CPS wished to proceed with the case – by utilising other evidence and/or applying for an adjournment so that further attempts could be made to bring the complainant to court – but had their applications refused by the court.



KEY FINDINGS: SPECIAL MEASURES

- The court-based witness service volunteers, who were available at the majority of observed trial proceedings, were seen to be caring and to ensure DA complainants could access a separate waiting area.
- Although observers saw other special measures being discussed at a number of early hearings, only **3** of the 8 complainants who gave evidence actually made use of them at trial.
- None of the trial proceedings were seen to make use of 1 of the 4 remote evidence centres in Northumbria.



KEY FINDINGS: IDVAS AT COURT



- There is considerable evidence that where a DA complainant has the support of a specialist support worker, s/he is more likely to attend court, to be more confident and to give better evidence.
- However, IDVAs have not been regularly present in Northumbria SDVC hearings since 2015.
- Only 3 were observed to be supporting complainants at trial and ensuring their interests were considered in the proceedings seen by our observers.

WHAT CHANGES ARE NEEDED?

This work led to a total of 13 recommendations. Work has begun on:

- (a) **The pilot of 2 Specialist DA Court Advisors** - to act as a liaison between our local IDVAs and the specialist DA courts and DA cases appearing before the remand court, to ensure that the needs/wishes of the complainant are known and acted upon at every stage.
- (b) **Training for the non-SDVC Magistrates**
- (c) **The development of a multi-agency task and finish group** – to take the remaining recommendations forward locally.

Other recommendations relate to: training court personnel, all DA trials being heard in SDVCs, increasing early guilty pleas, IDVA provision, complainant information around special measures, restraining orders, Sentencing Guidelines, perpetrator programmes, the definition of DA, Victim Personal Statements and technological issues.

